



# ***PR 1999/41 - Income tax: Chateau Xanadu Vineyards***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *12 November 2001*



## Product Ruling

### Income tax: Chateau Xanadu Vineyards Project

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#### *Preamble*

*The number, subject heading, and the **What this Product Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a ‘public ruling’ in terms of Part IVAAA of the **Taxation Administration Act 1953**. Product Ruling PR 98/1 explains Product Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

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

## What this Product Ruling is about

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1. This Ruling sets out the Commissioner’s opinion on the way in which the ‘tax law(s)’ identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates. In this Ruling this arrangement is sometimes referred to as the Chateau Xanadu Vineyard Project, or just simply as ‘the Project’.

#### **Tax law(s)**

2. The tax law(s) dealt with in this Ruling are:

- section 6-5 of the *Income Tax Assessment Act 1997* (‘ITAA 1997’);
- section 8-1 of the ITAA 1997;
- Division 35 of the ITAA 1997;
- section 42-15 of the ITAA 1997;
- section 387-125 of the ITAA 1997;
- section 387-185 of the ITAA 1997;
- Part 3-1 of the ITAA 1997;
- section 82KL of the *Income Tax Assessment Act 1936* (‘ITAA 1936’);

- section 82KZM of the ITAA 1936; and
- Part IVA of the ITAA 1936.

## Class of persons

3. The class of persons to whom this Ruling applies is those who enter into the arrangement described below on or after the date this Ruling is made. They will have a purpose of staying in the arrangement until it is completed (i.e., being a party to the relevant agreements until their term expires), and deriving assessable income from this involvement as set out in the description of the arrangement. In this Ruling these persons are referred to as ‘Growers’.

4. The class of persons to whom this Ruling applies does not include persons who intend to terminate their involvement in the arrangement prior to its completion, or who otherwise do not intend to derive assessable income from it.

## Qualifications

5. This Ruling provides this specified class of persons with a binding ruling as to the tax consequences of this product. The Commissioner accepts no responsibility in relation to the commercial viability of this product, and gives no assurance the prices charged for the product are reasonable, appropriate, or represent industry norms. A financial (or other) adviser should be consulted for such information.

6. The Commissioner rules on the precise arrangement identified in the Ruling.

7. The class of persons defined in the Ruling may rely on its contents, provided the arrangement (described below at paragraphs 12 to 34) is carried out in accordance with details described in the Ruling. If the arrangement described in the Ruling is materially different from the arrangement that is actually carried out:

- the Ruling has no binding effect on the Commissioner, as the arrangement entered into is not the arrangement ruled upon; and
- the Ruling will be withdrawn or modified.

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## **Date of effect**

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9. This Ruling applies prospectively from 26 May 1999, the date this Ruling is made. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

10. If a taxpayer has a more favourable private ruling (which is legally binding), the taxpayer can rely on the private ruling if the income year to which the private ruling relates has ended, or has commenced but not yet ended. However, if the arrangement covered by the private ruling has not begun to be carried out, and the income year to which it relates has not yet commenced, the product ruling applies to the taxpayer to the extent of the inconsistency only (see Taxation Determination TD 93/34).

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## **Withdrawal**

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11. This Product Ruling is withdrawn and ceases to have effect after 30 June 2002. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons within the specified class who enter into the specified arrangement during the term of the Ruling. Thus, the Ruling continues to apply to those persons, even following its withdrawal, for arrangements entered into prior to withdrawal of the Ruling. This is subject to there being no material difference in the arrangement or in the persons' involvement in the arrangement.

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## **Arrangement**

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12. The arrangement that is the subject of this Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- Application for Product Ruling, dated 2 March 1999;
- Draft Chateau Xanadu Vineyard Project Prospectus, dated 14 May 1999;

- Draft 3 of the Lease and Management Agreement between Western Australian Viticulture Services Ltd (Manager), Chateau Xanadu Wines Ltd (Lessor) and the Grower, dated 26 February 1999;
- Grape Supply and Purchase Agreement between the Manager and Chateau Xanadu Wines Ltd, dated 8 April 1999;
- Draft 2 of the Chateau Xanadu Vineyards Managed Investment Scheme Constitution, dated 19 February 1999;
- Chateau Xanadu Vineyards 1999 Compliance Plan, undated;
- Draft Loan Package Application Form and draft Deed of Loan and Charge between Richards Lyon (Funds Management) Pty Ltd, the Borrower (Grower) and the Guarantor (if any);
- Business Finance Agreement, dated 5 May 1999, and Deed of Fixed and Floating Charge, dated 23 June 1998, between Richards Lyon (Funds Management) Pty Ltd and a nominated bank;
- additional correspondence received from the applicant, dated 31 March 1999, 23 and 28 April 1999 and 5 May 1999.

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

13. For the purpose of describing the arrangement 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 the Grower, will be party to. The effect of these agreements is summarised as follows.

## Overview

14. This arrangement is called 'Chateau Xanadu Vineyard Project'. It is proposed to plant around 65 hectares of vines upon land held by the Lessor and located in Margaret River, Western Australia. The rootlings will be provided by the Lessor. Growers entering into the Project will lease the land and vines from the Lessor for a period of 14 years.

15. Growers contract with the Manager for the cultivation of the vinelot, planting and maintenance of their vines, the installation of

trellising and irrigation and the harvesting of their grapes. The Growers pay for the irrigation and trellising system that is on their leased area.

16. Unless the Grower has elected to take possession of their grapes, the Manager will sell the grapes on behalf of the Grower. The Manager has signed a Grape Sale Contract with Chateau Xanadu Wines Ltd for the sale of grapes from the Growers' vinelots. All grapes from the vinelots of non-electing Growers will be purchased under this contract provided they meet specified standards.

17. The minimum holding is one vinelot of 0.2 hectare in area of land planted with one or more of several types of vines to be used in the Project. Subscription is sought for 325 vinelots, although the Manager may accept oversubscriptions for up to 50 vinelots. If subscriptions are received for the additional 50 vinelots, an extra 10 hectares of vineyard will be planted, provided suitable land is available on the property.

18. In addition, subscribers to the Project have the option of subscribing for shares in Chateau Xanadu Wines Ltd. The minimum subscription is 10,000 shares at a cost of \$0.20 each, an outlay of \$2,000. More than 10,000 shares may be subscribed for by the Grower with the approval of the directors of Chateau Xanadu Wines Ltd.

### **Lease and Management Agreement**

19. Under the Lease and Management Agreement a Grower agrees to pay the annual lease rental and management fees and the cost of trellising and irrigation. Growers who lodge their applications on or before 30 June 1999 will have their Lease and Management Agreements executed by 30 June 1999.

20. Each Grower is granted by the Lessor a lease of one or more vinelots (set out in the Schedule attached to the Lease and Management Agreement), together with the vines thereon. The vines planted on the vinelot are provided by and remain the property of the Lessor at all times.

21. The Grower:

- will cultivate and maintain the vinelot for the purpose of long term commercial viticulture in a proper and skilful manner according to sound viticultural and environmental practices; and
- is not entitled to use the vinelot for permanent or temporary residential, recreational or tourist purposes.

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22. The Grower, on agreeing to pay the rent and observing the Grower's Covenants, may peaceably possess the vinelot during the term of the lease. The Grower has full right, title and interest in the produce of the vinelot and the right to have the produce sold.

23. At the expiration of the lease, the Grower will peaceably surrender and yield up to the Lessor the vinelot and its improvements free and clear of rubbish. All improvements, at the expiration of the Lease, will become the absolute property of the Lessor.

24. The Grower appoints the Manager to prepare, cultivate, plant and work the Grower's vinelot and to harvest the produce grown on the leased area(s). The Manager is required to perform these services in a proper and skilful manner and according to sound viticultural and environmental practices and has access to the staff, consultants and other specialist services necessary to perform the services.

25. To enable the Manager to carry out its duties, the Manager has ordered the required rootlings and has been reimbursed by the Lessor.

## Fees

26. Growers will make the following payments per vinelot for the first year of operation:

- a management fee of \$6,450 to the Manager by 25 June 1999 for the management of the vinelots for the period 30 June 1999 to 30 June 2000.
- a fee of \$300 to the Manager by 25 June 1999 for land preparation, planting, and deep fertilising;
- a fee of \$1,620 to the Manager by 25 June 1999 for the installation of the irrigation management system;
- a fee of \$1,580 to the Manager by 31 July 1999 for the installation of a suitable trellising system; and
- lease rental of \$800 to Chateau Xanadu Wines Ltd, the Lessor, by 25 June 1999 for lease of the Grower's vinelot for the period 30 June 1999 to 30 June 2000.

27. If a Grower exercises the option of subscribing for shares in Chateau Xanadu Wines Ltd, subscription monies for the shares are payable by 25 June 1999.

28. Growers will make the following payments per vinelot for the remainder of the fourteen year Project period:

- a management fee of \$2,276 payable to the Manager by 30 June 2000, for the year ended 30 June 2001, and a fee of \$2,128, payable by 30 June 2001, for the year ended 30 June 2002. Subsequent financial years' fees

will be due on 30 June of the previous year. The fee will be increased yearly by the greater of three percent or the percentage increase in the Consumer Price Index Australia from the immediately preceding year; and

- lease rental for each year subsequent to the first year of operation is payable to the Lessor by 30 June of the previous year and is calculated as the prior year's rental increased by the greater of three percent or the percentage increase in the Consumer Price Index Australia for the previous financial year.

### **Manager's bonus**

29. Following each year's harvest, where the gross proceeds from the sale of produce from the Growers' vinelots exceed the projected returns in the Prospectus for this Project, a bonus is payable to the Manager under the Lease and Management Agreement of 25% of the value of the excess, calculated proportionate to each Grower's holding.

### **Finance**

30. Growers can fund the investment themselves or borrow from an unassociated lending institution. Finance is also available through Richards Lyon (Funds Management) Pty Ltd ('Richards Lyon'). This arrangement will be as follows:

- the Grower funds the initial deposit of \$1,000 on application;
- the Grower may borrow the balance of management fees and rent for year 1, the cost of irrigation and trellising, the purchase of shares in Chateau Xanadu and the management fees and rent for year 2, a total of \$14,850;
- interest for the first year of the loan is to be paid in advance by 25 June 1999;
- from March 2000 repayments of principal and interest are to be made on a monthly basis;
- the term of the loan is 5 years; and
- Richards Lyon has a full recourse to the Grower and the loan will be secured by a mortgage over the Grower's Project interest.

31. The borrower's obligation to pay Richards Lyon interest and repay the loan is absolute and it is not subject to any condition



regarding the state of the Project, availability of crop proceeds, etc. In addition, if the borrower defaults on the loan, all of the secured monies (all amounts now or at any time in the future owing comprising the Principal sum, all interest and all other fees owing under the loan) immediately become payable. Legal action will be taken to recover any outstanding payments.

32. Richards Lyon will fund the loans through its established Commercial Bill Facility with a nominated bank. As part of this arrangement, the Manager is to deposit with Richards Lyon an amount equivalent to 10% of loan funds outstanding. The nominated bank has a full recourse loan with Richards Lyon and has full and legal recourse to the Grower, in the default of Richards Lyon.

33. Apart from the loans provided by the Richards Lyon, there is no agreement, arrangement or understanding between any entity or party associated with the Project and any financial or other institution for the provision of any finance to the Growers for any purpose associated with the Project.

### **Insurance**

34. At the expense of the Grower, the Manager will take out insurance cover in respect of the Grower's interest and obligations against damage or destruction of the vinelot and its improvements by fire and/or the other usual risks.

## **Ruling**

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35. For a Grower who invests in the Project the following deductions will be available:

- rent paid by the Grower in relation to the leased area will be an allowable deduction in the year incurred (section 8-1);
- management fees paid for the services outlined in the Lease and Management Agreement will be allowable deductions to the Grower in the year incurred (section 8-1);
- expenses incurred on the establishment of the vines are deductible to the Grower under section 387-165 at the rate of 13% per annum from the income year that the vines first become commercially productive. This is calculated on the basis that they have an 'effective life' for the purposes of section 387-185 of greater than 13 but less than 30 years;

- expenses incurred on irrigation will constitute allowable deductions to the Grower in the year incurred and the next two years at the rate of 33.3 % per annum (section 387-125);
- depreciation of trellising will be an allowable deduction to the Growers at a rate of 20% per year diminishing value or 13% per year prime cost (section 42-15);
- the bonus paid to the Manager, based on the proceeds of produce harvested and deducted from sale proceeds otherwise payable to the Grower, is deductible in the year incurred (section 8-1);
- insurance premiums paid by the Grower in respect of against damage or destruction of the vinelot by fire and/or the other usual risks is an allowable deduction to the Grower in the year incurred (section 8-1).

### **Division 35 – Deferral of losses from non-commercial business activities**

#### **Section 35-55 – Commissioner’s discretion**

35.1 For a Grower who is an individual and who entered the Project between 26 May 1999 and 14 May 2000 the rule in section 35-10 may apply to the business activity comprised by their involvement in this Project. Under paragraph 35-55(1)(b) the Commissioner has decided for the income years ended 30 June 2001 to 30 June 2002 that the rule in section 35-10 does not apply to this business activity provided that the Project has been, and continues to be, carried on in a manner that is not materially different to the arrangement described in this Ruling.

35.2 This exercise of the discretion in subsection 35-55(1) will not be required where, for any year in question:

- the exception in subsection 35-10(4) applies;
- a Grower’s business activity satisfies one of the tests in sections 35-30, 35-35, 35-40 or 35-45;
- the Grower’s business activity produces assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsection 35-10(2)); or
- the Commissioner is precluded from exercising the discretion under paragraph 35-55(1)(b) because of subsection 35-55(2).

35.3 Where the exception in subsection 35-10(4) applies, the Grower’s business activity satisfies one of the tests, or the discretion

in subsection 35-55(1) is exercised, section 35-10 will not apply. This means that a Grower will not be required to defer any excess of deductions attributable to their business activity in excess of any assessable income from that activity, i.e., any 'loss' from that activity, to a later year. Instead, this 'loss' can be offset against other assessable income for the year in which it arises.

35.4 Growers should not see the Commissioner's decision to exercise the discretion in paragraph 35-55(1)(b) as an indication that the Tax Office sanctions or guarantees the Project or the product to be a commercially viable investment. An assessment of the Project or the product from such a perspective has not been made.

### **Sections 82KZM and 82KL; Part IVA**

36. For a Grower who invests in the Project the following provisions of the ITAA 1936 have application as indicated:

- the expenditure by Growers does not fall within the scope of section 82KZM;
- 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.

### **Assessability of income from the Project**

37. Growers who invest in the Project will be assessable on their share of the gross sale proceeds from the sale of grapes in accordance with section 6-5.

## **Explanations**

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### **Section 8-1**

38. Consideration of whether Lease and Management fees are deductible under section 8-1, begins with paragraph 8-1(1)(a) of the section. This view proceeds on the following basis:

- the outgoing in question must have a sufficient connection with the operations or activities that directly gain or produce the taxpayer's assessable income;
- the outgoing is not deductible under paragraph 8-1(1)(b) if it is incurred when the business has not commenced; and

- where a taxpayer contractually commits themselves to a venture that may not turn out to be a business, there can be doubt about whether the relevant business has commenced, and hence, whether paragraph 8-1(1)(b) applies. However, that does not preclude the application of paragraph 8-1(1)(a) in determining whether the outgoing in question would have a sufficient connection with activities to produce assessable income.

39. A vineyard scheme can constitute the carrying on of a business. Where there is a business, or a future business, the gross sale proceeds from grapes from the scheme will constitute gross assessable income in their own right. The generation of 'business income' from such a business, or future business, provides the backdrop against which to judge whether the outgoings in question have the requisite connection with the operations that more directly gain or produce this income. These operations will be the planting, tending, maintaining and harvesting of the vines.

40. Generally, a Grower will be carrying on a business of viticulture where:

- the Grower has an identifiable interest in specific growing vines coupled with a right to harvest and sell the grapes produced;
- the viticultural activities are carried out on the Grower's behalf; and
- the weight and influence of the general indicators of a business, as used by the Courts, point to the carrying on of a business.

41. For this Project Growers have, under the Lease and Management Agreement, rights in the form of a lease over an identifiable area of land consistent with the intention to carry on a business of a commercial vineyard. Under the Lease and Management Agreement Growers appoint the Manager to provide services such as planting, tending, pruning, training, fertilising, replanting, spraying, maintaining and otherwise caring for the vines. The Manager is also responsible for the harvesting of the grapes from the vines.

42. The Lease and Management Agreement gives Growers an identifiable interest in specific vines and Growers have a legal interest in the land by virtue of a Lease. Growers have the right personally to market the produce attributed to their leased area or they can elect to use the Manager to market the produce for them.

43. Growers have the obligation to use the land in question for viticultural purposes and to have the Manager come onto the land to carry out its obligations under the Lease and Management Agreement. The Growers' degree of control over the Manager, as evidenced by the Lease and Management Agreement and the Chateau Xanadu Vineyards Managed Investment Scheme Constitution and supplemented by the Corporations Law, is sufficient. Under the Project, Growers are entitled to receive a yearly account for the proceeds of the sale of grapes from the Manager as well as regular reports of the vineyard's activities. Growers are able to terminate arrangements with the Manager in certain instances, such as cases of default or neglect. The activities described in the Lease and Management Agreement are carried out on the Growers' behalf.

44. The general indicators of a business, as used by the Courts, are described in Taxation Ruling TR 97/11. Positive findings can be made from the arrangement's description for all the indicators. The Independent Horticultural report considers that the Project is realistic and commercially viable.

45. Growers to whom this Ruling applies intend to derive assessable income from the Project. This intention is related to projections contained in the Prospectus that suggest the Project should return a 'before-tax' profit to the Growers from year 3, i.e., a 'profit' in cash terms that does not depend in its calculation, on the fees in question being allowed as a deduction.

46. The Manager engaged by Growers will have appropriate credentials and deliver professional services. These services are based on accepted viticultural practices and are of the type ordinarily found in vineyards that would commonly be said to be businesses.

47. Growers have a continuing interest in the vines from the time they are acquired until they reach the end of the most productive period of their life. There is a means to identify which vines Growers have an interest in. The vineyard activities, and hence the fees associated with their procurement, are consistent with an intention to commence regular activities that have an 'air of permanence' about them. The Growers' vineyard activities will constitute the carrying on of a business.

48. The fees associated with the vineyard activities will relate to the gaining of income from this business, and hence have a sufficient connection to the operations by which this income (from the sale of grapes) is to be gained from this business. They will thus be deductible under paragraph 8-1(1)(a).

49. Lease and Management fees are prepaid. Taxation Ruling TR 94/25 states that the facts in *Coles Myer Finance Ltd v. FC of T* (1993) 25 ATR 95; 93 ATC 4214; (1993) 176CLR 640 were fundamentally different from those of a prepayment and that the

decision did not affect the deductibility of prepaid expenses. The Lease and Management Agreement fees will be incurred in the year of payment.

50. Taxation Ruling TR 95/33 considered the decision of the Full High Court of Australia in *Fletcher & Ors v. FC of T* 91 ATC 4950; (1991) 22 ATR 613 and, in particular, considered situations in which a taxpayer's subjective purpose, intention or motive is relevant in determining the availability of an income tax deduction under the previous subsection 51(1) of the ITAA 1936. This may be the case where the amount of assessable income is less than the amount of the outgoing. It can be concluded that the expenditure in this Project is genuinely, and not colourably, used in an assessable income producing activity and therefore a deduction is allowable for the loss or outgoing.

### **Expenditure of a capital nature**

51. Any part of the expenditure of a Grower entering into a horticultural business that is attributable to acquiring an asset or advantage of an enduring kind is generally capital or capital in nature and will not be an allowable deduction under section 8-1. In this Project the costs of trellising, irrigation, and establishment of the vines are considered to be capital in nature. These expenses are not deductible under section 8-1. However, expenditure of this nature can fall for consideration under specific capital write-off provisions of the ITAA 1997.

### **Division 42**

52. Growers accepted into the Project incur expenditure on trellising upon which the vines are attached and are to be used on their behalf in the operation of the vineyard business. This is attached to the land as a fixture. This expenditure is of a capital nature.

53. Generally speaking, if a taxpayer incurs expenditure of a capital nature on plant or equipment, used during the year of income for the purposes of producing assessable income, and it is expenditure to which section 42-15 applies, a deduction will be allowed for depreciation on the item under that section. However, where an item is affixed to land so that it becomes a fixture, at common law it becomes part of the land and is legally, absolutely owned by the owner of the land.

54. It is, however, accepted in certain circumstances that a lessee is entitled to claim depreciation where they are considered to be the owner of those improvements. Taxation Ruling IT 175 sets out the Australian Taxation Office's (ATO's) views on this issue. Where a

lessee is considered to own the improvements under a state law, as detailed in the Ruling, the ATO accepts the lessee is entitled to claim depreciation for the fixture.

55. A Grower accepted into the Project enters into a lease giving them a right to occupy certain land upon which they are entitled to grow vines and conduct a business of a vineyard. Under the terms and conditions of the Lease and Management Agreement, the trellising becomes the property of the Lessor at the end of the Project.

56. The Responsible Entity will advise Growers the date when the trellising is installed and begins to be used for the purpose of producing assessable income. Therefore, the cost that relates to the acquisition and installation of trellises on the land, will be eligible for a depreciation deduction by the farmers under section 42-125, at a rate of 13% prime cost or 20% diminishing value from this date.

## **Subdivision 387-B**

57. Subdivision 387-B allows a taxpayer, who is carrying on a business of primary production on land in Australia, to claim a deduction for capital expenditure on conserving or conveying water. The deduction is allowed over a three year period and applies to plant or a structural improvement primarily or principally used for the purpose of conserving or conveying water for use in a primary production business. Irrigation systems of the kind proposed would be covered by this Subdivision.

58. As the taxpayer who can claim the deduction does not have to actually own the land but can be a tenant or lessee, a deduction would be available to the Growers in the Project at a rate of 33.3% per annum for the cost of the irrigation system.

## **Subdivision 387-C**

59. Subdivision 387-C allows capital expenditure on establishing horticultural plants owned and used, or held ready for use, in Australia in a horticultural business of to be written off for tax purposes. A lessee or licensee of land carrying on a horticultural business is taken to own the plants growing on that land rather than the actual owner of the land.

60. Under this Subdivision, if the effective life of the plant is more than three years an annual deduction is allowable on a prime cost basis during the plant's maximum write-off period. The write-off deductions commence from the vines' first commercial season. The Manager will advise the Grower of this date.

61. The effective life of a plant is to be determined objectively and should take into account all relevant circumstances. The write-off rate for horticultural plant is detailed in section 387-185. Since the effective life of the vines is estimated to be between 13 and 30 years the rate is 13%.

### **Section 82KZM**

62. Section 82KZM operates to spread over more than one income year a deduction for prepaid expenditure that would otherwise be immediately deductible, in full, under section 8-1. The section applies if certain expenditure incurred under an agreement is in return for the doing of a thing under the agreement that is not wholly done within 13 months after the day on which the expenditure is incurred.

63. Under the Lease and Management Agreement the fee of \$6,450 will be incurred on execution of the Agreement. This fee is charged for providing services to a Grower only for the period of 13 months from the execution of the Agreement. For this Ruling's purposes, no explicit conclusion can be drawn from the arrangement's description that the fee has been inflated to result in reduced fees being payable for subsequent years. The fee is expressly stated to be for a number of specified services. There is evidence this fee is for services to be provided within 13 months of incurring the expenditure in question.

64. Thus, for the purposes of this Ruling, it is accepted that no part of the fee of \$6,450 is for the Manager to do 'things' that are not to be wholly done within 13 months of the fee being incurred. On this basis, the basic precondition for the operation of section 82KZM is not satisfied and it will not apply to the expenditure by Growers of \$6,450 per vinelot.

### **Section 82KL**

65. Section 82KL is a specific anti-avoidance provision that operates to deny an otherwise allowable deduction for certain expenditure incurred, but effectively recouped, by the taxpayer. Under subsection 82KL(1), a deduction for certain expenditure is disallowed where the sum of the 'additional benefit' plus the 'expected tax saving' in relation to that expenditure equals or exceeds the 'eligible relevant expenditure'.

66. 'Additional benefit' (see the definition of 'additional benefit' at subsection 82KH(1) and paragraph 82KH(1F)(b)) is, broadly speaking, a benefit received that is additional to the benefit for which the expenditure is ostensibly incurred. The 'expected tax saving' is



essentially the tax saved if a deduction is allowed for the relevant expenditure.

67. Section 82KL's operation 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.

## **Part IVA**

68. For Part IVA 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).

69. The Chateau Xanadu Vineyard Project will be a 'scheme'. The Growers will obtain a 'tax benefit' from entering into the scheme, in the form of the tax deductions per leased area 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.

70. Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the sale of the fruit from the trees. Further, there are no features of the Project, for example, such as the Management fees being 'excessive', not commercial, and predominantly financed by a non-recourse loan, that might suggest the Project was so 'tax driven', and so designed to produce a tax deduction of a certain magnitude that it would attract the operation of Part IVA.

## **Part 3-1: capital gains tax**

71. Unless any shares in the Lessor are trading stock of the Grower or otherwise assessable on revenue account to the Grower, a capital gain or loss will arise on the disposal of those shares.

72. In the event that the Lessor is liquidated at the conclusion of the Project, further taxation considerations arise for the Grower holding shares in the Lessor. Any distribution made to a Grower on liquidation of the Lessor would be deemed to be a dividend to the Grower, to the extent of the undistributed profits of the Lessor. This dividend would be assessable as a normal dividend and may have franking credits attached. Further, a capital gain or loss could arise, based on the difference between the Grower's indexed cost base and the amount distributed.

## Detailed contents list

73. Below is a detailed contents list for this Ruling:

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## Commissioner of Taxation

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*Subject references:*

- carrying on a business
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- schemes and shams
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