



PR 1999/66 - Income tax: Parkview Orchard Project

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Product Ruling

Income tax: Parkview Orchard 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.*

What this Product Ruling is about

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 Parkview Orchard Project, or just simply as 'the Project', or the 'product'.

Tax laws

2. The tax laws dealt with in this Ruling are:
- section 8-1, *Income Tax Assessment Act 1997* ('ITAA 1997');
 - section 387-125, ITAA 1997;
 - section 387-165, ITAA 1997;
 - section 82KL, *Income Tax Assessment Act 1936* ('ITAA 1936');
 - section 82KZM, ITAA 1936; and
 - Part IVA, ITAA 1936.

Class of persons

3. The class of persons to whom this Ruling applies ('Growers') is those who enter into the arrangement described below on or after the date this Ruling is made. They will have an intention of staying in

the arrangement until it is completed (i.e., being a party to the relevant agreements until their term expires) with a purpose of deriving assessable income from this involvement as set out in the description of the arrangement.

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. The 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 32) 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

9. This Ruling applies prospectively from 16 June 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).

Withdrawal

11. This Product Ruling is withdrawn and ceases to have effect after 30 June 2001. 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.

Arrangement

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

- The Parkview Orchard Project Prospectus dated 22 May 1998;
- Management Agreement between Parkview Management Ltd ('the Manager') and Grower;
- Farm Allotment Agreement between Parkview Orchard Management Limited and Grower;
- Parkview Orchard Project Deed;
- Product Ruling request dated 30 March 1999;
- Supplementary Prospectus lodged with the Australian Securities Commission on 10 May 1999 and amendment dated 9 June 1999; and

- correspondence from Parkview Orchard's financial adviser to the Australian Taxation Office ('ATO') dated 10, 18, 24 May and two letters dated 7 June 1999.

13. The salient features and effect of these arrangements are summarised in paragraphs 14 to 32.

14. This arrangement is called 'Parkview Orchard Project'. It consists of the lease of two existing orchards, 'Gum Swamp' and 'Cawarrie', together with the lease of a third new orchard that is to be constructed at 'Avondale'. It is planned that the Avondale orchard will be substantially completed by 30 June 2000 and the entire Project will be operational by that date.

15. The orchard land will be leased by the landowners to the trustee for the Growers, who in turn will sublease the land to the Manager. The Manager will licence to each Grower their own separate identifiable orchard on which the Grower will conduct their business of growing fruit trees. A farm allotment fee is payable for the granting of the licence.

16. It is proposed that the Growers purchase the fruit trees and irrigation system that is on their licensed area in the Avondale orchard and that they lease the trees on their licensed area in the Gum Swamp and Cawarrie properties. Growers then enter into a contract with the Manager for the management, picking, packaging and marketing and harvesting of the fruit. Growers are allocated trees on only one property but share in the proceeds from all three properties.

17. The minimum individual holding is one area totalling 0.2 hectares of land planted with 131 fruit trees. Currently, the Gum Swamp and Cawarrie orchards cover 80 hectares and are planted with 62,200 assorted fruit trees. Overall, it is proposed that 300 hectares will be planted with approximately 196,500 fruit trees. The total number of allotments that will be licensed to Growers is 1,500 and these are identified on the plan of the orchard that will be attached to the Management Agreement.

18. The 62,200 trees that have already been planted range in age from 4 to 8 years. These being Cherries (15,000), Plums (30,000), Pears (7,700), Nashi (3,000), Peaches and Nectarines (2,000) and Apples (4,500). The proposed trees to be planted in the Project are Cherries (25,000), Plums (65,000) and Apples (45,000). Plants will be grown using the palmette system that will allow for a more dense planting of the Project than is usual for a 'traditional' style orchard.

19. The Project is also to use the latest available computer controlled 'trickle' irrigation system to apply water to the plants according to current regulated Deficit Irrigation principals, potentially using substantially less water than is provided for in the water licences. The Gum Swamp and Cawarrie orchards are to have this

upgraded irrigation system installed in the first year of operation. This will replace their current 'flood' method of irrigation and will be paid for from the management's own funds (see page 13 of the Prospectus).

Management Agreement

20. Growers will make payments toward the Project under the Management Agreement that is to be executed no later than 30 June 1999 being for licence fees, administration and management fees, and payments for the acquisition or lease of trees.

21. The Manager grants the Grower a licence of the area and the Grower will not:

- use or permit any other person to use their licensed area for any purpose other than that of commercial horticulture and the Project;
- erect any building or construction (whether temporary or permanent) on their licensed area, except with the approval of the Lessor and for the purpose of commercial horticulture and the Project; and
- use, or permit any other person to use, their licensed area for residential, recreational or tourist purposes.

22. In return, the Grower may peaceably possess and enjoy the licensed area during the term of the licence without any interruption or disturbance from the Lessor. The Grower and their invitees may also use the common areas of the Project.

23. At the expiration, or sooner determination of the term of the licence, the Grower will peaceably surrender and yield up to the sublessor the allotted area and fixtures free and clear of rubbish and in good and substantial repair, order and condition.

24. The Grower appoints the Manager to establish and maintain the orchard and the Project on the licensed area(s) and to arrange the harvest of the fruit grown on the licensed area(s). The Manager is required to perform these services according to good horticultural practices and may provide these services directly or through consultants or other specialists engaged at the Manager's expense. The Manager will have commenced these business operations on behalf of the Grower by 30 June 1999. The Responsible Entity will obtain insurance against public risk in respect of the orchard and, if requested by the Grower in writing, use its best efforts to arrange insurance of the licensed area against damage by fire on behalf of the Grower.

25. A Grower may carry out his or her own weeding and the Manager may, in this event, reduce the fees payable by the Grower to

the Manager (clause 5.1 of the Management Agreement). Growers may also elect to have their trees harvested separately or elect to take the produce from the harvest under clauses 5.2 and 5.3, respectively, of the Management Agreement. Any Grower who makes an election under clauses 5.1, 5.2 or 5.3 of the Management Agreement is outside the arrangement to which this Ruling applies and will be unable to rely on this Ruling.

26. The Management Agreement authorises the Manager to market produce as agent of the Growers (clause 4.3 of the Management Agreement).

Fees

27. The Growers will make the following payments per allotment:

- a management fee of \$18,300 to Parkview Orchard Management Ltd for management of the orchard for the period 30 June 1999 to 30 June 2000;
- Farm allotment fee of \$100 to Parkview Orchards Pty Ltd as trustee for the Parkview Orchards Unit Trust for the granting of the licence to the Grower in the period 30 June 1999 to 30 June 2000;
- a management fee of \$5,900 to Parkview Orchard Management Ltd for management of the orchard for the period 30 June 2000 to 30 June 2001; and
- Farm allotment fee of \$103 to Parkview Orchards Pty Ltd as trustee for the Parkview Orchards Unit Trust, for the granting of the licence to the Grower's allotted area of the orchard for the period 30 June 2000 to 30 June 2001.

28. The Growers will make the following payments per licensed area in subsequent years for the remainder of the sixteen year Project payment:

- a management fee to the Manager set at \$8.50 per tree for year ended 30 June 2002 and indexed up and charged yearly from 1 July 2001, plus a picking, packing and marketing fee of \$10 per case for cherries, plums, pears and apples and \$5 per tray for nashies, nectarines and peaches, all to be indexed up with Consumer Price Increase (All Groups) ('CPI') from 1 July 2002; and
- Farm allotment fee to the landowner set at \$103 for the year ended 30 June 2001 and thereafter increased by the CPI from the immediately preceding year.

29. The financial projections at pages 6 and 7 of the Prospectus estimate a substantial crop will be produced from year 1. From year 4 onwards the income should exceed the management fees.

Finance

30. Growers can fund their investments in the Project themselves, or borrow from an unassociated lending body or borrow through finance arrangements organised by the Manager.

31. Finance arrangements organised directly by a Grower with independent lenders will be a private arrangement between the Grower and the lender. These finance arrangements are outside the arrangement to which this Ruling applies.

32. The Manager has engaged the services of Laton Securities Pty Ltd ('Laton'). Laton is not associated with the Manager or any associates of the Manager. Laton will arrange loans from an Australian bank to cover the subscription fees payable to the Manager. Loans to Growers will have the following features:

- on the Grower being accepted as a borrower, the Manager will be put in funds directly as a result of the loan;
- the Manager will not put the funds received on deposit with Laton, or the Australian Bank used by Laton or any associated persons, but will substantially use the funds, subject to the trustee's approval, in carrying out its obligations under the Management Agreement;
- repayment of principal and payments of interest are not linked to derivation of income from the Project;
- loans made to investors are full recourse and there are no circumstances in which a Grower will not be required to pay the borrowed monies to the lender, within the period specified in the loan agreement with the Australian Bank;
- the Australian Bank lending to the Growers will undertake normal commercial recovery activity, including legal proceedings where necessary, to recover borrowed monies from defaulting Growers;
- the Manager, trustee or other entities associated with the Project, will use the monies in operating the Project and will not place the Grower subscription monies on security deposit or in substance return any of the funds to the lender (e.g., round robin of cheques with some or all of the monies lent being returned to the lender); and

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- Growers are not entitled to and will not recoup or have any part of their subscription monies refunded or returned after entering the Project.

33. Please note that the arrangement described in the above paragraphs does not apply to Growers who:

- organise finance agreements directly with lenders (see paragraph 31); or
- enter into finance agreements which do not have all of the features stated above in paragraph 32.

Ruling

Section 8-1

34. For a Grower who invests in the Parkview Orchard Project and is allocated trees in the Gum Swamp or Cawarrie orchards, the following deductions will be available:

TABLE A		Deductions available in each year		
	ITAA	Year 1	Year 2	Year 3
Fee type	1997 section	30/6/1999	30/6/2000	30/6/2001
Management fee	8-1	18,300	5,900	nil
Farm allotment fee	8-1	100	103	103
Interest	8-1	as incurred	as incurred	as incurred

35. For a Grower who invests in the Parkview Orchard Project and is allocated trees in the Avondale orchard the following deductions will be available:

TABLE B		Deductions available in each year		
	ITAA	Year 1	Year 2	Year 3
Fee type	1997 section	30/6/1999	30/6/2000	30/6/2001
Management fee	8-1	15,038	5,900	nil
Farm allotment fee	8-1	299	103	103
Interest	8-1	as incurred	as incurred	as incurred
Irrigation	387-125	544	543	543
Plant costs	387-165	nil	nil	212

Management fees

36. Growers who are allocated trees in either the Gum Swamp or Cawarrie orchards are entitled to a deduction under section 8-1 for the full amount of the management fee incurred, as no part of the management fee is capital or capital in nature.

37. That part of the management fee incurred by Growers allocated trees in the Avondale orchard that is capital or of a capital nature is not an allowable deduction. The deduction for management fees under section 8-1, shown in Table B, has been calculated after taking out the capital element of this fee.

Farm allotment fees

38. The licence fees are fully deductible under section 8-1.

Interest on loan

39. Interest incurred on loans arranged through Laton, of the kind described in paragraph 32, is deductible (section 8-1).

Irrigation

40. Growers allocated trees in the Avondale orchard are entitled to a deduction for capital expenditures on irrigation. The Grower's capital expenditures on irrigation shown in Table B are deductible. The deductions can be claimed on the basis of one-third of the total expenditure in the year the expenditure is incurred, and one-third in each of the following two years of income (section 387-125).

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Horticultural plant expenditure

41. Growers allocated trees in the Avondale orchard are entitled to a deduction for the establishment of fruit trees. The deduction, shown in Table B, will be allowable to the Grower at the rate of 13% per annum, calculated from the year in which a tree enters its first commercial season (section 387-165).

Section 82KL

42. Section 82KL does not apply to deny the Grower's deductions otherwise allowable under section 8-1.

Section 82KZM

43. The expenditure by Growers does not fall within the scope of section 82KZM.

Part IVA

44. The provisions in Part IVA will not be applied to the arrangement described in this Ruling.

Explanations

Section 8-1

45. Consideration of whether licence and management fees are deductible under section 8-1, begins with the first limb of the section. This view proceeds on the following basis:

- the outgoing in question must have sufficient connection with the operations or activities that directly gain or produce the taxpayer's assessable income;
- the outgoing is not deductible under the second limb 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 the second limb applies. However, that does not preclude the application of the first limb in determining whether the outgoing in question has a sufficient connection with activities to produce assessable income.

Growers carrying on a business

46. An orchard scheme can constitute the carrying on of a business. Where there is a business, or a future business, the gross sale proceeds from fruit from the scheme will constitute gross assessable income. The generation of 'business income' from such a business, or future business, provides the backdrop against which to judge whether the outgoing in question have the requisite connection with the operations that more directly gain or produce this income. These operations will include the planting, tending, maintaining and harvesting of the apple and pear trees as well as the distribution and marketing of the apples and pears.

47. Generally, a Grower will be carrying on a business of an orchard where:

- the Grower has an identifiable interest in specific growing trees coupled with a right to harvest and sell the fruit produced;
- the orchard 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.

48. For this Project, Growers have, under the Farm Allotment and Management Agreements, rights in the form of a licence over an identifiable area of land consistent with the intention to carry on a business of a commercial orchard. Under these agreements Growers appoint Parkview Orchard Management Ltd, as Manager, to provide services such as planting, tending, pruning, training, fertilising, replanting, spraying, maintaining and otherwise caring for the trees. The Manager is also responsible for the harvesting of the produce from the trees. Growers can also use the Manager to market and sell the produce from the trees.

49. The Management Agreement gives Growers an identifiable interest in specific trees by either direct purchase or lease, and Growers have a legal interest in the land by virtue of the Farm Allotment Agreement.

50. Growers have the right to use the land in question for horticultural purposes and to have Parkview Orchard Management Ltd come onto the land to carry out its obligations under the Management Agreements. The Growers' degree of control over Parkview Orchard Management Limited, as evidenced by the agreements 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 fruit from the Custodian as well as regular reports of the orchards' activities from the auditors. Growers are able to terminate arrangements with Parkview Orchard Management Ltd in certain instances, such as cases of default or neglect. The activities described in the Management Agreement are carried out on the Growers' behalf.

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

52. Growers will engage the professional services of a Manager with appropriate credentials. These services are based on accepted horticultural practices and are of the type ordinarily found in orchards that would commonly be said to be businesses.

53. Under the Project Deed (clause 6.1) the Farm Allotment Agreement and Management Agreement must specify the separate and distinct allotment or allotments as allocated by the Manager. Growers have a continuing interest in the trees from the time they are acquired or leased until they reach the end of the most productive period of their life. The orchards' 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 Grower's orchard activities will constitute the carrying on of a business.

Apportionment of management fees for the Avondale orchard

54. The activities the Manager is required to undertake are listed in the Management Agreement between the Grower and the Manager (see summary at paragraphs 20 to 26). For Growers allocated allotments in the Avondale orchard, some of these activities are of a capital nature. A breakdown of the fees paid by the Growers provided by the Project's financial adviser on 10 May 1999 outlines how the Grower's subscription monies will be spent. These monies, which principally consist of a management fee, will be spent on items that are of a revenue nature, while other expenditure is more properly classified as capital.

55. Under the Management Agreement the management fee is an undissected lump sum in return for which the Grower obtains services

of both a revenue and capital nature. *Ronpibon Tin v. Federal Commissioner of Taxation* (1949) 78 CLR 47; (1949) 8 ATD 431 provides authority for the apportionment of the management fee in determining deductibility under section 8-1.

56. The joint judgment of the High Court in *Ronpibon Tin* stated that subsection 51(1) of ITAA 1936 ‘contemplates apportionment’ and ‘there are at least two kinds of expenditure which require apportionment’. One of the described kinds of apportionable expenditure is a ‘single outlay or charge which serves both object indifferently’, those objects being previously described as ‘expenditure in respect of things or services of which distinct and severable parts are devoted to gaining or producing assessable income and distinct or severable parts to some other cause’ (CLR at 59; ATD at 437). The management fee paid by the Grower is an example of such an expenditure.

57. The management fee paid by the Grower is for activities that are of a revenue and capital nature and, in accordance with paragraph 8-1(2)(a), the management fee is not an allowable deduction to the extent it is a loss or outgoing of capital or of a capital nature.

58. For the purpose of determining the extent to which the management fee is capital or capital in nature, the projected expenditure components of the management fee have been examined and characterised as either revenue (e.g., training and pruning, licence fees), capital (e.g., costs of acquiring trees, irrigation equipment), indirect expenses (fund raising expenses, income tax) or profit. The following formula has then been applied to determine the percentage that indirect costs and profit bear to direct revenue and capital expenses:

$$\frac{\text{Total projected overheads (indirect expenses) plus profit}}{\text{Total projected direct expenses}} \times \frac{100}{1}$$

59. The resulting percentage is a ‘mark-up’ figure that is applied to all direct revenue and capital costs. By applying the mark-up figure to all direct costs, all indirect costs and profits will be absorbed in the costs that more directly advantage the investor, ensuring that the entire sum of prepaid management fees is referable to one advantage or another.

60. The revenue component of the management fee after the mark-up is the relevant deduction for management fees under section 8-1. Expenditures which are acceptable as being incurred for the purposes of Subdivisions 387-B and 387-C, are increased to account for the mark-up percentage based on the calculations described above. The resulting deductions are shown in the Table at paragraph 36.

Interest deductibility

61. Some Growers intend to finance the investment through a loan arranged through Laton with an Australian bank. The interest fees incurred will be in respect of a loan to finance the establishment of the orchard, and its development in the first year, which will continue to be directly connected with the gaining of 'business income' from the Project. These fees will, thus, also have sufficient connection with the gaining of assessable income. No capital, private or domestic component is identifiable in respect of them.

Subdivision 387-B

62. For Growers who are allocated trees in the Avondale orchard a deduction may be allowable under section 387-125. 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.

63. As the taxpayer who can claim the deduction does not have to actually own the land but can be a tenant, lessee or licensee who is conducting a primary production business on land in Australia, a deduction would be available to the Growers in the Project at a rate of 33.3 per cent per annum for the cost of the irrigation system.

Subdivision 387-C

64. For Growers who are allocated trees in the Avondale orchard a deduction may be allowable under section 387-165. Subdivision 387-C allows capital expenditure on establishing horticultural plants owned and used, or held ready for use, in Australia in a business of horticulture to be written off for tax purposes. A lessee or licensee of land carrying on a business of horticulture is taken to own the plants growing on that land rather than the actual owner of the land.

65. Under this Subdivision, if the effective life of the plant is less than three years, the expenditure can be written off in full. 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 period starts from the time the plant enters its first commercial season. The write-off rate is detailed in section 387-185. For a plant with an effective life of 13 to 30 years, as in this Project, that rate is 13%.

Section 82KZM

66. 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.

67. Management fees are deductible in years 1 and 2, respectively, as discussed previously in this Ruling. For this Ruling's purposes no explicit conclusion can be drawn from the arrangement's description, that the management fees have been inflated to result in reduced management fees being payable for subsequent years. The management fees are expressly stated to be for a number of specified services. There is no evidence that might suggest the services covered by management fees could not be provided within 13 months of incurring the expenditure in question.

68. Thus, for the purposes of this Ruling, it can be accepted that no part of the management fees that are deductible under section 8-1 in years 1 to 3 are to do 'things' that are not to be wholly done within 13 months of the management fee expenditure being incurred. On this basis, the basic precondition for the operation of section 82KZM is not satisfied and this section will not apply to the deductible part of the management fee expenditure incurred by the Growers in years 1 to 3.

Section 82KL

69. 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'.

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

71. Section 82KL's operation depends, among other things, on the identification of a certain quantum of 'additional benefit(s)'. Here, there may be a loan provided by a financier to the Grower. The loan is provided on a full recourse basis, and on commercial terms.

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Insufficient ‘additional benefits’ will be provided to trigger the application of section 82KL. Section 82KL will not apply to deny the deduction otherwise allowable under section 8-1.

Part IVA

72. 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).

73. The Parkview Orchard Project will be a ‘scheme’. The Growers will obtain a ‘tax benefit’ from entering into the scheme, in the form of the tax deductions for the amounts indicated in this Ruling that would not have been obtained but for the scheme. However, it is not possible to conclude that the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

74. 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 would attract the operation of Part IVA.

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Commissioner of Taxation

16 June 1999

Previous draft:

No draft issued

- schemes and shams
- taxation administration
- tax avoidance

Related Rulings/Determinations:

TR 92/1; TR 92/20; TR 97/11;
TR 97/16; TR 98/22; TD 93/34

Legislative references:

Subject references:

- carrying on a business
- commencement of business
- fee expenses
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- ITAA1936 51(1)
- ITAA1936 82KH(1)
- ITAA1936 82KH(1F)(b)
- ITAA1936 82KL
- ITAA1936 82KL(1)
- ITAA1936 82KZM
- ITAA1936 Pt IVA
- ITAA1936 177A
- ITAA1936 177C
- ITAA1936 177D
- ITAA1997 8-1

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- ITAA1997 8-1(2)(a)
- ITAA1997 387-B
- ITAA1997 387-125
- ITAA1997 387-C
- ITAA1997 387-165
- ITAA1997 387-185

Case references:

- Ronpibon Tin v. Federal
Commissioner of Taxation (1949)
78 CLR 47; (1949) 8 ATD 431

ATO references:

NO 99/4540-7

BO

FOI index detail: I 1020026

ISSN: 1039-0731

Price: \$1.80