

# ***PR 2010/8A - Addendum - Income tax: Rewards Group Premium Timber Project 2010***

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## Addendum

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### Product Ruling

### Income tax: Rewards Group Premium Timber Project 2010

This Addendum amends Product Ruling PR 2010/8 to include additional finance arrangements.

**PR 2010/8 is amended as follows:**

**1. Paragraph 7**

Omit last dot point, substitute:

- entities who enter into finance agreements with Greentree Capital Pty Ltd (Greentree) or Probitas Finance Pty Ltd (Probitas) outside the terms specified in paragraphs 94 and 94A of this Ruling.

**2. Paragraph 34**

After the paragraph insert:

**Interest**

**Section 8-1**

34A. A Grower in the Project can claim deductions for interest incurred on a loan to fund their investment in the Project (subsection 8-1(1)) in the income year in which the interest is incurred. This Product Ruling only applies to interest on loans between a Grower and Probitas as described in paragraph 94A of this Ruling. 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.

**3. Paragraph 37**

Omit the paragraph; substitute:

37. The Loan Application Fee of \$250 or 0.25% of the Finance Application Amount payable to Greentree or Probitas is a borrowing expense and is deductible under section 25-25.

#### 4. Paragraph 39

Omit the paragraph; substitute:

39. The deductibility or otherwise of borrowing costs arising from loan agreements entered into with financiers other than Greentree and Probitas under the finance arrangement described at paragraphs 94 and 94A of this Ruling is outside the scope of this Product Ruling.

#### 5. Paragraph 49

Omit the first dot point; substitute:

- interest and insurance costs paid by a Grower, in accordance with paragraphs 34A to 36 of this Ruling, do not fall within the scope of sections 82KZM, 82KZME and 82KZMF;

#### 6. Paragraph 50

(a) Omit the first and second dot points; substitute:

- Application for a Product Ruling as constituted by documents provided on 23 November 2009 and additional correspondence including emails received 8 February 2010, 18 March 2010, 19 March 2010, 22 March 2010, 23 March 2010, 26 March 2010, 31 March 2010, 15 April 2010, 21 April 2010, 27 April 2010 and 29 April 2010;
- Product Disclosure Statement (PDS) for the Rewards Group Premium Timber Project 2010, received 27 April 2010;

(b) Omit the last two dot points; substitute:

- Draft Loan Agreement for 12 month interest free loan from Greentree Capital Pty Ltd, received 23 November 2009;
- **Plantation Timber Insurance Policy**, received 23 November 2009; and
- **Finance Package** issued by Rewards Projects Ltd and Probitas Finance Pty Ltd, received 27 April 2010.

#### 7. Paragraph 57

Omit first sentence; substitute 'An offer to participate in the Project will be made through the PDS.'

**8. Paragraph 69**

Omit the paragraph; substitute:

**69. For the purpose of this Product Ruling only Growers who, from the time of planting until the end of the term of the Project, take out insurance in respect of the Trees against damage or destruction in terms of clause 19 of the Constitution for the Project, will be considered to be carrying on a business. Whether insurance is taken out or not will have no bearing on the deductibility under Division 394 of the amounts shown in the Table at paragraph 27 of this Ruling, the deductibility of interest shown at paragraph 34A of this Ruling and the deductibility of borrowing costs shown at paragraphs 37 to 39 of this Ruling.**

**9. Paragraph 84**

Omit the colon; substitute a full-stop.

**10. Paragraphs 91 and 92**

Omit the paragraphs; substitute:

91. To finance all or part of the cost of their 'forestry interest' a Grower can enter into a finance arrangement with Greentree or Probitas or alternatively borrow from an independent lender external to the Project.

92. The finance offered by Greentree and Probitas is set out below and only those arrangements are covered by this Product Ruling. A Grower cannot rely on this Product Ruling if they enter into a finance arrangement with Greentree or Probitas that materially differs from that set out in the documentation provided with the application for this Product Ruling.

**11. Paragraph 94**

After the paragraph; insert:

***Finance offered by Probitas***

94A. The full terms of the Finance Agreement offered by Probitas are included in the Finance Package issued with the PDS for the Project. The Loan Agreement provides the following features:

- Growers can borrow an amount of \$6,050 per Woodlot less a deposit as determined by Probitas;
- Monthly payments of principal and interest over 2, 3, 4 or 5 years commencing one month after the Date of Advance;

- Loan Application Fee of the greater of \$250 or 0.25% of the Finance Application Amount;
- interest will be charged at the Specified Rate as defined in the Finance Agreement;
- Growers undertake to take out insurance over the Growers' Woodlots;
- the loans are provided on a full recourse commercial basis; and
- Probitas will take security over the Growers' Woodlots.

## 12. Paragraph 95

Omit the paragraph; substitute:

95. Greentree and Probitas will only provide loans to Growers where they have sufficient funds to do so.

## 13. Paragraph 96

Omit last dot point; substitute:

- entities associated with the Project, other than Greentree and Probitas are involved or become involved in the provision of finance to Growers for the Project.

## 14. Paragraph 116

After the paragraph; insert:

**Interest on loans to finance the 'forestry interest' of a Grower and insurance costs related to the 'forestry interest'**

### **Section 8-1**

116A. Where a Grower borrows the Subscription Money from Greentree or Probitas to fund their investment in the Project, the deductibility of the interest incurred on the loan money falls for consideration under the general deduction provisions of section 8-1. Similarly, the costs relating to insuring the Trees fall for consideration under section 8-1. If the interest and the insurance costs incurred by the Grower are deductible under the first positive limb in subsection 8-1(1) there is no requirement to consider whether they are 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 at 56; (1949) 8 ATD 431 at 435).

116B. Under the first positive limb of subsection 8-1(1) the interest and insurance costs incurred by a Grower will be deductible if they are incurred in gaining or producing a Grower's assessable income and are 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 at 17; 91 ATC 4950 at 4957; (1991) 22 ATR 613 at 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 & Ors v. Federal Commissioner of Taxation* (1991) 173 CLR 1 at 19; 91 ATC 4950 at 4958; (1991) 22 ATR 613 at 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 at 257; 92 ATC 4380 at 4388; (1992) 23 ATR 494 at 504).

116C. Growers in the Project use the borrowed funds to acquire a 'forestry interest' in a 'forestry managed investment scheme' and the insurance costs protect their 'forestry interest' against certain risks. 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 the interest and the insurance costs under the first limb of subsection 8-1(1) are, therefore, met unless one of the exclusions in subsection 8-1(2) apply.

116D. 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, or insurance to protect, 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 at 470; 99 ATC 4242 at 4249; (1999) 41 ATR 139 at 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 at 241; 88 ATC 4627 at 4633; (1988) 19 ATR 1575 at 1582).

116E. Therefore, the capital exclusion in subsection 8-1(2) does not apply to the interest and the insurance costs and subject only to the potential application of the prepayment provisions, a deduction for the interest and the insurance costs can be claimed in the year in which they are incurred (Note: the meaning of 'incurred' is explained in Taxation Ruling TR 97/7).

## 15. Paragraphs 119 and 120

Omit the paragraphs; substitute:

119. Accordingly, under the scheme to which this Product Ruling applies, only deductions for interest payable under a loan with Probitas and for insurance premiums will potentially fall within the prepayment provisions. However, the conditions applying to the loans to which this Product Ruling applies (see paragraph 94A of this Ruling) do not require any prepayment of interest over the term of the loan. Similarly, nothing provided with the application for this Product Ruling indicates that insurance premiums will be prepaid. Accordingly, the prepayment provisions have no application to Growers who enter into those loans or incur expenses for insurance premiums.

120. If a Grower chooses to prepay the interest on their loans with Probitas or their insurance premiums, these amounts will not be covered by this Product Ruling and that Grower may request a private ruling on how the prepayment provisions will affect the timing of their deductions.

## 16. Paragraph 122

Omit the paragraph; substitute:

122. In this Project, the Loan Application Fee payable to Greentree or Probitas 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.

## 17. Paragraph 143

Insert:

Interest	34A
<i>Section 8-1</i>	34A
Finance offered by Probitas	94A
Interest on loans to finance the 'forestry interest' of a Grower and insurance costs related to the 'forestry interest'	116A
<i>Section 8-1</i>	116A

**18. Case references**

Insert:

- Australian National Hotels Ltd v. Federal Commissioner of Taxation (1988) 19 FCR 234; 88 ATC 4627; (1988) 19 ATR 1575
- Federal Commissioner of Taxation v. Roberts (1992) 37 FCR 246; 92 ATC 4380; (1992) 23 ATR 494
- Fletcher & Ors v. Federal Commissioner of Taxation (1991) 173 CLR 1; 91 ATC 4950; (1991) 22 ATR 613
- Ronpibon Tin NL v Federal Commissioner of Taxation (1949) 78 CLR 47; (1949) 8 ATD 431
- Steele v. Federal Commissioner of Taxation (1999) 197 CLR 459

This Addendum applies on and from 14 April 2010.

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**Commissioner of Taxation**12 May 2010

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ATO references

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