


PR 2008/43 - Income tax: Rewards Group Teak Project 2008

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Product Ruling

Income tax: Rewards Group Teak Project 2008

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

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

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

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

No guarantee of commercial success

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

Potential participants must form their own view about the commercial and financial viability of the product. 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 Rewards Group Teak Project 2008 or simply as 'the Project'.

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 36 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 (PDS);
- enter into finance arrangements with entities associated with this Project, other than those specified in paragraph 78 of this Ruling;
- have not paid the Initial Fee by 30 June 2008, where they have not entered into a finance arrangement; or

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.

- have their application conditionally accepted subject to finance by a lending institution for the payment of the Initial Fee, where the finance has not been approved by the lender by 30 June 2008, or the finance has been approved but the funds have not been made available to the Responsible Entity by 31 July 2008.

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 36 to 88 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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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 30 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 30 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 scheme described at paragraphs 36 to 88 of this Ruling.

20. 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 Licence Agreement and Management Agreement.

21. 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

22. 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').

23. 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 Initial Fee**Section 8-1 and Division 27 of the ITAA 1997 and section 82KZMG of the Income Tax Assessment Act 1936**

24. Other than where a 'CGT event'³ happens to their interest within 4 years of 30 June 2008 (see paragraph 25 of this Ruling), a Grower who is an initial participant in the scheme may claim a tax deduction for the following amount on a per Woodlot basis.

Fee Type	Year ending 30 June 2008	Year ending 30 June 2009	Year ending 30 June 2010
Initial Fee	\$6,600 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 Initial Fee is expenditure for 'seasonally dependent agronomic activities' (see paragraphs 94 to 108 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**

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

26. 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).

27. 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 109 to 111 of this Ruling).

³ Defined in section 995-1.

Deductions for loan interest, borrowing costs, and application fees***Sections 8-1, 25-25 and 40-880 and Division 27***

28. A Grower who is an initial participant in the scheme may also claim tax deductions for the following fees and expenses on a per Woodlot basis, as set out in the Table:

Fee type	Year ending 30 June 2008	Year ending 30 June 2009	Year ending 30 June 2010
Interest on loans with Rewards Projects Ltd or the Preferred Financier	As incurred See Note (iii)	As incurred See Note (iii)	As incurred See Note (iii)
Application Fee payable in respect of loans	Must be calculated See Note (iv)	Must be calculated See Note (iv)	Must be calculated See Note (iv)
Application Fee payable in respect of the Terms Option	Must be calculated See Note (v)	Must be calculated See Note (v)	Must be calculated See Note (v)

Notes:

- (iii) Interest on loans with Rewards Projects Ltd or the Preferred Financier 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 Rewards Projects Ltd or the Preferred Financier, is outside the scope of this Ruling. Prepayments of interest to any lender, including Rewards Projects Ltd 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 (see paragraph 102 of this Ruling).

- (iv) The Application Fee payable in respect of loans taken out to fund payment of the Initial Fee 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. Where the Application Fee is \$100, the full amount of the fee is deductible in the income year in which it is incurred. Otherwise, the deduction is spread over the period of the loan or 5 years, whichever is the shorter. The deductibility or otherwise of borrowing costs arising from loan agreements entered into with financiers other than Rewards Projects Ltd or the Preferred Financier is outside the scope of this Ruling.
- (v) The Application Fee payable to Rewards Projects Ltd in respect of the Terms Option is not deductible in full when it is incurred. Under section 40-880 it is deductible in equal proportions over five income years beginning in the year in which it is incurred (see paragraphs 124 to 125 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

29. Where a 'CGT event' (other than a 'CGT event' in respect of a thinning⁴ – see paragraph 33 of this Ruling) 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).

30. 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).

31. '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 Woodlot(s);
- 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.

⁴ 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.

32. 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.

Amounts received by Growers where the Project trees are thinned

Sections 6-5 and 17-5

33. An amount received by a Grower in respect of a thinning of the trees grown in this Project is not an amount received as a result of a 'CGT event' and is not otherwise assessable under section 82KZMGB of the ITAA 1936. The amount is a distribution of ordinary income that arises as an incident of the Grower holding an interest in the Project. Growers include amounts received for thinning the trees in their assessable income in the income year in which the amounts are derived (section 6-5 of the ITAA 1997) less any GST payable on those proceeds (section 17-5 of the ITAA 1997).

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

Section 35-55 – exercise of Commissioner's discretion

34. 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 above, 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 2027**. 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

35. For a Grower who commences participation in the Project and incurs expenditure as required by the Management Agreement and Licence 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

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

- Application for a Product Ruling as constituted by documents provided on 3 January, 6 March, 10 March and 18 April 2008;
- Product Disclosure Statement for the Project received on 18 April 2008;
- Draft **Constitution** establishing the Project received on 18 April 2008;
- Draft Compliance Plan for the Project received 3 January 2008;
- Draft Head Lease agreement with Rewards Projects Ltd as lessee received on 18 April 2008;
- Draft **Licence Agreement** to be entered into by each Grower and Rewards Projects Ltd received 18 April 2008;
- Draft Operations Agreement between Rewards Projects Ltd and Rewards Management Pty Ltd received 18 April 2008;
- Draft **Management Agreement**, to be entered into by each Grower and Rewards Projects Ltd, received 18 April 2008; and
- Draft Finance Package for the Rewards Group Teak Project 2008 incorporating **Finance Application (including 12 months terms option), Direct Debit Service Agreement**, terms relating to Direct Debit Request Service Agreement and Finance Agreement to be entered into by a Grower and Rewards Projects Ltd or the Preferred Financier, received 18 April 2008.

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

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

38. 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.

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

Location	Far North Queensland
Type of business to be carried on by each Grower	Cultivation of Teak trees (<i>Tectona grandis</i>) for harvest and sale
Term of the Project	Approximately 20 years
Number of hectares offered for cultivation	800
Size of each Woodlot	0.2 hectares
Minimum allocation per Grower	One Woodlot
Initial cost	\$6,600
Ongoing costs	Licence Fee Maintenance Fee
Other costs	Harvesting, transport, loading and sale costs Cost of cleaning up Woodlot after Final Harvest Costs for insurance of Woodlots, subject to Grower's election Note: these costs are not covered by this Product Ruling.

40. The Project will be a registered managed investment scheme under the *Corporations Act 2001*. Rewards Projects Ltd (the Responsible Entity) has been issued with an Australian Financial Service Licence number 224000 and will be the Responsible Entity for the Project.

41. The Project will involve the cultivation and harvest of teak trees and sale of the Timber.

42. An offer to participate in the Project will be made through a PDS. The offer under the PDS is for about 4,000 Woodlots in the Project, which corresponds to 800 hectares.

43. An entity that participates in the Project will do so by acquiring an interest in the Project on or before 30 June 2008, which will consist of a minimum of one Woodlot each of 0.2 hectares in size.

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

45. There is no minimum subscription for the Project. The Responsible Entity is able to accept oversubscriptions to the extent that it reasonably expects that it will have suitable land available within nine months of acceptance.

46. The Responsible Entity will lease land for the Project within North Queensland. Land utilised by the Project must meet the requirements of the Responsible Entity's land selection protocol, and its suitability must be confirmed by an independent forester.

47. Each Grower will use their Woodlot/s for the purpose of carrying on a business of cultivating and harvesting Teak trees and the sale of harvested produce.

Constitution

48. The Constitution establishes the Project and operates as a deed binding all Growers and the Responsible Entity. The Constitution sets out the terms and conditions under which Rewards Projects Limited 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.

49. In order to acquire an interest in the Project, the Grower must make an application for a Woodlots/s in accordance with clause 3.

50. The Responsible Entity will deposit all Application Moneys received from applicants, less bank fees, Government taxes and duties, and payment processing fees incurred by the Responsible Entity in receiving the money into a Subscription Fund that it will hold on trust for the Applicant.

51. The Responsible Entity may release money from the Subscription Fund in payment of Project Fees once certain specified criteria, set out in clause 3.3, have been met.

52. Once an application is accepted by the Responsible Entity in whole or in part, the Applicant is deemed to have become a party to the Constitution, the Licence Agreement and the Management Agreement.

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

- delegation of the Responsible Entity's powers (clause 7);
- the period and termination of the Project (clause 14); and
- destruction of Woodlots (clause 18).

Compliance Plan

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

Head Lease

55. The Responsible Entity will enter into a Head Lease with the owner of the relevant land in respect of Land required for the Project.

56. Under the terms of the Head Lease, the Responsible Entity must use the Land only for carrying on the business of Teak tree farming.

57. The Responsible Entity may also licence Woodlots to Growers in the Project.

Licence Agreement

58. Each Grower will enter into a Licence Agreement with the Responsible Entity as the Licensor. The Responsible Entity will grant to the Grower the right to use and occupy their Woodlot/s, for the conduct of the Grower's afforestation business and to harvest the Teak trees on the terms and conditions set out in the Licence.

59. The Responsible Entity warrants to the Grower that the Responsible Entity has the benefit of the Head Lease of the Land and that it is entitled to grant the Licence to the Grower.

60. The Licence shall operate on and from the date the Responsible Entity first accepts Applications under the PDS until completion of the Final Harvest.

61. Under the terms of the Licence, the Grower will be entitled to the Trees planted on their Woodlot and the Timber from them until all the Trees have been Harvested provided that the Licence has not been terminated.

62. The Grower's obligations are set out in detail in clause 4, under which the Grower agrees, among other things, to use the Woodlot/s for the purpose of establishing and tending to the Trees according to the principles of good forestry.

63. Under clause 5.1 the Responsible Entity agrees to provide the Grower with access to the Woodlot/s during the Term. This is subject to the Grower paying the Licence Fee and performing and observing all covenants in the Licence Agreement.

Management Agreement

64. Under the Management Agreement the Grower appoints the Responsible Entity (as independent contractor and Plantation Manager) to carry out the Initial Services and the Ongoing Services subject to the terms and conditions of the Agreement.

65. The Agreement will commence on the date on which the Responsible Entity first accepts applications under the PDS and shall continue until 30 June 2028 or such longer term agreed between the parties to allow the completion of the final Harvest, payment of proceeds from that Harvest, and dispatch of all accounts and reports in relation to it.

66. The Responsible Entity may, for the better performance of its obligations under the Management Agreement, employ any person as an agent or contractor (clause 2.4).

67. The Responsible Entity will complete the Initial Services during the Initial Period. The Initial Period is defined as the period of 12 months commencing on 1 July 2008.

68. The Initial Services are:

- supply sufficient tissue culture Teak plantlets to the specifications recommended in the Management Plan; and
- ensure that the Woodlots are ready for planting, including ripping, mounding and herbicide spraying (if required).

69. The Responsible Entity will carry out the Ongoing Services throughout the Term of the agreement.

70. The Ongoing Services include, but are not limited to the following services:

- prevent or combat land degradation in relation to the Woodlots;
- ensure that all roads, tracks and firebreaks are in good repair;
- provide an experienced and competent forestry management team to perform the services under the Management Agreement;
- supervise and secure management of all works on the Plantation;
- tend to the trees according to the principles of good forestry;
- disease, pest and weed control;
- grow out and during the wet season immediately following the end of the Initial Period plant the teak plants;

- within 12 months of the planting of the Trees, conduct a survival count and replant the Trees such that there is an average of 1,250 Trees per hectare;
- manage the Tree crop in accordance with the Management Plan;
- undertake periodic site inspections;
- determine the Harvest Schedule and manage each Harvest; and
- manage the sale of Harvested Timber in accordance with clause 7 of the Management Agreement.

Operations Agreement

71. Under the Operations Agreement the Responsible Entity will appoint Rewards Management Pty Ltd as Manager to carry out the Initial Services and the Ongoing Services on the terms and conditions set out in the Operations Agreement.

72. In carrying out its obligations under the Operations Agreement, the Manager will be subject to the direction of the Responsible Entity.

Pooling of Timber and Grower's Entitlement to Net Proceeds

73. The Management Agreement sets out provisions relating to the sale of the Timber harvested, and the Constitution sets out provisions relating to the Grower's entitlement to the proceeds from sale of the Grower's Timber. This Product Ruling only applies where the following principles apply to the pooling and distribution arrangements:

- only Growers who have contributed Timber are entitled to benefit from distributions of harvest proceeds from the pool; and
- any pooled Timber must consist only of timber contributed by Growers accepted to participate in the Project in the same income year.

Fees

74. Under the terms of the Management Agreement and the Licence Agreement, a Grower will make payments as described below on a per Woodlot basis.

Fees payable under the Management Agreement

75. An Initial Fee of \$6,600 is payable by each Grower on the date of Acceptance of the Grower's Application, for the provision of the Initial Services in the Initial Period.

76. A Maintenance Fee of 8.8% is payable out of the Grower's Share of the sale proceeds of each Harvest after deduction of costs of and incidental to the Harvest, for the provision of the Ongoing Services.

Fees payable under the Licence Agreement

77. Under the Licence Agreement the Licence Fee of 13.2% of the Grower's Share of the sale proceeds of each Harvest, after deducting the Grower's share of the Harvest costs, is to be paid by each Grower out of such sale proceeds.

Finance

78. A Grower who does not pay the Initial Fee in full upon application can borrow from, or enter into a 12 months terms option (Terms Option) with, the Responsible Entity, borrow from the Preferred Financier, or borrow from an independent lender external to the Project.

79. Where a Grower enters into a Terms Option or borrows from the Responsible Entity or the Preferred Financier, an Application Fee of 1% of the Finance Application Amount (subject to a minimum Application Fee of \$100 and a maximum of \$500), together with stamp duty and ASIC registration fees also apply.

80. 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 the Responsible Entity or with the Preferred Financier 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 other than the Preferred Financier may request a private ruling on the deductibility or otherwise of interest incurred under finance arrangements not covered by this Product Ruling.

81. Other than where a Terms Option arrangement is in place Growers cannot rely on any part of this Ruling if the Initial 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. However, where an application is accepted subject to finance approval by any lending institution other than the Preferred Financier or the Responsible Entity, Growers cannot rely on this Ruling if written evidence of that approval has not been given to the Responsible Entity by the lending institution by 30 June 2008 and the funds have not been made available to the Responsible Entity by 31 July 2008.

Terms Option

82. Where the Responsible Entity accepts an application from a Grower to pay the Initial Fees under the Terms Option, the Initial Fees are payable by 12 equal monthly instalments of \$550 per Woodlot, commencing on 31 July 2008. The full amount of the Initial Fees must be paid no later than 12 months from the date the Grower is accepted to participate in the Project.

Finance

83. A Grower can finance the cost of their Initial Fees by borrowing that amount from the Responsible Entity or the Preferred Financier.

84. Subject to the Responsible Entity or the Preferred Financier accepting the Grower's application, the Grower will be bound by the terms and conditions of the Finance Agreement and the Direct Debit Service Agreement.

Finance offered by the Responsible Entity

85. The term available under the finance offered by the Responsible Entity is a 5 year principal and interest loan.

Finance offered by the Preferred Financier

86. The terms available under the finance offered by the Preferred Financier are:

- 2 years principal and interest;
- 5 years principal and interest;
- 10 years principal and interest; and
- 3 years interest only followed by 7 years principal and interest.

Conditions of Finance offered by the Responsible Entity and the Preferred Financier

87. The Finance Agreements offered by the Responsible Entity and the Preferred Financier include the following conditions:

- there is no minimum or maximum loan amount;
- no deposit is payable;
- there is an Application Fee of 1.00% of the Finance Application Amount, subject to a minimum Application Fee of \$100 and a maximum of \$500;
- stamp duty and any ASIC registration fees are payable by the Applicant;

- repayments are to be made monthly in arrears by equal monthly repayments;
- the first repayment will be due on 31 July 2008; and
- the interest rate is fixed at 10.95% per annum.

88. 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 Responsible Entity or the Preferred Financier, are involved or become involved in the provision of finance to Growers 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?

89. For the amounts set out in paragraphs 24 and 28 of this Ruling to constitute allowable deductions the Grower's afforestation activities as a participant in the Project must amount to the carrying on of a business of primary production.

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

91. 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?

92. Taxation Ruling TR 2000/8 Income tax: investment schemes, particularly paragraph 89, 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.

93. 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 Initial Fee and loan interest

Section 8-1

94. The Initial Fee is 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 Initial Fee (see paragraphs 49 to 51 of TR 2000/8).

95. 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 98 to 108 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.)

96. Some Growers may finance their participation in the Project through a Loan Agreement with the Responsible Entity or the Preferred Financier. Applying the same principles as that used for the management fees, interest incurred under such a loan has sufficient connection with the gaining of assessable income to be deductible under section 8-1.

97. Other than where the prepayment provisions apply (see paragraphs 98 to 102 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

98. 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.

99. 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 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 this Project

Sections 82KZME and 82KZMF

100. Other than the Initial Fee (see below), the fees payable under the scheme to which this Product Ruling applies are payable only out of harvest proceeds and the interest payable to the Responsible Entity 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.

101. However, sections 82KZME and 82KZMF of the ITAA 1936 may have relevance if a Grower in this Project chooses or is required to prepay interest under a loan agreement (including loan agreements with lenders other than the Responsible Entity or the Preferred Financier).

102. As stated in Note (iii) of paragraph 28 of this Ruling, prepayments of interest are not covered by this Product Ruling and Growers who make such prepayments may instead request a private ruling on the tax consequences of the prepaid interest.

Section 82KZMG

103. 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.

104. Section 82KZMG of the ITAA 1936 provides a '12 month rule' that, in effect, facilitates an immediate deduction for certain prepaid expenditure⁵ incurred under an 'agreement for planting and tending trees for felling' (subsection 82KZMG(3) of the ITAA 1936).

105. 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.

106. 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).

107. Under the Management Agreement each Grower incurs an Initial Fee of \$6,600 per Woodlot in the income year ended 30 June 2008 for 'seasonally dependent agronomic activities' that will be carried out during the 'establishment period' of the Teak Trees.

108. 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 109 to 111 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 Initial Fee.

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

109. 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 this Project, only the Initial Fee meets the requirements of section 82KZMG of the ITAA 1936. Accordingly, the deduction of \$6,600 per 'interest' for the Initial Fee will not be allowable if a 'CGT event' happens to the Grower's interest within the 4 year period.

⁵ The expenditure must be incurred on or before 30 June 2008 (see subsection 82KZMG(2) of the ITAA 1936).

110. 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).

111. A Grower whose deduction for the Initial 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

112. 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

113. Where a 'CGT event' (other than for a 'CGT event' in respect of a thinning)⁶ happens to an interest held by a Grower who is an initial participant in this 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 the Initial Fee (shown in paragraph 24 of this Ruling); and
- subsection 82KZMG(1) of the ITAA 1936 applies to the timing of the deduction of the Initial Fee (or would apply if section 82KZMGA of the ITAA 1936 were disregarded – see above).

⁶ A thinning under this scheme is not a 'CGT event'.

Market value rule applies to 'CGT events'

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

- no longer holds the interest; or
- 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.

115. 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).

116. 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***

117. 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.

118. In the case of interests held by Growers who are initial participants in this 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 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.

Amounts received by initial participants where the Project trees are thinned

Section 6-5

119. Section 82KZMGB of the ITAA 1936 specifically excludes from its operation a 'CGT event' that happens in respect of a thinning (see paragraph 82KZMGB(1)(d) of the ITAA 1936).

120. Thinning amounts received by a Grower who is an initial participant in this Project do not arise as a result of a 'CGT event' and are not otherwise assessable under section 82KZMGB of the ITAA 1936. The receipt of an amount arising from a thinning of the Project trees is a distribution that arises as an incident of the Grower holding an interest in the Project. It is an item of ordinary income and is assessable under section 6-5 of the ITAA 1997 in the year in which it is derived.

Borrowing costs

Section 25-25

121. 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)).

122. In this Project the Application Fee of 1.00% of the amount borrowed, subject to a minimum Application Fee of \$100 and a maximum of \$500, payable to either the Responsible Entity or the Preferred Financier, 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.

123. 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)).

Application Fee payable under a Terms Payment Agreement

Section 40-880

124. Growers who elect to pay their Initial Fee under the Terms Option must pay an Application Fee of one percent of the amount of the Initial Fees payable by the Grower, subject to a minimum Application Fee of \$100 and a maximum of \$500. This expenditure does not constitute a borrowing expense and is therefore not deductible under section 25-25. As it is capital in nature it is also not deductible under section 8-1.

125. However, section 40-880 will allow the Application Fee to be deducted in equal proportions over five income years starting in the year in which the Grower incurred the amount (subsection 40-880(2)). Section 40-880 applies to capital expenditure that is incurred in relation to a business and which is not taken into account elsewhere or denied deductibility under another provision of income tax law (subsection 40-880(1)).

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

126. 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 2027**, the Commissioner has applied the principles set out in Taxation Ruling TR 2007/6 Income tax: non commercial business losses: Commissioner’s discretion. Based on the evidence supplied, 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.

127. 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.

128. 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

129. 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

130. 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).

131. The Project will be a 'scheme'. A Grower will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 24 and 28 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.

132. 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 Teak Trees. 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.

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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 2007/6;
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)
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- ITAA 1997 8-1
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