

PR 2008/38 - Income tax: Macquarie Eucalypt Project 2008

 This cover sheet is provided for information only. It does not form part of *PR 2008/38 - Income tax: Macquarie Eucalypt Project 2008*

 This document has changed over time. This is a consolidated version of the ruling which was published on *3 September 2008*



Product Ruling

Income tax: Macquarie Eucalypt Project 2008

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	10
Ruling	19
Scheme	34
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	90
Appendix 2:	
Detailed contents list	130

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

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

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

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

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

No guarantee of commercial success

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

Potential participants must form their own view about the commercial and financial viability of the product. 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 provisions identified in the Ruling section (below) apply to the defined class of entities, who take part in the scheme to which this Ruling relates. Unless otherwise indicated, all legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997). In this Product Ruling the scheme is referred to as the Macquarie Eucalypt Project 2008 or simply as 'the Project'. The Project will be offered under a Product Disclosure Statement in relation to the Project and the Macquarie Timber Land Trust 2008 (Land Trust). **This Product Ruling does not rule on the tax consequences of investing in the Land Trust.**

Class of entities

2. This part of the Product Ruling specifies which entities:

- are subject to the taxation obligations; and
- can rely on the taxation benefits,

set out in the Ruling section of this Product Ruling.

3. The members of the class of entities who are subject to those taxation obligations and who can rely on those taxation benefits are referred to as Growers.

4. Growers will be those entities that are accepted to participate in the scheme specified below as initial participants¹ on or after the date this Product Ruling is made. They will have executed the relevant Project Agreements set out in paragraph 34 of this Ruling on or before 30 June 2008.

5. 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:

- participate in the scheme other than as initial participants;
- are accepted into this Project before the date of this Ruling or after 30 June 2008;
- participate in the scheme through offers made other than through the Product Disclosure Statement; or
- do not take out insurance against the loss or destruction of their Trees from the time of planting until the end of the term of the Project (refer to paragraph 38 of this Ruling).

¹ For the purposes of this Product Ruling an 'initial participant' means a participant who has obtained their Interest in the scheme from the Responsible Entity or the Manager of the scheme.

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 34 to 89 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.

8. This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to:

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

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

Superannuation Industry (Supervision) Act 1993

9. 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.

Date of effect

10. This Product Ruling applies prospectively from 23 April 2008, the date this Product Ruling is made. It therefore applies only to the specified class of entities that enter into the scheme from 23 April 2008 until 30 June 2008 being the closing date for entry into the scheme. This Product Ruling provides advice on the availability of tax benefits to the specified class of entities for the income years up to 30 June 2010.

11. 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.

12. 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).

13. 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.

14. 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

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

16. 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

17. 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

18. 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

19. 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 Project described at paragraphs 34 to 89 of this Ruling.

20. The Grower's participation in the Project must constitute the carrying on of 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 acceptance of their application, the time at which they become contractually bound by the Constitution, which incorporates the Licence and Management Arrangements, of the Project. 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.

Concessions for 'small business entities'²

21. From the 2007-08 income year, a range of concessions previously available under the simplified tax system (STS), will be available to an entity if it carries on a business and satisfies the \$2 million aggregated turnover test (a 'small business entity').

22. A 'small business entity' can choose the concessions that best suit its needs. Eligibility for some small business concessions is also dependent on satisfying some additional conditions. Because of these choices and the eligibility conditions the application of the small business concessions to Growers who qualify as a 'small business entity' is not able to be dealt with in this Ruling.

² The meaning of 'small business entity' is explained in section 328-110.

Deductions for the fee for land preparation and tree planting***Section 8-1 and Division 27 of the ITAA 1997 and section 82KZMG of the Income Tax Assessment Act 1936***

23. Other than where a 'CGT event'³ happens to their Interest within 4 years of 30 June 2008 (see paragraph 24 of this Ruling), a Grower who is an initial participant in the Project may claim tax deductions for the following amount on a per Interest basis.

Fee Type	Year ending 30 June 2008	Year ending 30 June 2010	Year ending 30 June 2011
Plantation Establishment Fee	\$2,420 See Notes (i) & (ii)	Nil	Nil

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 Plantation Establishment Fee is expenditure for 'seasonally dependent agronomic activities' (see paragraphs 104 to 109 of this Ruling) and is deductible in the income year in which it is incurred.

'CGT event' within 4 years for Growers who are 'initial participants'***Section 82KZMGA***

24. A deduction for the Plantation Establishment Fee is not allowable where a 'CGT event' happens in relation to a Grower's Interest⁴ before 1 July 2012 (subsection 82KZMGA(1) of the ITAA 1936).

25. Where deductions for these amounts have already been claimed by a Grower the Commissioner may amend their assessment at any time within two years after the end of the income year in which the 'CGT event' happens. The Commissioner's power to amend in these circumstances applies despite section 170 of the ITAA 1936 (subsection 82KZMGA(2) of the ITAA 1936).

³ Defined in section 995-1.

⁴ Within this Product Ruling, reference to 'Interest' as used in sections 82KZMGA and 82KZMGB of the ITAA 1936, is a reference to a Grower's Interest in the Project. Accordingly, the term 'Interest' has been capitalised for the purpose of this Product Ruling.

26. Growers whose deductions are disallowed are still required to include in their assessable income the market value of the Interest at the time of the 'CGT event' or the decrease in the market value of the Interest as a result of the 'CGT event' (see paragraphs 114 to 116 of this Ruling).

Deductions for loan interest and borrowing costs

Sections 8-1 and 25-25 and Division 27 of the ITAA 1997 and sections 82KZME and 82KZMF of the ITAA 1936

27. A Grower who is an initial participant in the Project may also claim tax deductions for the following fees and expenses on a per Interest basis, as set out in the Table below.

Fee Type	Year ending 30 June 2008	Year ending 30 June 2009	Year ending 30 June 2010
Interest on loans with Macquarie Bank Limited (MBL)	Nil	As incurred See Note (iii)	As incurred See Note (iii)
Borrowing Cost for loans with MBL	Must be calculated See Note (iv)	Must be calculated See Note (iv)	Must be calculated See Note (iv)

Notes:

- (iii) Interest on loans with MBL is deductible in the year in which it is incurred (section 8-1). The deductibility or otherwise of interest arising from agreements entered into with financiers other than MBL, is outside the scope of this Ruling. Prepayments of interest to any lender, including MBL, 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 Application Fee payable to MBL is a borrowing expense and is deductible under section 25-25. The deduction is spread over the period of the loan or 5 years, whichever is the shorter or, where the total of the Loan Application Fee and each amount of expenditure incurred by a Grower for the income year for borrowing money that is used for the purpose of gaining or producing assessable income is \$100 or less, will be deductible in the year it is paid. The deductibility or otherwise of borrowing costs arising from loan agreements entered into with financiers other than MBL is outside the scope of this Ruling.

Assessable income from 'CGT events' for Growers who are initial participants

Sections 6-10, 17-5 and 118-20 of the ITAA 1997 and section 82KZMGB of the ITAA 1936

28. Where a 'CGT event' happens to the Interest held by a Grower who is an initial participant in this Project, the market value of the Interest, or the decrease in the market value of the Interest, is included in the Grower's assessable income (section 6-10 of the ITAA 1997 and section 82KZMGB of the ITAA 1936), less any GST payable on those proceeds (section 17-5 of the ITAA 1997).

29. The amount is included in the Grower's assessable income in the income year in which the 'CGT event' happens (subsection 82KZMGB(2) of the ITAA 1936).

30. 'CGT events' for these purposes include those relating to:

- a **clear-fell harvest of all or part of the trees** grown on the Grower's plantation Lot;
- the **sale, or any other disposal** of all or part of the 'Interest' in the Project held by the Grower; or
- any other 'CGT event' that results in a reduction of the market value of the 'Interest' in the Project held by the Grower.

31. Where an amount arising from a 'CGT event' is included in the assessable income of a Grower by section 82KZMGB of the ITAA 1936 the anti-overlap provisions in section 118-20 of the ITAA 1997 will operate to exclude that amount from the capital gains provisions in Part 3-1 of the ITAA 1997.

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

Section 35-55 – exercise of Commissioner's discretion

32. A Grower who is an individual accepted into the Project in the year ended 30 June 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 at paragraphs 34 to 89 of this Ruling, the Commissioner will exercise the discretion in paragraph 35-55(1)(b) for Growers for the income years ended **30 June 2008 to 30 June 2019**. 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***

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

- 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

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

- Application for a Product Ruling dated 31 October 2007 as constituted by documents provided on 31 October 2007 and additional correspondence dated 20 January 2008, 29 January 2008 and 4 February 2008;
- Application for a Product Ruling Addendum as constituted by documents received on 1, 5 and 12 August 2008 and additional correspondence received on 4 and 9 July and 1, 5 and 12 August 2008;
- Product Disclosure Statement (PDS) prepared by the Applicants, dated 8 May 2008;
- Draft Macquarie Eucalypt Project 2008 Constitution, draft dated 20 January 2008 (the Project Constitution);
- Draft Macquarie Eucalypt Project Compliance Plan, draft dated December 2007;
- Transactions treated as sub-sales of land – Statutory Declaration, received on 1 August 2008;
- Draft Agreement for Sale between MBL and Macquarie Financial Products Management Limited (MFPML), received on 1 August 2008;
- Contract of Sale of Real Estate between MCGL and the Vendor, dated 20 May 2008;

- Draft Agreement for Ground Lease and Forest Property Agreement 2008 between the Lessor and the Project RE (Agreement for Lease and Forest Property Agreement), draft dated 20 January 2008;
- Draft Novation Deed in relation to the Draft Agreement for Ground Lease and Property Forestry Agreement between MCGL, MBL and MAAML, received on 1 August 2008;
- Draft Form of Ground Lease Agreement 2008 between MCGL and the Project RE, draft dated 20 January 2008;
- Draft Form of Forest Property Agreement 2008 between the Landowner and the Project RE (Forest Property Agreement), draft dated 20 January 2008;
- Draft MFSPL Management Agreement 2008 between the Project RE and Macquarie Forestry Services Pty Limited (MFSPL) (MFSPL Management Agreement), draft dated 20 January 2008;
- Draft Midway Forestry Management Agreement 2008 between MFSPL and Midway (Midway Management Agreement), draft dated 20 January 2008;
- Draft Novation Deed in relation to the Midway Management Agreement 2008 between MCGL, MBL, MAAML, MFSPL and Midway, received on 1 August 2008;
- Draft McEwens Forestry Management Agreement 2008 between MFSPL and McEwens (McEwens Management Agreement), draft dated 20 January 2008;
- Draft Novation Deed in relation to the McEwens Management Agreement 2008 between MCGL, MBL, MAAML, MFSPL and McEwens, received on 1 August 2008;
- Draft Confirmation of Investment Loan letters in relation to the 1, 5 and 7 year loans, received on 12 August 2008;
- Draft Midway Off-Take Agreement 2008 between the Growers (to be executed by the Project RE on behalf of Growers) and Midway (Midway Off-Take Agreement), draft dated 20 January 2008;
- Draft Pricing and Payment Schedule 2008 to the Midway Off-Take Agreement, draft dated 20 January 2008;
- Draft Loan and Security Agreement and Notice of Mortgage between MBL and Investors (Loan Agreement), which forms part of the PDS.

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

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

36. 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 in the following paragraphs.

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

Location	The land will be located within an economic haulage distance of a log processor's mill gate in Victoria for example, Midway's log processing facilities at the port of Geelong Victoria or facilities at Portland.
Type of business to be carried on by each participant in the Project	Commercial growing and cultivation of varieties of eucalyptus trees including <i>Eucalyptus globulus</i> and <i>Eucalyptus nitens</i> for the purpose of harvesting and selling trees for woodchips and other timber products.
Number of hectares offered for cultivation	Up to approximately 10,000 hectares.
Size of each Interest	1/4 hectare.
Minimum allocation	4 Interests.
Number of trees per hectare	Approximately 1,000.
Term of the Project	Approximately 11.5 years.
Initial cost	\$2,420 Plantation Establishment Fee for an Interest in the Project.
Ongoing costs	<ul style="list-style-type: none"> Deferred Management Fee of 4.4% of Net Sale Proceeds or 4.4% of any Tree Insurance Proceeds (if an Insurance Event occurs and there is no replanting); and Licence Fee of 6.6% of Net Sale Proceeds or 6.6% of any Tree Insurance Proceeds (if an Insurance Event occurs and there is no replanting).
Other costs	<ul style="list-style-type: none"> Annual Tree Insurance premiums payable by the Growers; and Productivity Performance Fee of 16.5% of Net Sale Proceeds in excess of \$3,375 (GST exclusive) per Interest, if the average amount of all Timber from the region produced is greater than 60 GMT per Interest for the Plantation Lots for that region.

38. The scheme is called the Macquarie Eucalypt Project 2008 (Project). This Ruling only applies to participants in the Project who, from the time of planting until the end of the term of the Project, take out insurance in respect of the trees against damage or destruction in terms of clause 5.1(b) of Schedule 1 of the Constitution of the Project. **The PDS for the Project also contains an offer to invest in Units in the Land Trust. This Ruling DOES NOT address the tax consequences of an investment in the Land Trust.**

39. The Project will be a registered managed investment scheme under the *Corporations Act 2001*. Macquarie Alternative Assets Management Limited (MAAML) has been issued with Australian Financial Service Licence number 225758 and will be the Responsible Entity for the Project.

40. Under the PDS, MAAML is offering Interests in the Project at an application price of \$2,420 per Interest. The minimum application for each Grower is 4 Interests in the Project.

41. MAAML will act as the Responsible Entity for the Project. An Interest in the Project is comprised of one Plantation Lot having a total area of one quarter hectare which will be licensed by the Grower from the Project Responsible Entity to carry on the business of growing eucalypt trees.

42. At the termination of the Project, on or around 31 December 2019, an Offtaker such as Midway Pty Limited (Midway) will harvest and purchase the Grower's trees. Midway will agree to purchase the Grower's standing Trees located in the areas managed by Midway or McEwens (see below).

43. The Sale Period, being the period during which the Project trees will be harvested or otherwise sold, as defined in the PDS is expected to be 1 January 2019 to 31 December 2019. The Growers will receive their Net Sale Proceeds (this term is defined in paragraph 58 of this Ruling) in instalments throughout the Sale Period. The Sale Period is not expected to be longer than 12 months. It is envisaged that upon purchase by an Offtaker such as Midway the trees will be harvested in accordance with the Midway Off-Take Agreement as applicable.

44. Under the Midway Management Agreement and McEwens Management Agreement, Midway and McEwens Contracting Pty Limited (McEwens) respectively will select land in Victoria for the Project which satisfies a detailed protocol for land selection which has been developed by Macquarie Bank Limited (MBL). The protocol employs a site classification system based on climate and soils that correlates with plantation productivity predictions.

45. MCGL will purchase suitable land recommended by Midway (in respect of the Geelong region and potentially other regions) or McEwens (in respect of the Portland region). Once it has acquired the land, MCGL will, pursuant to the Agreement for Lease and Forestry Property Agreement enter the Lease and Forest Property Agreement with MAAML for the term of the Project. MAAML will grant each Grower a Licence to access and conduct their afforestation business on their Plantation Lots.

46. The land will be acquired and the Lease and Forest Property Agreement granted before the first of:

- (a) the expiry of 15 months after the grant of the Interest to the Grower; and
- (b) the date that is three months before the end of the Initial Term for that Interest.

Project Constitution

47. The Constitution establishes the scheme known as the Macquarie Eucalypt Project 2008 and operates as a deed declared to be for the benefit of and binding on the Growers. It sets out the terms and conditions under which MAAML agrees to act as Responsible Entity and manage the Project.

48. Following entry into a Lease or the issuance of Interests (whichever occurs later):

- (a) Plantation Lots shall be granted to Growers in the order in which Interests were issued;
- (b) a Plantation Lot granted to a Grower may be in any region and, where a Grower has multiple Interests, Plantation Lots may be granted across the regions as determined by the Manager in its absolute discretion and on the basis that the allocation to Growers of Plantation Lots between regions may be different as between Growers; and
- (c) a Licence and Forest Property Right in respect of the Grower's Plantation Lots on the Land shall, by virtue of the issuance of the Interests and allocation of Plantation Lots, be granted to the Grower.

49. Under the Constitution the Manager must hold any scheme Property on trust for Growers or cause it to be held by a Custodian.

50. An applicant for Interests must complete the Application Form attached to the PDS issued by the Manager in connection with the scheme. Payment in a form acceptable to the Manager, of the part (if any) of the Plantation Establishment Fee which is not being provided by MBL as Lender for the applicant, must:

- (a) accompany the Grower's Application; or
- (b) be received by or made available to the Manager or the Custodian within such period before or after the Manager receives the Grower's Application as the Manager determines from time to time.

51. The balance (if any) of the Plantation Establishment Fee which is being provided by MBL as Lender for the applicant must also be received by the Manager before an Interest will be issued.

52. Money paid with or in relation to a Grower's Application for an Interest is to be held by the Manager in a trust account in accordance with the Corporations Act pending the issue of the Interest. Once the Interest is issued the Manager may retain the Plantation Establishment Fee on its own account (clause 6.7).

53. MAAML grants each Grower a Licence to access and conduct their afforestation business on their Plantation Lot. MAAML also grants each Grower certain Forestry Rights in relation to their Plantation Lot, which include the vesting in the Grower of ownership of the Trees, Carbon Sequestration Rights and Environmental Credits (clause 3.2 and as defined in clause 25 of the Project Constitution) in respect of the Grower's Plantation Lot.

54. The Project Constitution states the various fees and expenses to which the Manager is entitled during the term of the Project. Clauses 4.1, 4.2 and 4.3 of Schedule 1 of the Constitution list the Manager's obligations in respect of each Grower during both the Initial Term and the period following the Initial Term.

55. The activities in respect of an Interest shall commence no earlier than the start of the Initial Term for that Interest. The only activities to be carried out during the Initial Term are those associated with the planting of seedling trees (including ordering and receiving seed and seedlings, preparing the Plantation Lots for planting, weed control in conjunction with planting, cultivation and planting), which, excluding refilling, are to be completed during the Initial Term for that Interest (clause 4.4 of Schedule 1).

56. The Initial Term for an Interest, which will be for a period of no more than 12 months, will vary depending on the date on which a Grower's Interest is allotted. The Initial Term will be for an Interest issued on or before 30 June 2008 – the period commencing on 30 June 2008 and ending on the first anniversary of that date.

57. The Manager will distribute or retain the Net Sale Proceeds and Other Income of each Grower in the following order of priority:

- (a) retain an amount representing any liabilities incurred by the Manager in respect of that Grower for the account of the Manager;
- (b) pay any provision for Environmental Debts to the Responsible Entity of the Land Trust;
- (c) retain the Deferred Management Fee as set out in clause 18.2 of the Project Constitution for the account of the Manager;
- (d) distribute the Licence Fee in accordance with clause 7.1 of the schedule to the MAAML;

- (e) when the Net Sale Proceeds received by the Manager for the Grower and all other Growers from that region exceed \$3,375 (GST exclusive) per Plantation Lot if the average yield of All Timber is greater than 60 GMT per Plantation Lot in that Region (or the average mean annual increment of All Timber is greater than 6.0), retain the Productivity Performance Fee; and
- (f) distribute the balance to the Grower.

58. The Net Sale Proceeds in relation to a Grower is the Grower's Proportional Interest of the proceeds of sale of All Timber of the scheme, less the cost, where payable, of harvest, handling, loading, transport, processing, shipping and delivery costs which are received by the Manager.

59. A Grower's Proportional Interest is the proportion which the aggregate Interests issued to that Grower bears to all Interests issued to all the Growers in the scheme at that time. If a Plantation Lot is affected by an Event (being destruction or damage to any of the Trees), then the Grower's Proportional Interest will be as determined by the Manager. This determination can occur at any time, including when the timber is sold at stump. In this situation the Manager will determine the proportion of that Grower's Trees which remain, and the relative market value of those remaining Trees, as they relate to the Trees which would have been expected on the Plantation Lot licensed to that Grower.

60. If an Event occurs and Tree Insurance has been arranged by the Manager for a Grower, the Manager will use the proceeds of the claim to replant the affected parts of that Grower's Plantation Lot, if so directed by the Grower before 30 June 2010. If the Manager is not so directed by the Grower, the Manager must determine whether the proceeds are to be used to replant the affected parts of that Grower's Plantation Lot or the proceeds shall accrue to the Manager on behalf of the Grower.

61. The scheme terminates on the earlier of:

- (a) the termination or expiration of every Lease and the last payment of the Net Sale Proceeds and Other Income; or
- (b) such later date in accordance with any extensions of time as determined by agreement by at least:
 - (i) a resolution or written agreement of Growers with at least 75% of all Interests; and
 - (ii) the Off-Takers, to the extent that the Off-Take Agreements have not been terminated and are affected by the determination.

Lease

62. Under clause 1.1 of the Lease, MCGL grants a lease to MAAML who takes a lease of the Land for the Term of the Project, on and subject to the terms of the Lease.

63. At clause 1.2 MCGL also grants to MAAML a licence to access and use the Other Land for all purposes having regard to the Permitted Use (as defined in clause 21 of the Lease) of the Land. This right is contractual, non-exclusive and irrevocable for the duration of the Term of the Project.

64. At clause 5.1 MAAML may:

- (a) sub-let any part of the Land for the Permitted Use if it sees fit without the consent of MCGL;
- (b) grant non-exclusive licences or sub licences for the use of the Land and non-exclusive licences for the use of the Other Land for the Permitted Use as it sees fit; or
- (c) assign the Lease in accordance with the Project Constitution without the consent of MCGL.

65. The Term of the Lease is the period commencing on the Commencement Date and expiring on the Termination Date. The Termination Date is 30 June 2024; however MCGL may terminate the Lease by notice to MAAML at any time in its absolute discretion after the later to occur of:

- (a) 31 December 2019; and
- (b) the final payment of the Net Sale Proceeds and the final payment of Other Income under the scheme Constitution.

66. The Rent payable by MAAML in relation to the Lease is the amount which is \$1 or 6.6% of:

- (a) Net Sale Proceeds in arrears when the Net Sale Proceeds in respect of the Land are distributed by MAAML to Growers of the scheme; or
- (b) upon the occurrence of an Event, any Tree Insurance Proceeds (that are not applied in replanting the affected parts of the Land) when Tree Insurance Proceeds in respect of the Land are received by the Tenant (whether on its own behalf or for others).

67. If a Grower's trees are destroyed or damaged and there is no replanting of the affected parts of the Grower's Plantation Lot, at MAAML's election, MAAML may surrender that part of the Plantation Lot over which those trees were planted, by notice to the Lessor.

Forest Property Agreement

68. Under this Agreement, MCGL, in consideration of MAAML paying the Rent under the Lease, vests ownership to MAAML of the Forest Property, Carbon Sequestration Rights and Environmental Credits in the Land for the Term of the Lease. MCGL also acknowledges it has no interest in the Forest Property, Carbon Sequestration Rights and Environmental Credits for the Term of the Lease.

69. Clause 13.1 states that Forest Property Rights means the right to ownership of the Forest Property on the Land, the Carbon Sequestration Rights and any Environmental Credits.

Agreement for Ground Lease and Forest Property Agreement

70. MCGL agrees to grant, or procure the grant, and MAAML agrees to accept the grant of the Lease and the Forest Property Agreement from and including the Commencement Date, being the settlement date under the relevant contract for the purchase of Project Land.

71. Under the Agreement, MAAML must deliver to MCGL with this Agreement the Lease and the Forest Property Agreement in duplicate executed by MAAML to be held in escrow by MCGL.

MFSP Management Agreement 2008

72. Under this Agreement MAAML engages Macquarie Forestry Services Pty Limited (MFSP) to undertake certain of its obligations under the Constitution for the Term of the Project.

73. MAAML grants to MFSP a licence to access and use (and to allow its subcontractors and agents to access and use) the Land and Other Land for all purposes necessary to carry out its obligations under this Agreement.

74. This Agreement commences on the Commencement Date and continues until the Termination Date. In terms of clause 12.4, the Termination Date is the same as that for the Project Constitution.

Midway Management Agreement 2008

75. Under this Agreement MFSP sub-contracts some of its obligations under the MFSP Management Agreement to Midway in respect of the Geelong region and potentially other regions.

76. MFSP and Midway agree and acknowledge that the Growers are to sell Timber from Plantation Lots in the Geelong region and other regions managed by Midway to Midway, in accordance with the terms of the Off-Take Agreement.

McEwens Management Agreement 2008

77. Under this Agreement MFSPL sub-contracts some of its obligations under the MFSPL Management Agreement to McEwens in respect of the Portland region.

78. MFSPL and McEwens agree and acknowledge that the Growers are to enter into arrangements to sell Timber from Plantation Lots in the Portland region to an off taker. McEwens agrees to provide access at least annually for representatives of any contracted off taker to inspect the Plantation Lots in the Portland region. Such access will be granted at a mutually agreeable time.

Midway Off-Take Agreement 2008

79. Under the Midway Off-Take Agreement, Midway agrees to buy and the Manager, on behalf of the Growers, agrees to sell the Timber located in the Geelong and Portland regions and other regions managed by Midway or McEwens at stump for the Selling Price. The Selling Price for All Timber at stump will be calculated and paid in accordance with the Pricing and Payment Schedule. This Schedule forms part of the Midway Off-Take Agreement and establishes the pricing and payment mechanisms for the Off-Take Agreement. Midway will pay to the Manager the Selling Price on behalf of each of the Growers.

80. Midway agrees with the Grower that it will, at its own cost and expense:

- (a) harvest the Timber by 31 December 2019 or such later date agreed in writing by Midway and the Manager but no later than 31 December 2024;
- (b) transport the Timber from the Land to Midway's Facility, or to any other agreed place between Midway and the Manager prior to the end of the Sale Period (being the year in which all Standing Timber is to be harvested, currently expected to be 2019);
- (c) unless otherwise agreed, produce wood chips or other timber products from the Timber for sale to its Customers; and
- (d) unless otherwise agreed, market the wood chips to its Customers for sale.

81. MAAML grants to Midway a licence to access and use the Land and Other Land for all purposes necessary to carry out its obligations under this Agreement.

Fees

82. The fees payable under the Constitution of the Macquarie Eucalypt Project 2008, on an Interest basis, are as follows:

- Plantation Establishment Fee of \$2,420 payable on application for the maintenance and management of each Grower's Plantation Lot during the Initial Term;
- Deferred Management Fee for the maintenance and management of each Grower's Plantation Lot for the period commencing after the Initial Term and ending on the Termination Date being an amount equal to either 4.4% of the Net Sale Proceeds of each Grower or where an Event has occurred 4.4% of any Tree Insurance Proceeds (see clause 18.2 of the Project Constitution);
- Productivity Performance Fee payable in respect of each Grower, being an amount equal to 16.5% of Net Sale Proceeds for a region in excess of \$3,375 (GST exclusive) per Plantation Lot if the average yield of All Timber from the region is greater than 60 GMT per Plantation Lot (or the average mean annual increment of All Timber is greater than 6.0) per Plantation Lot in the region. This Fee is payable for the maintenance and management of each Grower's Plantation Lot for the period commencing after the Initial Term and ending on the Termination Date;
- Licence Fee is payable by the Growers for the Licence. The Licence Fee is an amount equal to 6.6% of either Net Sale Proceeds or where an Event occurs, 6.6% of any Tree Insurance Proceeds; and
- Handling Fee for arranging Tree Insurance will be invoiced to the Growers as soon as practicable (but within thirty days). The invoiced amount will be payable by the Growers within thirty days of the invoice date.

Finance

83. Growers can fund their involvement in the Project themselves, borrow from MBL (a lender associated with the Responsible Entity) or borrow from an independent lender.

84. Only the finance arrangements set out below are covered by this Product Ruling. A Grower cannot rely on this Product Ruling if they enter into a finance arrangement with MBL that materially differs from that set out in the documentation provided to the Tax Office with the application for this Product Ruling. A Grower who enters into a finance arrangement with an independent lender external to the Project may request a private ruling on the deductibility or otherwise of interest incurred under finance arrangements not covered by this Product Ruling.

85. Growers cannot rely on any part of this Ruling if the Plantation Establishment Fees are not paid in full on or before 30 June 2008 by the Grower or, on the Grower's behalf, by a lending institution.

MBL Finance

86. Where Growers borrow from MBL, all application monies received (both from Growers directly and from MBL) will be paid to the Manager to be held in a trust account for the Project in accordance with the Corporations Act. Such application monies will be paid into the trust account on or before the issue date of the Interests. The finance made available by MBL is offered on the following terms contained in the Loan Agreement:

Term	1 year	5 years	7 years
Investment amount able to be borrowed	100%	100%	100%
Indicative Interest Rate	No interest	9.80%	9.95%
Interest Rate Set Date	N/A	Interest rates will be set on the day the loan is approved.	Interest rates will be set on the day the loan is approved.
Amortisation Profile	1 year of equal monthly principal repayments	5 years of equal monthly payments ⁵	7 years of equal monthly payments ⁶
Interest Payments	N/A	Monthly in arrears	Monthly in arrears
Application Fee	1% of the total Application Price less any cash contributions	\$0	\$0

⁵ Monthly payments of principle and interest will commence in July 2008. The amount of monthly principle repayable will increase and the amount of monthly interest will decrease over the term of the Facility.

⁶ Monthly payments of principle and interest will commence in July 2008. The amount of monthly principle repayable will increase and the amount of monthly interest will decrease over the term of the Facility.

87. In each case:

- maximum amount allowed to be borrowed to finance an investment in the Project is \$9,680 plus the Application Fee for every 4 Interests in the Project;
- the borrowing includes the GST payable in relation to the Plantation Establishment Fee for 4 Interests;
- the above repayments must be paid irrespective of the amount of any distribution from the Project;
- the interest rate payable on the loan facility will be determined by MBL on the day the loan is approved, and will be published on the Macquarie Forestry website. This indicative interest rate will be set on an arm's length commercial basis; and
- Growers who borrow from MBL are obliged to obtain and maintain Tree Insurance at all times during the term of any financial accommodation provided by MBL, except that Tree Insurance is not required before the Trees are planted and is not required if the term of any finance provided is not greater than one year.⁷

88. Growers cannot rely on this Product Ruling if a different finance arrangement is entered into with MBL to finance an investment in the Project or if application monies otherwise remain unpaid on 30 June 2008.

89. 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;

⁷ As per paragraph 38 of this Ruling, this Ruling only applies to participants in the Project who from the time of planting until the end of the term of the Project, take out insurance in respect of the trees against damage or destruction in terms of clause 5.1(b) of Schedule 1 of the Project Constitution.

PR 2008/38

- 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 MBL, are involved or become involved in the provision of finance to Growers for the Project.

Commissioner of Taxation

23 April 2008

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?

90. For the amounts set out in paragraph 23 of this Ruling to constitute allowable deductions the Grower's afforestation activities as a participant in the Macquarie Eucalypt Project 2008 must amount to the carrying on of a business of primary production.

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

92. 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?

93. Taxation Ruling TR 2000/8 Income tax: investment schemes, particularly paragraph 87, is more specific to arrangements such as the 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.

94. Having applied these principles to the arrangement set out above, a Grower in the Project is accepted to be carrying on a business of growing and harvesting timber for sale.

Deductibility of the Plantation Establishment Fee and interest on loans with MBL

Section 8-1

95. The Plantation Establishment Fees 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 arrangement and there is no capital component evident in the Plantation Establishment Fees (see paragraphs 49 to 51 of TR 2000/8).

96. 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 101 to 109 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.)

97. Some Growers may finance their participation in the Project through a Loan Agreement with MBL. Applying the same principles as that used for the Plantation Establishment Fees, interest incurred under such a loan has sufficient connection with the gaining of assessable income to be deductible under section 8-1.

98. Other than where the prepayment provisions apply (see paragraphs 101 to 109 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

99. 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.

100. For the 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 of the ITAA 1936 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 the Project

Sections 82KZME and 82KZMF

101. Other than the Plantation Establishment Fee (see below) the fees payable under scheme to which this Product Ruling applies are payable out of harvest proceeds and the interest payable to MBL 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.

102. However, sections 82KZME and 82KZMF of the ITAA 1936 may have relevance if a Grower in the Project prepays interest under a loan agreement (including loan agreements with lenders other than MBL).

103. 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 the Project.

Section 82KZMG

104. 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.

105. Section 82KZMG of the ITAA 1936 provides a '12 month rule' that, in effect, facilitates an immediate deduction for certain prepaid expenditure⁸ incurred under an 'agreement for planting and tending trees for felling' (subsection 82KZMG(3) of the ITAA 1936).

106. 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 (subsection 82KZMG(4) of the ITAA 1936). Seasonally dependent agronomic activities are explained in Taxation Determination TD 2003/12.

107. 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 income year following the 'expenditure year' (see subsections 82KZMG(1) and (2) of the ITAA 1936).

108. Under the Constitution each Grower incurs a Plantation Establishment Fee of \$2,420 per Plantation Lot for 'seasonally dependent agronomic activities' that will be carried out during the 'establishment period' of the Trees.

109. The expenditure for 'seasonally dependent agronomic activities' meets all other requirements of section 82KZMG of the ITAA 1936 and, therefore, other than where section 82KZMGA of the ITAA 1936 applies (see paragraphs 110 to 112 of this Ruling), a deduction is allowable in the income year ended 30 June 2008 for the full amount of expenditure incurred by the Grower for the Plantation Establishment Fee.

'CGT event' within 4 years for Growers who are initial participants**Section 82KZMGA**

110. A Grower who is an initial participant in the Project cannot deduct an amount that meets the requirements of section 82KZMG of the ITAA 1936 if a 'CGT event' happens in relation to the Grower's interest within 4 years of 30 June 2008 (subsection 82KZMGA(1) of the ITAA 1936). In the Project, only the Plantation Establishment Fee meets the requirements of section 82KZMG of the ITAA 1936. Accordingly, the deduction of \$2,420 per 'Interest' for the Plantation Establishment Fee will not be allowable if a 'CGT event' happens to the Grower's Interest within the 4 year period.

⁸ The expenditure must be incurred on or before 30 June 2008 (subsection 82KZMG(2) of the ITAA 1936).

111. Where subsection 82KZMGA(1) of the ITAA 1936 applies, the Commissioner may amend any affected Grower's assessment within 2 years after the end of the income year in which the 'CGT event' happens. The Commissioner's power to amend in these circumstances applies despite section 170 of the ITAA 1936 (subsection 82KZMGA(2) of the ITAA 1936).

112. A Grower whose deduction for the Plantation Establishment Fee is disallowed because of section 82KZMGA of the ITAA 1936 is still required to include in their assessable income either the market value of the Interest at the time of the 'CGT event', or the decrease in the market value of the Interest as a result of the 'CGT event' (section 82KZMGB of the ITAA 1936).

Assessable income from 'CGT events' for Growers who are initial participants

Sections 6-10, 10-5, and 118-20 of the ITAA 1997 and section 82KZMGB of the ITAA 1936

113. Section 6-10 of the ITAA 1997 includes in assessable income amounts that do not constitute ordinary income. These amounts, called statutory income, are listed in the table in section 10-5 of the ITAA 1997 and include amounts that are included in the assessable income of a Grower by section 82KZMGB of the ITAA 1936.

Section 82KZMGB

114. Where a 'CGT event' (other than for a 'CGT event' in respect of a thinning)⁹ happens to an Interest held by a Grower who is an initial participant in the Project, section 82KZMGB of the ITAA 1936 includes an amount in the assessable income of the Grower if:

- the Grower can deduct or has deducted Plantation Establishment Fee; and
- subsection 82KZMG(1) of the ITAA 1936 applies to the timing of the deduction of Plantation Establishment Fee (or would apply if section 82KZMGA of the ITAA 1936 were disregarded – see above).

Market value rule applies to 'CGT events'

115. If, as a result of the 'CGT event' the Grower either:

- no longer holds the Interest; or

⁹ A thinning of the trees includes a selective harvest of immature trees to facilitate better outcomes at harvest. A thinning differs from a clear fell of a percentage of mature trees which may occur over two or more income years.

- otherwise – where the Grower continues to hold the ‘forestry Interest’ but there is a decrease in the market value of the Interest,

then the market value of the Interest at the time of the event, or the decrease in market value of the Interest as a result of the event, is included in the assessable income of the Grower (subsection 82KZMGB(2) of the ITAA 1936). A market value rule applies rather than the amount of money actually received from the CGT event (subsection 82KZMGB(3) of the ITAA 1936). However, the market value and the actual amount of money received may be the same.

116. The market value amount included in the assessable income of a Grower is the value of the Interest just before the ‘CGT event’, or where the Grower continues to hold their Interest after the ‘CGT event’, the amount by which the market value of the Interest is reduced by the ‘CGT event’ (subsection 82KZMGB(2) of the ITAA 1936).

117. This provision will apply where the Interest is sold, is extinguished, or ceases, and will include ‘CGT events’ such as a full or partial sale of the Interest or from a full or partial clear-fell harvest of the trees grown under the Project.

Anti-overlap provisions

Section 118-20

118. Generally, where as a result of a ‘CGT event’ a capital gain would otherwise be included in a taxpayer’s assessable income, section 118-20 will apply to reduce the capital gain if, because of the event, a provision of the ITAA other than the CGT provisions includes an amount in the taxpayer’s assessable income.

119. In the case of Interests held by Growers who are initial participants in the Project the market value, or the reduction in the market value of the Interest from a CGT event is included in assessable income by section 6-10 of the ITAA 1997 and section 82KZMGB of the ITAA 1936. Therefore, section 118-20 of the ITAA 1997 will operate to reduce to nil any capital gain that would otherwise be assessable under the CGT provisions in Part 3-1 of the ITAA 1997.

Borrowing cost

Section 25-25

120. A deduction is allowable for expenditure incurred by a Grower in borrowing money to the extent that the borrowed money is used for the purpose of producing assessable income (subsection 25-25(1)).

121. In the Project the Application Fee payable to MBL is incurred to borrow money that is used or is to be used solely for income producing purposes during each income year over the term of the loan.

122. Borrowing expenses of \$100 or less are deductible in the year in which they are incurred (subsection 25-25(6)). Where the amount exceeds \$100, the deduction for the borrowing expense is spread over the period of the loan or 5 years, whichever is the shorter (subsection 25-25(4)).

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

123. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for the income years ended 30 June 2008 to 30 June 2019, 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.

124. 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.

125. 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

126. The operation of section 82KL of the ITAA 1936 depends, among other things, on the identification of a certain quantum of ‘additional benefits(s)’. Insufficient ‘additional benefits’ will be provided to trigger the application of section 82KL 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

127. 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).

128. The Macquarie Eucalypt Project 2008 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 24 of this Ruling that would not have been obtained but for the scheme. However, it is not possible to conclude the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

129. 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 timber. There are no facts that would suggest that Growers have the opportunity of obtaining a tax advantage other than the tax advantages identified in this Ruling. There is no non-recourse financing or round robin characteristics, and no indication that the parties are not dealing at arm's length or, if any parties are not dealing at arm's length, that any adverse tax consequences result. Further, having regard to the factors to be considered under paragraph 177D(b) of the ITAA 1936 it cannot be concluded, on the information available, that participants will enter into the scheme for the dominant purpose of obtaining a tax benefit.

Appendix 2 – Detailed contents list

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

	Paragraph
What this Ruling is about	1
Class of entities	2
Qualifications	6
Superannuation Industry (Supervision) Act 1993	9
Date of effect	10
Changes in the law	15
Note to promoters and advisers	17
Goods and Services Tax	18
Ruling	19
Application of this Ruling	19
Concessions for 'small business entities'	21
Deductions for the fee for land preparation and tree planting	23
<i>Section 8-1 and Division 27 of the ITAA 1997 and section 82KZMG of the Income Tax Assessment Act 1936</i>	23
'CGT event' within 4 years for Growers who are 'initial participants'	24
<i>Section 82KZMGA</i>	24
Deductions for loan interest and borrowing costs	27
<i>Sections 8-1 and 25-25 and Division 27 of the ITAA 1997 and sections 82KZME and 82KZMF of the ITAA 1936</i>	27
Assessable income from 'CGT events' for Growers who are initial participants	28
<i>Sections 6-10, 17-5 and 118-20 of the ITAA 1997 and section 82KZMGB of the ITAA 1936</i>	28
Division 35 – deferral of losses from non-commercial business activities	32
<i>Section 35-55 – exercise of Commissioner's discretion</i>	32
Prepayment provisions and anti-avoidance provisions	33
Sections 82KZME, 82KZMF and 82KL and Part IVA	33
Scheme	34
Project Constitution	47
Lease	62
Forest Property Agreement	68
Agreement for Ground Lease and Forest Property Agreement	70
MFSP Management Agreement 2008	72

Midway Management Agreement 2008	75
McEwens Management Agreement 2008	77
Midway Off-Take Agreement 2008	79
Fees	82
Finance	83
MBL Finance	86
Appendix 1 – Explanation	90
Is the Grower carrying on a business?	90
Deductibility of the Plantation Establishment Fee and interest on loans with MBL	95
<i>Section 8-1</i>	95
Prepayment provisions	99
<i>Sections 82KZL to 82KZMG</i>	99
Application of the prepayment provisions to the Project	101
<i>Sections 82KZME and 82KZMF</i>	101
<i>Section 82KZMG</i>	104
'CGT event' within 4 years for Growers who are initial participants	110
<i>Section 82KZMGA</i>	110
Assessable income from 'CGT events' for Growers who are initial participants	113
<i>Sections 6-10, 10-5, and 118-20 of the ITAA 1997 and section 82KZMGB of the ITAA 1936</i>	113
<i>Section 82KZMGB</i>	114
Market value rule applies to 'CGT events'	115
Anti-overlap provisions	118
<i>Section 118-20</i>	118
Borrowing cost	120
<i>Section 25-25</i>	120
Sections 35-10 and 35-55 – deferral of losses from non-commercial business activities and the Commissioner's discretion	123
Section 82KL – recouped expenditure	126
Part IVA – general tax avoidance provisions	127
Appendix 2 – Detailed contents list	130

References

Previous draft:

Not previously issued as a draft

*Related Rulings/Determinations*TR 97/7; TR 97/11; TR 98/22;
TR 2000/8; TD 2003/12*Subject references:*

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

Legislative references:

- ITAA 1936 82KL
- ITAA 1936 Pt III Div 3 Subdiv H
- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZLA
- ITAA 1936 82KZM
- ITAA 1936 82KZMA
- ITAA 1936 82KZMB
- ITAA 1936 82KZMC
- ITAA 1936 82KZMD
- ITAA 1936 82KZME
- ITAA 1936 82KZMF
- ITAA 1936 82KZMG

- ITAA 1936 82KZMG(1)
- ITAA 1936 82KZMG(2)
- ITAA 1936 82KZMG(3)
- ITAA 1936 82KZMG(4)
- ITAA 1936 82KZMGA
- ITAA 1936 82KZMGA(1)
- ITAA 1936 82KZMGA(2)
- ITAA 1936 82KZMGB
- ITAA 1936 82KZMGB(2)
- ITAA 1936 82KZMGB(3)
- ITAA 1936 170
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1997 6-10
- ITAA 1997 8-1
- ITAA 1997 10-5
- ITAA 1997 17-5
- ITAA 1997 25-25
- ITAA 1997 25-25(1)
- ITAA 1997 25-25(4)
- ITAA 1997 25-25(6)
- 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 Pt 3-1
- ITAA 1997 118-20
- ITAA 1997 328-110
- ITAA 1997 995-1
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968
- Corporations Act 2001
- SISA 1993

Case references:

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

ATO references

NO: 2007/19204

ISSN: 1441-1172

ATOlaw topic: Income Tax ~~ Product ~~ timber