



# ***PR 2008/63 - Income tax: 2009 Timbercorp Forestry Project***

 This cover sheet is provided for information only. It does not form part of *PR 2008/63 - Income tax: 2009 Timbercorp Forestry Project*

 This document has changed over time. This is a consolidated version of the ruling which was published on *10 September 2008*



## Product Ruling

### Income tax: 2009 Timbercorp Forestry Project

---

Contents	Para
<b>LEGALLY BINDING SECTION:</b>	
What this Ruling is about	1
Date of Effect	12
Ruling	22
Scheme	44
<b>NOT LEGALLY BINDING SECTION:</b>	
Appendix 1:	
Explanation	98
Appendix 2:	
Detailed contents list	136

#### **! 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. In this Product Ruling this scheme is referred to as the 2009 Timbercorp Forestry Project, or simply as 'the Project'.
2. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated. Where used in this Ruling, the word 'associate' has the meaning given in section 318 of the *Income Tax Assessment Act 1936* (ITAA 1936). In this Ruling capitalised terms are specifically defined in the Project agreements.

### Class of entities

3. 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.
4. 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 in this Product Ruling as Growers.
5. Growers are those entities that:
  - meet the definition of 'initial participant' in subsection 394-15(5); and
  - are accepted to take part in the scheme specified below on or after the date this Product Ruling is made.
6. A Grower will have executed the relevant Project agreements set out in paragraph 44 of this Ruling on or before 30 June 2009 and will hold a 'forestry interest'<sup>1</sup> in the Project.
7. The class of entities who can rely on this Product Ruling does **not** include:
  - Growers who are accepted into this scheme before the date of this Ruling or after 30 June 2009;
  - Growers whose Application Moneys, including all loan moneys, are not paid in full to Timbercorp Securities Limited (TSL) by 30 June 2009, either by the Grower and/or on the Grower's behalf by a lending institution; or

---

<sup>1</sup> See subsection 394-15(3).

- Growers who participate in the scheme through offers made other than through the Product Disclosure Statement (PDS).

**Qualifications**

8. 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 44 to 97 of this Ruling.

9. 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.

10. 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/ccca>

**Superannuation Industry (Supervision) Act 1993**

11. 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

---

12. This Product Ruling applies prospectively from 10 September 2008, the date this Product Ruling is made. It therefore applies only to the specified class of entities that enter into the scheme from 10 September 2008 until 30 June 2009, 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 all income years up to the income year in which the scheme is terminated in accordance with the Constitution.

13. 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.

14. 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)).

15. 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.

16. 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

17. 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.

18. 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**

19. 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**

20. As it is not necessary for an investor to carry on a business to qualify for a deduction under Division 394, this Ruling does not consider whether an initial participant is carrying on a business and thus an enterprise for GST purposes. In this regard, we refer to Draft Goods and Services Tax Ruling GSTR 2008/D1 about registered agricultural managed investment schemes and the income tax test case referred to in that draft ruling. To the extent that the scheme that is the subject of this Ruling resembles that in the test case and, if the court finds that a business is carried on by initial participants, investors should be aware that there may be issues relating to GST liability and entitlement to input tax credits that should be considered.

21. Should an 'initial participant' be entitled to an input tax credit in respect of fees and expenses that are allowable deductions under section 394-10, the deduction otherwise available under section 394-10 would be reduced by the amount of the entitlement (subdivision 27-A).

---

**Ruling****Structure of the Project**

22. The Project is a 'forestry managed investment scheme' as defined in subsection 394-15(1). Its purpose is the establishment and tending of *Eucalyptus globulus* (Tasmanian bluegum) trees for felling in Australia.

23. Subject to the stated qualifications, this part of the Product Ruling sets out in detail the taxation obligations and benefits for an 'initial participant'<sup>2</sup> in the defined class of entities (see paragraphs 4 to 7 of this Ruling) who is accepted to participate in the 'forestry managed investment scheme' described below at paragraphs 44 to 97 of this Ruling, from 10 September 2008 to 30 June 2009 inclusive.

---

<sup>2</sup> See subsection 394-15(5).

24. An entity that takes part in the Project as a 'subsequent participant'<sup>3</sup> is not covered by this Product Ruling but may request a private ruling on their participation in the Project. A 'subsequent participant' is an entity that does not meet the definition of 'initial participant' in subsection 394-15(5).

### **The '70% DFE rule' and the establishment of the Trees**

#### **Section 394-35 and subsection 394-10(4)**

25. The taxation obligations and benefits set out below have been determined using the information provided to the Commissioner by TSL. On the basis of that information the Commissioner has decided that it will be reasonable to expect that the '70% direct forestry expenditure rule'<sup>4</sup> will be satisfied on 30 June 2009. The Tax Office may undertake review activities during the term of the Project to verify the information relied on for the purposes of the '70% DFE rule'.

26. The Ruling will only apply if TSL establishes all of the Trees that were intended to be established under the Project within 18 months of the end of the income year in which the first 'participant' in the Project is accepted.<sup>5</sup> For this Project the Trees must be established on or before 31 December 2010.

27. In the context of this Project, the Trees will be established either when they are planted, or when they have been the subject of initial coppicing activities, at the average rate of 800 – 1,000 trees per hectare. TSL is required by section 394-10 of Schedule 1 of the TAA to notify the Tax Office if the Trees are not established by 31 December 2010.

### **Allowable deductions**

#### **Sections 8-5, 394-10 and 394-20**

28. A Grower in the Project can claim, on a per Forestry Interest basis, deductions for the amounts shown in the table below that are paid to TSL (sections 8-5 and 394-10).

<b>Fee</b>	<b>Amount</b>	<b>Year(s) deductible</b>
Establishment Services fee	\$2,600 See Note (i)	2009
Plantation Services fee (maintenance fee)	3.5% of Net Proceeds	Final year
Rent	3.5% of Net Proceeds	Final year
Harvesting, Delivery, sale and marketing costs	As incurred	Final year

<sup>3</sup> See section 394-30.

<sup>4</sup> The '70% DFE rule' is set out in section 394-35.

<sup>5</sup> See subsection 394-10(4).

**Note:**

- (i) The Application Moneys for each Forestry Interest is \$2,600. TSL has not included GST in the Application Moneys. Growers should particularly note the important statements about GST made in paragraphs 20 and 21 of this Ruling and in the PDS for the Project in sections 4 and 9.

29. A Grower in the Project can claim a deduction for Additional Wood Resource Services fees calculated as 7.0% of Additional Wood Resource Net Proceeds, if any, paid to TSL (sections 8-5 and 394-10).

30. Amounts allowable under section 394-10 do not require a Grower to be carrying on a business of forestry. Therefore, this issue is outside the scope of this Ruling and has not been considered (see also paragraph 20 of this Ruling).

31. The deductibility of the amounts detailed at paragraphs 28 and 29 of this Ruling remains subject to a requirement that a 'CGT event'<sup>6</sup> does not happen in relation to the Grower's 'forestry interest' before 1 July 2013 (see paragraphs 33 to 35 of this Ruling).

32. The amount is deductible in the income year in which it is paid, or is paid on behalf of the Grower (subsection 394-10(2) and section 394-20). Where a Grower does not fully pay an amount, or it is not fully paid on their behalf in an income year, it is deductible only to the extent to which it has been paid. Any unpaid amount is then deductible in the year or years in which it is actually paid.

**'CGT event' within 4 years for Growers who are 'initial participants'*****Subsections 394-10(5) and (6)***

33. Deductions for the Establishment Services fee, the Plantation Services fee, the Additional Wood Resource Services fees, Rent and Harvesting, Delivery, sale and marketing costs are not allowable where a 'CGT event' happens in relation to the 'forestry interest' of a Grower before 1 July 2013 (subsection 394-10(5)).

34. Where deductions for these amounts have already been claimed by a Grower the Commissioner may amend their assessment at any time within two years of the 'CGT event' happening (subsection 394-10(6) of the ITAA 1997). The Commissioner's power to amend in these circumstances applies despite section 170 of the ITAA 1936.

35. Growers whose deductions are disallowed because of subsection 394-10(5) are still required to include in assessable income the market value of the 'forestry interest' at the time of the 'CGT event' or the decrease in the market value of the 'forestry interest' as a result of the 'CGT event'.

---

<sup>6</sup> Defined in section 995-1.



## **Interest on loans to finance the ‘forestry interest’ of a Grower and insurance fees**

### **Section 8-1**

36. A Grower in the Project can claim deductions for interest incurred on a loan to fund their investment in the Project (paragraph 8-1(1)(a)). The deduction is allowable in the year in which the interest is incurred. This Ruling only applies to interest incurred on loans between a Grower and Timbercorp Finance Pty Ltd (the Financier). Growers who borrow from other financiers may apply for a private ruling on the deductibility of loan interest or may self assess the deductibility of the interest. Prepayments of interest to any lender, including the Financier are also not covered by this Ruling. Growers who prepay interest may request a private ruling on the deductibility of the interest incurred.

37. Any insurance fees incurred by a Grower to insure their Trees, or incurred by a Grower to the extent that TSL elects to charge insurance fees associated with any land on which TSL establishes the Additional Wood Resource, will be deductible under section 8-1. The deduction is allowable in the year in which the insurance fee is incurred. TSL will advise the Grower each year of the amount of the insurance fee.

## **Borrowing costs**

### **Section 25-25**

38. The Loan Application Fee of \$250 payable to the Financier is a borrowing expense and is deductible under section 25-25. The deduction for the borrowing expense is spread over the period of the loan or 5 years, whichever is the shorter, on a straight line basis from the date the loan begins.

39. The deductibility or otherwise of borrowing costs arising from loan agreements entered into with financiers other than the Financier is outside the scope of this Ruling.

## **Assessable income, ‘CGT events’ and the ‘forestry interests’ of Growers who are ‘initial participants’**

### **Sections 6-10 and 394-25**

40. Where a ‘CGT event’ happens to a ‘forestry interest’ held by a Grower in this Project, the market value of the ‘forestry interest’, or the decrease in the market value of the ‘forestry interest’, is included in the assessable income of the Grower (sections 6-10 and 394-25).

41. The relevant amount is included in the Grower’s assessable income in the income year in which the ‘CGT event’ happens (subsection 394-25(2)).

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

- a **clear-fell Harvest of all or part of the Trees** grown under the Project;
- the **sale, or any other disposal** of all or part of the 'forestry interest' held by the Grower; or
- any other 'CGT event' that results in a reduction of the market value of the 'forestry interest' held by the Grower.

### **Prepayment provisions, non-commercial losses, and anti-avoidance provisions**

#### ***Division 35 of the ITAA 1997 and sections 82KZM, 82KZME, 82KZMF, 82KL and Part IVA of the ITAA 1936***

43. Where a Grower is accepted to participate in the Project set out at paragraphs 44 to 97 of this Ruling, the following provisions have application as indicated:

- interest incurred by a Grower on the loans with the Financier set out in paragraphs 93 to 95 of this Ruling does not fall within the scope of sections 82KZM, 82KZME and 82KZMF of the ITAA 1936 (however, see paragraph 123 of this Ruling if a Grower chooses to prepay interest);
- losses arising from participation in the Project are not within the scope of Division 35;
- section 82KL of the ITAA 1936 does not apply to deny the deductions otherwise allowable; and
- the relevant provisions in Part IVA of the ITAA 1936 will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

## **Scheme**

44. 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 and information provided on 19 December 2007, 7 January 2008, 26 February 2008, 29 February 2008, 4 March 2008, 5 March 2008, 13 March 2008, 14 April 2008, 16 April 2008, 16 June 2008, 19 June 2008, 26 June 2008, 29 July 2008, 11 August 2008, 21 August 2008, 26 August 2008 and 2 September 2008;

- Draft PDS for the 2009 Timbercorp Forestry Project, dated 26 August 2008, to be issued by the Responsible Entity, TSL, received on 26 August 2008;
- Draft **Constitution** for the 2009 Timbercorp Forestry Project between TSL and each Grower, received on 21 August 2008;
- Draft Compliance Plan for the 2009 Timbercorp Forestry Project, received on 16 June 2008;
- Draft Custody Agreement between TSL and the Custodian, received on 16 June 2008;
- Draft **Agreement for Sub-lease** between TSL and each Grower, received on 16 June 2008;
- Draft **Deed of Sub-lease – Victoria** between TSL and each Grower, received on 29 July 2008;
- Draft **Management Agreement** between TSL and each Grower, received on 21 August 2008;
- Draft Plantation Services Agreement between TSL and Timbercorp Forestry Pty Ltd, received on 16 June 2008;
- Draft Lease and Memorandum of Common Provisions, between TSL and Timbercorp Limited, received on 26 February 2008; and
- Draft 2008 Timbercorp Projects Finance Package, which includes the **Loan Application Form**, and Loan Explanation and Loan Terms, received on 19 December 2007.

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

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

46. 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.

**Overview**

47. The main features of the 2009 Timbercorp Forestry Project are as follows:

Location(s)	South-west Western Australia, Victoria or South Australia
Species of Trees to be planted under the scheme	<i>Eucalyptus globulus</i> (Tasmanian bluegum)
Term of the Project	9-13 years
Date all Trees are due to be planted on scheme land	31 December 2010
Number of Trees per hectare	800 – 1,000
Number of hectares offered for cultivation	Approximately 4,000 (12,000 Forestry Interests)
Size of each Forestry Interest	Approximately one third of a hectare
Minimum allocation of Forestry Interests per Grower	3 (or fewer at the absolute discretion of TSL)
Minimum subscription	None
Initial cost per Forestry Interest	\$2,600
Ongoing costs per Forestry Interest	<ul style="list-style-type: none"> <li>• Rent at 3.5% of Net Proceeds derived in final year; and</li> <li>• Plantation Services (maintenance) fee at 3.5% of Net Proceeds derived in final year.</li> </ul>
Other costs	Harvesting, Delivery, sales and marketing costs; Additional Wood Resource Services fees calculated as 7.0% of Additional Wood Resource Net Proceeds, if any, derived in final year; and Insurance fees

48. The Project will be a registered managed investment scheme under the *Corporations Act 2001*. TSL has been issued with an Australian Financial Services Licence (Number 235653) and will be the Responsible Entity for the Project.

49. An offer to participate in the Project will be made through the PDS. The offer under the PDS is for approximately 4,000 hectares, which corresponds to approximately 12,000 Forestry Interests in the Project, although TSL reserves the right to accept oversubscriptions. An entity that participates in the Project as a Grower will do so by acquiring Forestry Interests in the Project on or before 30 June 2009. There is no minimum amount that must be raised under the PDS.

50. To participate in the Project Applicants must complete the Application and Power of Attorney Form Booklet attached to the PDS and lodge the completed Booklet together with the relevant Application Moneys on or before 30 June 2009. A custodian will be appointed under the Custody Agreement to protect the interests of the Growers in their dealings with TSL.

51. Under the Power of Attorney, TSL will execute the Grower Agreements on behalf of Applicants who are accepted to participate in the Project as Growers. TSL will also allocate Forestry Interests to Growers and place the Growers' details in a Register.

52. For the purposes of this Ruling, an Applicant accepted to participate in the Project and who executes either the Agreement for Sub-lease or Sub-lease, and the Management Agreement on or before 30 June 2009 will commence participation as a Grower. This Ruling only applies in respect of Growers who are accepted into the Project during the period from the date of this Ruling to on or before 30 June 2009.

53. A Grower will Sub-lease at least three identifiable allotments of land, called Forestry Interests in Victoria, South Australia and/or Western Australia. Each allotment of land will be approximately one third of a hectare in size and will be leased from TSL under a Sub-lease.

54. Suitable land for use in the Project is required to meet the following specifications. It must:

- either be cleared agricultural land that has been pastured in accordance with Forest Stewardship Council principles, previously used for plantation forestry, or land on which a rotation of trees is or has been cultivated;
- be within 150 km of either Bunbury or Albany, Western Australia or 200 km from Portland, Victoria; and
- receive more than 600 mm average annual rainfall or have access to underground water.

55. Pursuant to a Management Agreement, Growers will engage TSL to manage the Project and be responsible for establishing, tending and harvesting the Trees and marketing the Wood for the purpose of sale as wood fibre for paper production on the Grower's behalf.

56. Where TSL makes an initial assessment of each Forestry Interest's yield capability and determines that additional land may be required to achieve the Target Yield, TSL will, within 18 months of the end of the income year in which the first Grower in the Project is accepted, lease such land as is required in its personal capacity and at its own cost and establish additional Trees. Within one month after the last of the Trees from the Growers' Forestry Interests are Harvested, TSL will assess whether in its reasonable opinion, the yield from the Forestry Interests is less than the Target Yield. To the extent that the yield from the Growers' Forestry Interests is less than the Target Yield, TSL will contribute and pool the Wood derived from these additional Trees (Additional Wood Resource) with the Wood produced from the Growers' Forestry Interests.

**Constitution**

57. The Constitution establishes the Project and operates as a deed binding all of the Growers and TSL, as Responsible Entity. The Constitution sets out the terms and conditions under which TSL 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 (clause 7.6).

58. TSL must hold the Application Money as a bare trustee for the Applicant. The Application Money paid by any Applicant must be accounted for by TSL in a special trust account and such amounts must be placed in one or more bank accounts solely for the purposes of depositing the Application Money for this Project (clause 4).

59. Once TSL is satisfied that all documents have been executed and finance, where required, has been approved for an Applicant, the Application Money may be released and applied against the fees payable by the Applicant (clause 8.3).

60. Among other things, the Constitution also sets out provisions relating to:

- invitations and offers under the PDS (clause 2);
- the irrevocable appointment of the Responsible Entity as the Grower's agent, representative and attorney (clause 3);
- procedures for processing applications and the absolute discretion of the Responsible Entity to refuse applications (clauses 5 and 6);
- the preparation and execution of the Sub-lease or Agreement for Sub-lease, as the case requires, and the Management Agreement by the Responsible Entity (clause 8);
- the irrevocable power of the Responsible Entity as agent and attorney of the Grower to bind the Grower as a party to a Wood Purchase Agreement, or any marketing and processing agreement in respect of the Wood (clause 9);
- the issue of Forestry Interest Statements to a Grower and the setting up and maintenance of a Register of Growers (clause 10);
- the Responsible Entity's powers and covenants (clause 11);
- the keeping of a separate Agency Account for the holding of Proceeds and any other money, apart from Application Money and interest thereon, that the Responsible Entity may hold for the Grower (clause 12);

- the right of the Responsible Entity to be remunerated for its services and any other extraordinary expenses that arise (clauses 13 and 16);
- the Responsible Entity's authority to use money in the Agency Account and powers of investment of the money standing in the Agency Account (clauses 14 and 15);
- the status and the retention by the Responsible Entity of the Management Agreements, Sub-leases and any Agreement for Sub-leases. This includes the right of a Grower to obtain a copy of the above agreements by written request to the Responsible Entity (clauses 16A.1 and 16A.2);
- the termination of the Management Agreements, Sub-leases and any Agreement for Sub-leases, consequences of termination in the event of default, and procedures for the sale of a Defaulting Grower's Forestry Interests (clauses 16A.3 and 16A.4);
- the right of a Grower to inspect certain documents related to their participation in the Project and to give opinions to the Responsible Entity (clause 17.1);
- the transfer of Forestry Interests (clause 17A);
- procedures for calling a meeting of Growers (clause 19);
- the liabilities and indemnities of the Responsible Entity and Growers (clauses 20 and 21);
- the pooling of Wood and Proceeds, and distributions of the Proceeds from the Agency Account to each Grower (clauses 22A and 22);
- the resolution of complaints made by a Grower in relation to the Project or the Responsible Entity (clause 23); and
- the termination of the Project (clause 24).

61. Whilst clause 5.4 of the Constitution provides that, in certain circumstances, Growers may pay the Application Moneys by instalments, this Product Ruling does not apply to any Applicant who enters into an arrangement with TSL to pay their Application Moneys by instalments.

## Compliance Plan

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

**Lease and Memorandum of Common Provisions**

63. Generally, land for the Project will be owned by a Timbercorp Limited subsidiary established to hold land for use in Timbercorp projects or leased from independent third parties on arm's length commercial terms. All Project land will be leased to Timbercorp Limited which in turn will sub-lease the land to TSL pursuant to a Lease and Memorandum of Common Provisions ('Head Lease').

64. The Head Lease sets out the terms and conditions under which the Lessor will lease the Project land to the Lessee, to use and occupy for the Term of the Project for the principal purpose of growing, tending and harvesting a plantation or plantations of Trees, whether by planting or coppicing.

**Sub-lease**

65. Either at the time their application is accepted or when sufficient suitable land is available, each Grower will enter into a Sub-lease with TSL to use the relevant Forestry Interests solely for the purpose of establishing, tending, maintaining and harvesting a plantation or plantations of eucalyptus trees (clause 3). The Sub-lease is for a Term expiring on the earlier of 30 September 2022; the completion of Harvesting; or the day immediately preceding the termination date of the Head Lease (Part 3 of the Schedule).

66. There are separate Sub-leases depending upon whether the land subject to the Sub-lease is located in Victoria, South Australia or Western Australia. To be suitable for allocation to a Grower under a Sub-lease the relevant land must meet the land selection criteria described in the Independent Forester's Report reproduced in the PDS.

67. A Forestry Interest is a parcel of land with a net plantable area of approximately one third of a hectare and being the whole of one or more portions of the Plantation which is the subject of a Sub-lease or an Agreement for Sub-lease.

68. Each Sub-lease is conditional upon the obtaining of all local, State and Commonwealth government approvals, licences or permissions required for the establishment of the Trees within 18 months from the end of the financial year in which the Grower's application to participate in the Project is accepted (clause 4.1) and conditional upon TSL entering into a Head Lease on or before the Commencement Date (clause 4.2).

69. TSL and the Grower agree that the Trees on the respective Forestry Interests are and will remain the property of the Grower during the Term of the Sub-lease (clauses 8.3 and 13.1). TSL grants each Grower an independent and severable grant of a proprietary interest in the relevant Forestry Interests (clause 13.3).



70. The Sub-lease also sets out provisions relating to:
- the Rent payable by the Growers (clause 5 and Part 4 of the Schedule);
  - the obligations and rights of the Growers (clauses 6 and 8);
  - the obligations and rights of TSL (clauses 7 and 9); and
  - the early termination and reduction of the relevant Forestry Interests (clause 11).
71. Any additional land leased by TSL for the purposes of the Additional Wood Resource will not form part of the Sub-lease between TSL and the Growers.

## **Agreement for Sub-lease**

72. Where, at the time of accepting an application from a Grower, there is no suitable land available for allotment, a Grower will enter into an Agreement for Sub-lease with TSL.
73. An Agreement for Sub-lease will be entered where TSL believes it will be able to secure suitable Plantation land and enter into the necessary Sub-lease in sufficient time to perform the Establishment Services under the Management Agreement within the Establishment Period.
74. Subsequently, when suitable land is secured, TSL will arrange entry into a Sub-lease on behalf of the Grower.

## **Management Agreement**

75. Each Grower will engage TSL as an independent contractor for the Term of the Project to carry out the Establishment Services and the Plantation Services in accordance with the Management Plan and, as an agent, to Harvest and sell the Wood on behalf of the relevant Grower (clause 3).
76. TSL will determine in its absolute discretion the method of establishment of Trees on each relevant Plantation which may be carried out either through new plantings of seedlings or by way of coppicing previously harvested trees. The Establishment Services, listed in clause 6, are the services which will be carried out in respect of each Forestry Interest within the Establishment Period, commencing on 30 June 2009 and ending 18 months thereafter.
77. The Plantation Services, listed in clause 6A, are to be carried out in respect of each Forestry Interest following the completion of the Establishment Services. The Plantation Services consist of general management and maintenance services during the Term of the Project.

78. The Additional Wood Resource Services, listed in clause 6AA, are to be carried out following the establishment of Trees on any additional land leased by TSL for the purposes of the Additional Wood Resource. The Additional Wood Resource Services are identical to the Plantation Services to be undertaken in respect of each Forestry Interest.

79. TSL undertakes to market and sell, as agent for the Grower, the Wood grown or growing, processed or unprocessed on the relevant Forestry Interests and, if necessary, the Additional Wood Resource, to any bona fide purchaser for as high a price as it can reasonably achieve for the Wood (clause 7).

80. Unless otherwise agreed between TSL and the Growers the Harvest of the Trees and the Delivery of the Wood to a purchaser is required to take place between 30 September 2018 and 30 September 2022. TSL is required to give written notice to Growers setting out the dates between which Harvesting and Delivery or collection of the Wood will take place, the proposed Purchase Price of the Wood and a fixed quote for the Harvesting and Delivery of the Wood to the designated Facility or Facilities (clause 8 and Part 2 of the Schedule).

81. Upon request by the Grower, TSL agrees to keep policies of insurance on behalf of the Grower with a reputable insurer against fire to the Trees, provided that such insurance is available (clause 6B(a)).

82. Among other things, the Management Agreement also sets out details of the following:

- remuneration of TSL (clause 5 and Part 1 of the Schedule);
- the duties and rights of TSL (clause 9);
- certain mutual covenants (clause 10);
- the rights of each Grower (clause 11);
- the rights of termination in the event of default (clause 14); and
- damage to or reduction in the viability of the relevant Forestry Interests (clause 15).

### **Plantation Services Agreement**

83. TSL commissions and engages Timbercorp Forestry Pty Ltd as an independent contractor to carry out the Establishment Services (set out in clause 6) and the Plantation Services (set out in clause 6A) during the Term of the Project in accordance with the Establishment and Maintenance Plan (clause 3).

## **Custody Agreement**

84. TSL will engage the Custodian to act as the custodian for the Project. The Custodian will be responsible for holding the Scheme Assets on the terms and conditions set out in the Agreement. Scheme Assets are defined as the Subscription Moneys, until they are expended, and the Proceeds, until they are distributed, in accordance with the Constitution.

## **Pooling of Wood and distribution of Proceeds**

85. The Constitution provides that TSL must pool and keep separate the Wood and Proceeds of Growers (clause 22A).

86. A Grower is entitled to a proportion of the aggregate of the Purchase Price payable to all Growers for all the Wood sold pursuant to the Management Agreement as represented by the Grower's own Forestry Interests to the total number of all Forestry Interests leased to all Growers (clause 7).

## **Fees**

87. A Grower is liable to pay TSL the following fees per Forestry Interest under the terms of the Management Agreement (Part 1 of the Schedule) and the Sub-lease (Part 4 of the Schedule):

- \$2,600 for Establishment Services to be performed during the Establishment Period, payable on Application;
- 3.5% of the Net Proceeds for Plantation Services provided during the Term of the Project, payable out of and at the time that Net Proceeds are paid by TSL to the Grower;
- 3.5% of the Net Proceeds for Rent for the sub-lease of the Grower's Forestry Interests during the Term of the Project, payable out of and at the time that Net Proceeds are paid by TSL to the Grower; and
- to the extent that such costs have not been deducted from the Purchase Price payable under any agreement for the sale of Wood, the Participating Interest of the Harvesting, Delivery and other costs, including the costs of sale and marketing which, at the sole discretion of TSL, may be increased to an amount that does not exceed the actual costs plus an additional amount equal to the actual costs multiplied by the GST rate.

88. Where Growers receive proceeds from the sale of the Additional Wood Resource, they are required to pay TSL 7.0% of the Additional Wood Resource Net Proceeds for Additional Wood Resource Services provided during the Term of the Project, payable out of and at the time that Net Proceeds are paid by TSL to the Grower (Part 1 of the Schedule to the Management Agreement).

89. Growers insuring their Trees are required to pay an insurance fee comprising the insurance premium at cost and a 10% service fee payable to TSL by 31 October of each year following establishment of the Trees.

90. The PDS provides that the ultimate cost to the Grower will depend on the fees the Grower negotiates with TSL or a financial adviser. This Product Ruling does not apply to any Grower who does not pay the fees set out in paragraphs 87 and 88 of this Ruling. Growers who negotiate fees that are different to those set out in paragraphs 87 and 88 of this Ruling may request a private ruling on the tax consequences of their participation in the Project.

### **Finance**

91. Growers can fund their participation in the Project themselves, borrow from the Financier (a lender associated with TSL), or borrow from an independent lender external to the Project.

92. Subject to the Financier accepting the Grower's application for finance, the Grower will be bound by the terms and conditions of the Loan Application Form and Loan Explanation and Loan Terms.

93. The Financier will offer Loan Terms on a commercial basis and approve Loan Amounts generally up to 90% of the Application Money. The Financier will provide a Grower with the loan on a full recourse basis and will pursue legal action against any defaulting borrowers.

94. Common features contained in the Loan Terms are:

- on application the Grower will be required to pay the deposit, being the balance still to be paid for their Forestry Interests after deduction of the Loan Amount;
- the Financier will lend to the Grower the Loan Amount by paying it to TSL as payment of the Grower's balance of the Application Money for Forestry Interests;
- a Loan Application Fee of \$250 will comprise part of the Loan Amount;
- other than for loans with a term of one year, equal monthly principal and interest instalments over the term of the loan are payable, commencing on the last business day of the month in which the term of the loan commences;
- for loans with a term of one year, equal monthly principal instalments over the term of the loan are payable, commencing on the last business day of the month in which the term of the loan commences;
- interest rates, where applicable, will be fixed for the term of the loan;

- the Grower is entitled to repay the whole or part of the Total Amount Owing without penalty for early repayment;
- in the event that any amount is overdue, the Financier may charge interest at the Higher Interest Rate;
- during the term of the loan the Grower must maintain fire insurance over their Trees on a full replacement basis; and
- for the purpose of securing payment of the Total Amount Owing, the Grower will assign to the Financier all its rights, title, and interest in any debt or other monetary obligations owed to the Grower by TSL under or in relation to the Grower's investment in the Project.

95. The terms specific to each optional Loan Term offered by the Financier are summarised below. Interest rates quoted are indicative.

Type B – principal only loan

- 1 year term with an interest rate of 0.00% p.a.

Type A – principal and interest loans

- 2 and 3 year terms with an interest rate of 9.50% p.a.
- 4 and 5 year terms with an interest rate of 10.25% p.a.
- 6 and 7 year terms with an interest rate of 10.75% p.a.
- 8 year term with an interest rate of 11.25% p.a.

96. Only the finance arrangements set out above are covered by this Product Ruling. A Grower cannot rely on this Product Ruling if they enter into a finance arrangement with the Financier that materially differs from that set out in the documentation provided to the Tax Office by TSL with the application for this Product Ruling.

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

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' are or will be granted to the borrowers for the purpose of section 82KL of the ITAA 1936 or the funding arrangements transform the Project into a 'scheme' to which Part IVA of the ITAA 1936 may apply;
- the loan or rate of interest is non-arm's length;

- repayments of the principal and payments of interest are linked to the derivation of income from the Project;
- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender or any associate of the lender;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- entities associated with the Project, other than the Financier, are involved or become involved in the provision of finance to a Grower for the Project.

---

**Commissioner of Taxation**10 September 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.*

### Structure of the Project

98. In return for payment of the Establishment Services fee and the other fees and expenses required under the Project agreements during the term of the Project, Growers will hold a 'forestry interest' in a 'forestry managed investment scheme'. The Project qualifies as a 'forestry managed investment scheme' because its purpose is for 'establishing and tending trees for felling in Australia' (see subsection 394-15(1)).

99. Under the Constitution of the Project and the other supporting agreements, the holding of a Forestry Interest in the Project gives each Grower a right to a share in the proceeds of the Harvest of the Trees grown on the Project land. That share of proceeds is determined using the number of Forestry Interests held by a Grower as a proportion of all Forestry Interests held by all 'participants'<sup>7</sup> in the Project.

### Allowable deductions

#### **Sections 8-5, 12-5, 394-10, and 394-20**

100. Section 8-5 allows certain specific deductions to be claimed against the assessable income of a taxpayer. The list of specific deductions is shown in a table in section 12-5 and includes payments under a 'forestry managed investment scheme' that meet the requirements of subsection 394-10(1).

### The '70% DFE rule'

#### **Paragraph 394-10(1)(c) and section 394-35**

101. The threshold test for Growers in the Project to be entitled to deductions under subsection 394-10(1) is the '70% DFE rule' in paragraph 394-10(1)(c). Under that rule it must be reasonable to expect that on 30 June 2009 the amount of 'direct forestry expenditure'<sup>8</sup> under the scheme will be no less than 70% of the amount of payments under the scheme.<sup>9</sup>

102. The amount of all 'direct forestry expenditure' is the amount of the net present value of all 'direct forestry expenditure' that TSL, as 'forestry manager'<sup>10</sup> of the Project, has paid or will pay under the scheme (subsection 394-35(2)).

---

<sup>7</sup> The term 'participant' is defined in subsection 394-15(4).

<sup>8</sup> See section 394-45.

<sup>9</sup> See subsection 394-35(1) and section 394-40.

<sup>10</sup> Defined in subsection 394-15(2).

103. The 'amount of payments under the scheme' is the amount of the net present value of all amounts (that is the fees and expenses) that all current and future 'participants' in the scheme have paid or will pay under the scheme (subsection 394-35(3)).

104. Both of the above amounts are determined as at 30 June 2009 taking into account:

- the timing requirements in subsections 394-35(4) and (5);
- any amounts that can reasonably be expected to be recouped (subsection 394-35(6));
- the discount rate in subsection 394-35(7); and
- the market value rule in subsection 394-35(8).

105. Applying all of these requirements to the information provided by TSL, the Commissioner has determined that the Project will satisfy the '70% DFE rule' on 30 June 2009.

***The other elements for deductibility under subsection 394-10(1)***

106. The requirement of paragraph 394-10(1)(d) that Growers in the Project not have day to day control over the operation of the Project is clear from the Project Agreements, as are the alternative elements of paragraph (e) relating to the number of Growers in the scheme and TSL's role in other managed investment schemes.

107. The final requirement for deductibility requires that all the Project Trees are established within 18 months of 30 June 2009 (see paragraph 394-10(1)(f) and subsection 394-10(4)). The planting timeline provided with the application for this Ruling by TSL indicates that all the Trees required to be established under the scheme will be planted or otherwise established on the Project land by 31 December 2010.

108. Accordingly, subject to the qualifications set out below, amounts paid by Growers to TSL in relation to their 'forestry interests' satisfy all requirements of subsection 394-10(1). The amounts are allowable deductions in the income year in which they are paid (subsection 394-10(2)).

109. Where a Grower does not fully pay an amount, or the amount is not fully paid on their behalf in an income year (see section 394-20), it is deductible only to the extent to which it has been paid. The unpaid balance is then deductible in the year or years in which it is actually paid. This may occur, for example, if all or part of the amount is borrowed and the financier fails to transfer the funds to the account of the 'forestry manager' on or before 30 June in an income year.



***Loss of deductions previously allowed under subsection 394-10(1)***

110. Two situations may lead to a loss of deductions previously allowed to Growers.

111. The first of these situations will occur if TSL fails to establish the Trees on the Project land within 18 months of the end of the income year in which the first Grower is accepted into the Project. Where this occurs TSL is required to notify the Commissioner within 3 months of the end of the 18 month period (section 394-10 of Schedule 1 to the TAA).

112. The second situation where a Grower may have deductions disallowed is where a 'CGT event' happens to their 'forestry interest' within 4 years from 30 June of the income year in which they first paid an amount under the scheme, for example, the Establishment Services fee (see subsection 394-10(5)).

113. For the purposes of this provision, the Commissioner is able to amend the assessment of a Grower within 2 years of the relevant 'CGT event' happening. The Commissioner's power to amend in these circumstances applies despite section 170 of the ITAA 1936 (subsection 394-10(6) of the ITAA 1997).

114. Where a 'CGT event' happens to the 'forestry interest' of a Grower within 4 years, the market value of the 'forestry interest' at the time of the 'CGT event' or the decrease in the market value of the 'forestry interest' as a result of the 'CGT event' is still included in the assessable income of the Grower by section 394-25. The amount must be included in assessable income even where an amendment has disallowed or may disallow the deductions previously allowed under section 394-10.

**Interest on loans to finance the 'forestry interest' of a Grower*****Section 8-1***

115. Where a Grower borrows money to fund their investment in the Project the deductibility of the interest incurred on the loan monies falls for consideration under the general deduction provisions of section 8-1. If the interest incurred by the Grower is deductible under the first positive limb in subsection 8-1(1) there is no requirement to consider whether it is also deductible under the second positive limb of that provision. Court decisions show that the same basic test applies to both limbs (see *Ronpibon Tin NL v. Federal Commissioner of Taxation* (1949) 78 CLR 47; (1949) 8 ATD 431, at CLR 56; ATD 435).

116. Under the first positive limb of subsection 8-1(1) the interest incurred by a Grower will be deductible if it is incurred in gaining or producing a Grower's assessable income and is not excluded by one of the negative limbs in subsection 8-1(2).

'The question of whether an outgoing [is] ... incurred in gaining or producing the assessable income is a question of characterisation' (*Fletcher & Ors v. Federal Commissioner of Taxation* (1991) 173 CLR 1; 91 ATC 4950; (1991) 22 ATR 613, at CLR 17; ATC 4957; ATR 621).

'To the extent that ... outgoings of interest ... can properly be characterised as of a kind referred to in the first limb of [section 8-1] they must draw their character from the use of the borrowed funds (*Fletcher*, at CLR 19; ATC 4958; ATR 623).

'[T]he characterisation of interest will generally be ascertained by reference to the objective circumstances of the use to which the borrowed funds are put' (*Federal Commissioner of Taxation v. Roberts* (1992) 37 FCR 246; 92 ATC 4380; (1992) 23 ATR 494, at FCR 257; ATC 4388; ATR 504).

117. Growers in the Project use the borrowed funds to acquire a 'forestry interest' in a 'forestry managed investment scheme'. The holding of that 'forestry interest' will produce assessable income for a Grower in the form of the proceeds of a full or part disposal of the 'forestry interest' or, as a proportionate share of the Harvest proceeds. The tests of deductibility of interest under the first limb of subsection 8-1(1) are, therefore, met unless one of the exclusions in subsection 8-1(2) apply.

118. For the purposes of this Project, only the capital exclusion in paragraph 8-1(2)(a) is relevant. The use of borrowed funds to purchase a capital asset, such as a 'forestry interest', does not mean that the interest outgoings are on capital account (see *Steele v. Federal Commissioner of Taxation* (1999) 197 CLR 459; 99 ATC 4242; (1999) 41 ATR 139, at CLR 470; ATC 4249; ATR 148).

'Interest [is a] periodic payment for the use, but not the permanent acquisition of a capital item. Therefore, a consideration of the often-cited three matters identified by Dixon J in *Sun Newspapers Ltd v. FC of T* ... assigns interest ... to revenue' (*Australian National Hotels Ltd v. Federal Commissioner of Taxation* (1988) 19 FCR 234; 88 ATC 4627; (1988) 19 ATR 1575, at FCR 241; ATC 4633-4634; ATR 1582).

119. Therefore, the capital exclusion in subsection 8-1(2) does not apply to the interest and, subject only to the potential application of the prepayment provisions, a deduction for the interest can be claimed in the year in which it is incurred (Note: the meaning of 'incurred' is explained in Taxation Ruling TR 97/7).

## **Prepayment provisions**

### **Sections 82KZL to 82KZMF**

120. 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 that will not be wholly done within the same year of income as the year in which the expenditure is incurred. For schemes such as this Project, the main operative provisions are sections 82KZMD and 82KZMF of the ITAA 1936.

121. However, subsection 394-10(7) of the ITAA 1997 specifically provides that sections 82KZMD and 82KZMF of the ITAA 1936 do not affect the timing of amounts deductible under section 394-10 of the ITAA 1997.

122. Accordingly, under the scheme to which this Product Ruling applies, only deductions for interest payable under a loan with the Financier will potentially fall within the prepayment provisions. However, the conditions applying to the loans to which this Ruling applies (see paragraphs 93 to 95 of this Ruling) do not require any prepayment of interest over the term of the loan. Accordingly, the prepayment provisions have no application to Growers who enter into those loans.

123. 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 Financier). As stated above, prepayments of interest are not covered by this Product Ruling and Growers who make such prepayments may instead request a private binding ruling on the tax consequences of the prepaid interest.

## **Borrowing costs**

### ***Section 25-25***

124. 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)).

125. In this Project, the Loan Application Fee of \$250 payable to the 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.

126. 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)).

## **Assessable income, 'CGT events' and the 'forestry interests' of Growers who are 'initial participants'**

### ***Sections 6-10, 10-5, and 394-25***

127. Section 6-10 includes in assessable income amounts that are not ordinary income. These amounts, called statutory income, are listed in the table in section 10-5 and include amounts that are included in the assessable income of 'initial participants' of a 'forestry managed investment scheme' by subsection 394-25(2).

***Subsection 394-25(2)***

128. Where a 'CGT event' happens to a 'forestry interest' held by a Grower in this Project, subsection 394-25(2) includes an amount in the assessable income of the Grower if:

- the Grower can deduct or has deducted an amount under section 394-10; or
- the Grower would have met the condition immediately above if subsection 394-10(5) had not applied to disallow the deduction(s). Paragraphs 33 to 35 of this Ruling explain when deductions will be disallowed under subsection 394-10(5).

***Market value rule applies to 'CGT events'***

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

- no longer holds the 'forestry interest'; or
- where the Grower continues to hold the 'forestry interest', but there is a decrease in the market value of the 'forestry interest';

then the market value of the 'forestry interest' at the time of the event, or the reduction of the market value of the 'forestry interest' as a result of the event, is included in the assessable income of the Grower in the income year in which the 'CGT event' happens (subsection 394-25(2)). A market value rule applies rather than the amount of money actually received from the 'CGT event' (subsection 394-25(3)). However, the market value and the actual amount of money received may be the same.

130. The market value amount included in the assessable income of a Grower is the value of the 'forestry interest' just before the 'CGT event', or where the Grower continues to hold their interest after the event, the amount by which the market value of the 'forestry interest' is reduced as a result of the 'CGT event' (subsection 394-25(2)).

131. Section 394-25 will apply where the 'forestry interest' is sold, is extinguished, or ceases, and will include 'CGT events' such as a full or partial sale of the 'forestry interest' or from a full or partial clear-fell Harvest of the Trees grown under the Project.

***Section 82KL – recouped expenditure***

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

## **Part IVA – general tax avoidance provisions**

133. 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).

134. The 2009 Timbercorp Forestry Project will be a 'scheme' and a Grower will obtain a 'tax benefit' from entering into the 'scheme', in the form of tax deductions for the amounts detailed at paragraphs 28 to 29 and 36 to 38 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.

135. Growers to whom this Ruling applies will derive assessable income from holding or disposing of their 'forestry interest' in the Project. 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 Growers will enter into the scheme for the dominant purpose of obtaining a tax benefit.

## **Appendix 2 – Detailed contents list**

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

	<b>Paragraph</b>
<b>What this Ruling is about</b>	<b>1</b>
Class of entities	3
Qualifications	8
Superannuation Industry (Supervision) Act 1993	11
<b>Date of effect</b>	<b>12</b>
Changes in the law	17
Note to promoters and advisers	19
Goods and Services Tax	20
<b>Ruling</b>	<b>22</b>
Structure of the Project	22
The '70% DFE rule' and the establishment of the Trees	25
<i>Section 394-35 and subsection 394-10(4)</i>	25
Allowable deductions	28
<i>Sections 8-5, 394-10 and 394-20</i>	28
'CGT event' within 4 years for Growers who are 'initial participants'	33
<i>Subsections 394-10(5) and (6)</i>	33
Interest on loans to finance the 'forestry interest' of a Grower and insurance fees	36
<i>Section 8-1</i>	36
Borrowing costs	38
<i>Section 25-25</i>	38
Assessable income, 'CGT events' and the 'forestry interests' of Growers who are 'initial participants'	40
<i>Sections 6-10 and 394-25</i>	40
Prepayment provisions, non-commercial losses, and anti- avoidance provisions	43
<i>Division 35 of the ITAA 1997 and sections 82KZM, 82KZME, 82KZMF, 82KL and Part IVA of the ITAA 1936</i>	43
<b>Scheme</b>	<b>44</b>
Overview	47
Constitution	57
Compliance Plan	62
Lease and Memorandum of Common Provisions	63

Sub-lease	65
Agreement for Sub-lease	72
Management Agreement	75
Plantation Services Agreement	83
Custody Agreement	84
Pooling of Wood and distribution of Proceeds	85
Fees	87
Finance	91
<b>Appendix 1 – Explanation</b>	<b>98</b>
Structure of the Project	98
Allowable deductions	100
<i>Sections 8-5, 12-5, 394-10, and 394-20</i>	100
The '70% DFE rule'	101
<i>Paragraph 394-10(1)(c) and section 394-35</i>	101
<i>The other elements for deductibility under subsection 394-10(1)</i>	106
<i>Loss of deductions previously allowed under subsection 394-10(1)</i>	110
Interest on loans to finance the 'forestry interest' of a Grower	115
<i>Section 8-1</i>	115
Prepayment provisions	120
<i>Sections 82KZL to 82KZMF</i>	120
Borrowing costs	124
<i>Section 25-25</i>	124
Assessable income, 'CGT events' and the 'forestry interests' of Growers who are 'initial participants'	127
<i>Sections 6-10, 10-5, and 394-25</i>	127
<i>Subsection 394-25(2)</i>	128
<i>Market value rule applies to 'CGT events'</i>	129
Section 82KL – recouped expenditure	132
Part IVA – general tax avoidance provisions	133
<b>Appendix 2 – Detailed contents list</b>	<b>136</b>

## References

### *Previous draft:*

Not previously issued as a draft

### *Related Rulings/Determinations:*

TR 97/7; TR 98/22; GSTR 2008/D1

### *Subject references:*

- 4 year holding period
- 70 per cent DFE rule
- DFE
- direct forestry expenditure
- forestry interest
- forestry MIS
- interest expenses
- managed investment schemes
- market value substitution rule
- payments under the scheme
- producing assessable income
- product rulings
- reasonable expectation
- tax avoidance
- taxation administration

### *Legislative references:*

- ITAA 1936 82KL
- ITAA 1936 Pt III Div 3 Subdiv H
- ITAA 1936 82KZL
- ITAA 1936 82KZM
- ITAA 1936 82KZMA
- ITAA 1936 82KZMB
- ITAA 1936 82KZMC
- ITAA 1936 82KZMD
- ITAA 1936 82KZME
- ITAA 1936 82KZMF
- ITAA 1936 170
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1936 318
- ITAA 1997 6-10
- ITAA 1997 8-1
- ITAA 1997 8-1(1)
- ITAA 1997 8-1(1)(a)
- ITAA 1997 8-1(2)
- ITAA 1997 8-1(2)(a)
- ITAA 1997 8-5
- ITAA 1997 10-5
- ITAA 1997 12-5
- ITAA 1997 25-25
- ITAA 1997 25-25(1)
- ITAA 1997 25-25(4)

- ITAA 1997 Subdiv 27-A
- ITAA 1997 Div 35
- ITAA 1997 Div 394
- ITAA 1997 394-10
- ITAA 1997 394-10(1)
- ITAA 1997 394-10(1)(c)
- ITAA 1997 394-10(1)(d)
- ITAA 1997 394-10(1)(f)
- ITAA 1997 394-10(2)
- ITAA 1997 394-10(4)
- ITAA 1997 394-10(5)
- ITAA 1997 394-10(6)
- ITAA 1997 394-10(7)
- ITAA 1997 394-15(1)
- ITAA 1997 394-15(2)
- ITAA 1997 394-15(3)
- ITAA 1997 394-15(4)
- ITAA 1997 394-15(5)
- ITAA 1997 394-20
- ITAA 1997 394-25
- ITAA 1997 394-25(2)
- ITAA 1997 394-25(3)
- ITAA 1997 394-30
- ITAA 1997 394-35
- ITAA 1997 394-35(1)
- ITAA 1997 394-35(2)
- ITAA 1997 394-35(3)
- ITAA 1997 394-35(4)
- ITAA 1997 394-35(5)
- ITAA 1997 394-35(6)
- ITAA 1997 394-35(7)
- ITAA 1997 394-35(8)
- ITAA 1997 394-40
- ITAA 1997 394-45
- ITAA 1997 995-1
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- TAA 1953 Sch 1 394-10
- Copyright Act 1968
- Corporations Act 2001
- SISA 1993

### *Case references:*

- Australian National Hotels Ltd v. Federal Commissioner of Taxation (1988) 19 FCR 234; 88 ATC 4627; (1988) 19 ATR 1575
- Ronpibon Tin NL v. Federal Commissioner of Taxation (1949) 78 CLR 47; (1949) 8 ATD 431



# PR 2008/63

- Fletcher & Ors v. Federal Commissioner of Taxation (1991) 173 CLR 1; 91 ATC 4950; (1991) 22 ATR 613
  - Federal Commissioner of Taxation v. Roberts (1992) 37 FCR 246; 92 ATC 4380; (1992) 23 ATR 494
  - Steele v. Federal Commissioner of Taxation (1999) 197 CLR 459; 99 ATC 4242; (1999) 41 ATR 139
- 

## ATO references

NO: 2008/1579

ISSN: 1441-1172

ATOlaw topic: Income Tax ~~ Product ~~ timber