PR 2000/39 - Income tax: Barkworth Olive Groves Project No 4

Product Ruling
Income tax: Barkworth Olive Groves Project No 4

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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 1999/95 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.]*

No guarantee of commercial success

The Australian Taxation Office (ATO) **does not** sanction or guarantee this product as an investment. 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 investors must form their own view about the commercial and financial viability of the product. This will involve a consideration of important issues such as whether projected returns are realistic, the 'track record' of the management, the level of fees in comparison to similar products, how the investment fits an existing portfolio, etc. We recommend a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential investors by confirming that the tax benefits set out below in the **Ruling** part of this document are available, **provided that** the arrangement is carried out in accordance with the information we have been given, and have described below in the **Arrangement** part of this document.

If the arrangement is not carried out as described below, investors lose the protection of this Product Ruling. Potential investors may wish to seek assurances from the promoter that the arrangement will be carried out as described in this Product Ruling.

Potential investors should be aware that the ATO will be undertaking review activities to confirm the arrangement has been implemented as described below and to ensure that the participants in the arrangement include in their income tax returns income derived in those future years.

Terms of Use of this Product Ruling

This Product Ruling has been given on the basis that the person(s) who applied for the 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 Ruling.

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 applies to the defined class of persons, who take part in the arrangement to which this Ruling relates. In this Ruling this arrangement is referred to as "Barkworth Olive Groves Project No. 4", "the Project", "the Product" or "the arrangement".

Tax law(s)

2. The tax laws 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;
- Section 25-25 of the ITAA 1997;
- Section 27-5 of the ITAA 1997;
- Section 27-30 of the ITAA 1997;
- Section 70-35 of the ITAA 1997;
- Section 387-55 of the ITAA 1997;
- Section 387-125 of the ITAA 1997;
- Section 387-165 of the ITAA 1997
- Section 387-185 of the ITAA 1997;
- Section 960-335 of the ITAA 1997;
- Section 960-340 of the ITAA 1997;
- Section 960-345 of the ITAA 1997;
- Section 960-350 of the ITAA 1997;
- Section 82KL of the *Income Tax Assessment Act 1936* ("ITAA 1936");
- Section 82KZM of the ITAA 1936;
- Section 82KZMA of the ITAA 1936;

- Section 82KZMB of the ITAA 1936;
- Section 82KZMC of the ITAA 1936;
- Section 82KZMD of the ITAA 1936;
- Part IVA of the ITAA 1936.

3. 3. On 11 November 1999, the Government announced further changes to the tax system as part of The New Business Tax System. A number of those changes, especially those to do with 'tax shelters', could affect the tax laws dealt with in this Ruling. Some of the changes apply from the date of announcement and others are proposed to apply from nominated dates in the future.

4. 4. Although this Ruling mentions certain of those announced changes, the information given on the treatment of expenditure which may be affected by them is not binding on the Commissioner. Legally binding advice in respect of those changes cannot be given until the relevant laws(s) are enacted.

5. However, if the changes become law the operation of that law will take precedence over the application of this Ruling, and to that extent, this Ruling will become superseded. If requested, when the relevant law(s) are enacted, the Commissioner will formalise the non-binding information shown in this Ruling by issuing a new Product Ruling that describes the operation of those law(s).

Goods and Services Tax

6. This Ruling does not deal with the Goods and Services Tax or any other associated 'A New Tax System' legislative reforms, including the proposed changes announced as part of The New Business Tax System, except certain legislative reforms which have now been enacted.

Class of persons

7. 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 their involvement as a result (as set out in the description of the arrangement). This Ruling only applies to Growers who enter into a Management Agreement with Barkworth Olives Management Limited ('BOML') and are referred to as a "Grower/Processor".

8. 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

9. The Ruling provides this specified class of persons with a binding ruling as to the tax consequences of the Product. The Commissioner accepts no responsibility in relation to the commercial viability of this product. A financial (or other) adviser should be consulted for such information.

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

11. This Ruling is based on the assumption that minimum subscription will be reached by 30 April 2000.

12. The class of persons defined in the Ruling may rely on its contents, provided the arrangement 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

14. This Ruling applies prospectively from 4 April 2000. The Ruling replaces Product Ruling 2000/27, which is withdrawn on and from 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).

15. If a taxpayer has a more favorable 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, this Ruling applies to the taxpayer to the extent of the inconsistency only (see Taxation Determination TD 93/34).

Withdrawal

16. 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 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, who entered into the specified arrangement prior to the withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the persons' involvement in the arrangement.

Arrangement

17. 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 21 December 1999;
- Constitution (Articles of Association) of Barkworth Olive Groves Limited ("BOGL");
- Draft Prospectus for Barkworth Olives Project No 4 ("the Prospectus");
- Draft Management Agreement between BOML and Grower/Processors ("the Management Agreement");
- Constitution of Barkworth Olives Project No 4.
- Draft Compliance Plan of Barkworth Olives Project No 4, which applies to BOML ("the Compliance Plan");
- Factory Access Agreement between BOGL and Inglewood Olive Processors Limited ("the Factory Access Agreement");

- Lease between BOGL (as lessor) and ARG (as lessee) ("the Lease");
- Sublease between ARG (as lessor) and BOGL (as lessee) ("the Sublease");
- Loan Agreement between Barkworth Finance Pty Ltd ("BFPL") and an applicant.

18. Minimum subscription is required to be reached within 4 months from the date of the Prospectus. Shares will be allocated after minimum subscription has been reached.

19. The salient features and effect of these arrangements are summarized below:

Location:	Part of 1680 hectares near Griffith, NSW.
Type of business each participant is carrying on:	Commercial growing of Manzanillo and Mission varieties of olives for use as fruit destined for the table olive market, as well as processing of olives into olive oil.
Number of hectares under cultivation:	minimum of 16 hectares for Barkworth Olives Project No 4.
Name used to describe the product:	Barkworth Olives Project No 4.
Size of the leased area:	1680 hectares.
Number of trees per hectare	250
Expected production:	50kg per tree / ~ 12 tonnes per hectare (average) with yield of 70kg per tree for mature trees after Y10.
The term of the investment:	20 years.
Initial cost:	$5,761
Initial cost on a per hectare basis:	$72,012.50
Ongoing costs:	$2,350 for year ended 30 June 2002
Other costs:	$1,025 irrigation work

20. This arrangement is called "Barkworth Olive Groves Project No 4". Under the arrangement an investor (Grower) must purchase "D" class shares in Barkworth Olive Groves Limited ("BOGL"). (Note that the Project will not proceed unless the minimum subscription of 200 applications is achieved.) If the investor purchases the minimum number of shares, being 250 $1 shares, the investor will obtain a right to farm an identified area of cleared land of approximately 0.08 hectare owned by BOGL. Such an investor is

known as a "Grower". Each farm will be suitable for the growing of 20 olive trees. Each Grower will also obtain a right to process up to 1.5 tonnes of olives per annum. A Grower will pay monies to BOGL on account of the subscription price of shares, farm administration fees and factory access fees.

21. Each Grower may (but is not required) to appoint ('BOML') to manage that Grower's farm. A Grower who appoints BOML is known as a "Grower/Processor". As well as the outlays mentioned in paragraph 30 Grower/Processors will outlay monies under the arrangement for the purchase of olive trees, irrigation works, processing and marketing fees and brand name license fees.

22. The property owned by BOGL and intended to be used in this Project is comprised of 1680 hectares and is located in the Carathool Shire in the Griffith region of New South Wales. The Property is known as Barasso (796 hectares) and Kingston Park (884 hectares). The Property Description is:

AREA	DESCRIPTION	PARISH	COUNTY	TITLE REFERENCE
796	Lot 6 & 11 DP755136	Beaconsfield	Nicholson	Auto Consol 14258-96
	Lot 58 DP755136	Beaconsfield	Nicholson	58/755136
	Lot 2 DP802334	Beaconsfield	Nicholson	2/802334
884	Lot 9 DP756043	Carrego	Sturt	9/756043
	Portion 11 and Part of Portion 10	Carrego	Sturt	Vol 14258 Folio 97
	Lots 1 and 2 DCP133890	Carrego	Sturt	Auto Consol 10866-154

Rights of shareholders (Growers)

23. The rights of shareholders are set out in BOGL's Constitution. In particular:

- A Grower shall have a right to occupy a section of the land owned by BOGL and specified in the Company's Constitution subject to that Grower paying administration fees to BOGL.
- A Grower shall have a right to an annual processing allocation of up to 1.5 tonnes of olives, subject to that Grower paying factory access fees to BOGL.
- A Grower shall be entitled to use the agricultural infrastructure necessary for the Grower's business, including but not limited to access to irrigation mains, storage areas and access roads.
- A Grower shall be entitled to use the processing infrastructure necessary for the Grower's business,

including but not limited to loading and unloading equipment, storage areas, grading and sampling equipment.

- The "D" class shares will convert to ordinary shares on 1 July 2020. At that time, the benefit of and the responsibility for the olive trees situated on a Grower's farm will pass to BOGL. The Grower will no longer have a right to farm the land and his/her interest will be the rights attaching to that Grower's ordinary shares in BOGL. The taxation consequences, flowing from the events occurring at that time, do not form part of this Ruling; and
- A Grower may conduct that Grower's business personally, appoint an agent or contractor to manage the business, or appoint BOML to manage the business in accordance with the Management Agreement.

Ruling only applies to Growers who enter into Management Agreements with BOML referred to as "Grower/Processor"

24. It is expected that most Growers will elect to enter a Management Agreement with BOML.

25. However, if Growers harvest and process their own olives or appoint other agents to do this, their circumstances may be unique and their tax affairs will likely be different from those Growers who enter into Management Agreements with BOML. Growers who do not enter into Management Agreements with BOML do not fall within the defined "Class of persons" for the purposes of this Ruling. This Ruling only applies to Grower/Processors who enter into Management Agreements with BOML.

Management Agreement with BOML (Grower/Processors)

26. Under the Management Agreement with BOML, the manager agrees to carry out duties that relate to:

(i) Soil conditioning, fertilizing and drainage of the land, planting, maintaining and marketing on the Grower/Processor's behalf; and

(ii) ongoing management, harvesting and processing.

27. Under the Management Agreement, BOML will acquire olives produced by Grower/Processors prior to processing. BOML will also acquire olives from other sources for processing under the Grower/Processors processing allocations. BOML must account to the Grower/Processor for the proceeds of the sale of olives attributable

to their farms and from the sale of processed olives and olive products attributable to their processing allocations.

28. Grower/Processors who appoint BOML may still elect to take control of the following activities on their farms:

- weeding;
- harvesting trees; and
- marketing olives and olive products.

29. In the event that a Grower/Processor makes such an election, the management fees payable to BOML may be reduced. However, tax implications may be different for Grower/Processors who elect to harvest and/or market their own olives and olive products - refer paragraphs 38, 74 and 121.

Expenditure

30. The amounts to be incurred by a Grower to BOGL (the land owner) are as follows (excluding GST):

Upon Application

250 x $1 Shares	$250.00

Period from application to 30 June 2001 and payable within 2 months of application

Farm Administration Fee	$88.00
Factory access fee	$225.00

Year 2 (year ended 30 June 2002) and payable on 1 July 2000

Farm administration fee	$75.00
Factory access fee	$225.00

Years 3 to 20 (Years ended 30 June 2003 to 2020)

Farm administration fee	10% of the gross income generated from the sale of raw olive produce from the Grower's farm
Factory access fee	15% of the gross income generated from the sale of olive products processed under the

	member's processing allocation

31. The amounts to be paid under the Management Agreement by a Grower who appoints BOML as manager, are as follows (excluding GST):

Upon Application

Payment for olive trees	$90.00

Period from application to 30 June 2001

Irrigation fee	$1,025.00 payable within 2 months of application
Processing and marketing fee	$1,175 (a reduced amount applies if paid by 1 July- otherwise the amount is $1,293.00)
Management fee	$3,433.00 (a reduced amount applies if paid by 1 July- otherwise the amount is $3,776.00) (see note 1)
Brand name licence fee	$500.00 (a reduced amount applies if paid by 1 July– otherwise the amount is $550.00)

Note 1:

Part of the management fee for the period to 30 June 2001 of $3,433.00 (at the reduced rate) will relate to establishment costs such as preparation of the ground and planting of the olive trees.

The applicants calculate that the establishment costs included in the management fee for the period to 30 June 2001 are as follows:

Landcare operations (drainage works, pests and plant control, prevention of land degradation) $100.00

Preparation for planting and planting of olive trees $150.00

Note 2:

Where a Grower appoints BOML as manager prior to 30 April 2000, the moneys payable to BOML will be as follows:

Payable on 30 April 2000 for management services to be provided from the date of application to 30 June 2000

(see note 3) $2,558.00

Payable on 30 April 2000 for irrigation $1,025.00

Payable on 1 July 2000 for management services to be provided during the financial year ending 30 June 2001 $875.00

Note 3:

Where the Grower appoints BOML as manager prior to 30 April 2000, the management fee payable for the period from the date of application to 30 June 2000 ($2,558.00) will include all the establishment costs referred to in Note 1 ($250.00)

Year 2 (Year ended 30 June 2002)

Processing and marketing fee	$1,175 (a reduced amount applies if paid by 1 July– otherwise the amount is $1,293)
Management fee	$875 (a reduced amount applies if paid by 1 July– otherwise the amount is $962)
Brand name licence fee	The lesser of $500 and the gross income generated from the sale of the processed olives attributable to the Grower/Processor's allocation

Year 3 (Year ended 30 June 2003)

Processing and marketing fee	70% of gross income generated from the sale of processed olives attributable to the Grower/ Processor's allotment

Years 4 and 5 (Years ended 30 June 2004 to 30 June 2005)

Management fee	90% of gross income generated from the sale of the raw olives attributable to the Grower/Processor’s allotment
Processing and marketing fee	70% of gross income generated from the sale of processed olives attributable to the Grower/Processor’s processing allocation

Year 6 (Year ended 30 June 2006)

Management fee	60% of gross income generated from the sale of the raw olives attributable to the Grower/Processor's allotment
Processing and marketing fee	70% of gross income generated from the sale of processed olives attributable to the Grower/Processor's processing allocation

Year 7 (Year ended 30 June 2007)

Management fee	50% of gross income generated from the sale of the raw olives attributable to the Grower/Processor's allotment
Processing and marketing fee	70% of gross income generated from the sale of processed olives attributable to the Grower/Processor's processing allocation

Years 8-20 (Years ended 30 June 2008 to 30 June 2020)

Management fee	40% of gross income generated from the sale of the raw olives attributable to the Grower/Processor's allotment
Processing and marketing fee	70% of gross income generated from the sale of processed olives attributable to the Grower/ Processor's processing allocation

Finance

32. A Grower may finance his or her participation from:

(i) The Grower's own cash reserves/resources;

(ii) Funds borrowed by the Grower from such external sources as the Grower arranges; or

(iii) Funds borrowed (by approved applicants) from Barkworth Finance Pty Ltd ("BFPL"). This finance will be offered with a maximum term of 5 years and an interest rate of 6.5% per annum will apply. A

minimum cash payment or deposit of $1,000 per interest will be required. The loan and interest will be repayable by monthly instalments over the term of the loan. The loan will be on a "full recourse" basis.

33. This Ruling does not apply if a Grower enters into a finance arrangement that includes any of the following features:

- split loan features of the type described in Taxation Ruling TR 98/22;
- entities associated with the Project, other than RCFPL, are, or become, involved in provision of the finance;
- indemnity agreements, or equivalent collateral arrangements limiting the borrower's risk;
- non-arms length terms and conditions;
- 'additional benefits', for the purposes of section 82KL are granted to the borrower, or the funding arrangement transforms the Project into a 'scheme' to which Part IVA may be applied;
- repayments of principal and payments of interest are limited to income derived from the Project;
- funds borrowed, in whole or in part, are not available for the conduct of the Project, but are transferred (by any means, and directly, or indirectly) back to the lender, or any associate; or
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers.

Income

34. Under the arrangement, income will be received from two types of business. Income from the sale of raw olives is derived from a business of primary production. Income from the sale of processed olives and processed olive products is derived from a business involving non-primary production activities.

35. BOML will advise Grower/Processors within a reasonable time after the end of each financial year of the apportionment between the two types of income.

36. Any dividends received from BOGL in respect to a Grower's 'D' class shares would constitute assessable income.

Trading Stock

37. Where BOML performs all functions on behalf of Growers/Processors, olives to be used for processing will be acquired by BOML before processing. Under the terms of the arrangement, all olives will be trading stock of BOML.

38. Grower/Processors who elect to do their own harvesting or processing may have trading stock on hand at the end of the financial year.

Ruling

39. The amount and timing of deductions available to Grower/Processors on expenditure paid to BOML is dependent on:

- basic deductibility on fees/charges incurred,
- the timing of the application and payment by the Grower/Processor, and
- the application of the legislation to prepayments.

Basic deductibility of fees paid

40. Deductions are considered to be generally allowable for various expenses as indicated under the following headings.

Farm administration

41. The farm administration fee is levied annually by BOGL for the administration of Grower's farms. A deduction is allowed under section 8-1. For fees incurred from 1 July 2000, section 27-5 of the ITAA 1997 will apply to reduce the amount of the deduction allowable by any input tax credit to which the Grower is entitled.

Factory access

42. The factory access fee is levied annually by BOGL so that Growers can have access to the olive-processing factory. A deduction is allowed under section 8-1. For fees incurred from 1 July 2000, section 27-5 of the ITAA 1997 will apply to reduce the amount of the deduction allowable by any input tax credit to which the Grower is entitled.

Irrigation

43. Irrigation expenses are a capital expense. A deduction under section 387-125 is available to Grower/Processors in the year the expenditure is incurred and two years following at the rate of 33.3% per annum.

Processing and marketing

44. The processing and marketing fee is levied annually by BOML for the processing and marketing of olives and olive products on the behalf of Grower/Processors. A deduction is allowed under section 8-1. For fees incurred from 1 July 2000, section 27-5 of the ITAA 1997 will apply to reduce the amount of the deduction allowable by any input tax credit to which the Grower/Processor is entitled.

Management fees

45. Part of the management fee relates to ongoing costs incurred by BOML on behalf of Grower/Processors. Ongoing costs are revenue in nature and are deductible under section 8-1. For fees incurred from 1 July 2000, section 27-5 of the ITAA 1997 will apply to reduce the amount of the deduction allowable by any input tax credit to which the Grower/Processor is entitled.

46. Part of the management fee relates to establishment costs, ie, preparing the ground and planting trees. Establishment costs are capital in nature and are not deductible unless specific provisions allow for their deduction.

47. Establishment costs that relate to the planting of trees form part of the cost of the trees. The cost of the trees is written off over the life of the trees under section 387-165. The amount of write-off is 7% of the cost of the trees. The period of write-off commences from when the trees enter their first commercial season. The amounts eligible for deductions under Section 387-165 are as follows:

Description of fees	Amount	Deduction
Management fees – establishing horticultural plants	$150.00	Deductible at the rate of 7% per annum from the year in which the trees are first used for production of income.
Purchase price of trees	$90.00	

48. Part of the Management fees for first year qualify as landcare expenses under section 387-55. That part will be deductible in the year that it is incurred.

Brand name licence

49. Brand name licence fees are incurred by Grower/Processors so that processed olives and olive products may be marketed under brand names controlled by BOML. The expense is deductible under section 8-1. For fees incurred from 1 July 2000, section 27-5 of the ITAA 1997 will apply to reduce the amount of the deduction allowable by any input tax credit to which the Grower/Processor is entitled.

Interest, Loan Repayments and Borrowing Expenses

50. Any interest and periodic charges incurred by a Grower/Processor on borrowings to fund the fees payable by the Grower/Processor under the arrangement will be deductible under section 8-1. For fees incurred from 1 July 2000, section 27-5 of the ITAA 1997 will apply to reduce the amount of the deduction allowable by any input tax credit to which the Grower/Processor is entitled.

51. Expenses incurred in borrowing funds to finance the fees payable by a Grower/Processor will be deductible under section 25-25. If the total of that amount is $100.00 or less, the full amount will be deductible in the year in which it is incurred. If the total amount of borrowing costs is more than $100.00 then those costs will be deductible over the lesser of the period of the loan or five years commencing on the first day on which the funds are borrowed.

52. Any repayments of loan principal will be capital in nature and therefore not deductible.

The timing of the application and payments by the Grower/Processors.

Pre 30 April 2000 applications

53. Grower/Processors who apply by 30 April 2000 will incur expenditure in respect of activities to be undertaken before the end of the year ended 30 June 2000. They may also incur expenditure in respect of a subsequent year or years which will be subject to various prepayment rules discussed below.

54. This Ruling assumes that minimum subscription will be reached by 30 April 2000. Growers who invest on or before 30 April will not be entitled to a deduction for any expenditure on fees paid during the year ended 30 June 2000 unless minimum subscription is reached by 30 April 2000.

Post 30 April 2000 applications but pre 1 July 2000

55. Grower/Processors who apply after 30 April 2000 but before 1 July 2000 will not incur any expenditure in respect of activities to be undertaken before the end of the year ended 30 June 2000. They will incur expenditure in respect of a subsequent year or years which will be subject to various prepayment rules discussed below.

1 July 2000 applications

56. Grower/Processors who apply on 1 July 2000 will incur expenditure in respect of activities to be undertaken before the end of the year ended 30 June 2001. They may also incur expenditure in respect of a subsequent year or years which will be subject to various prepayment rules discussed below.

Post 1 July 2000 applications

57. Grower/Processors who apply after 1 July 2000 will incur expenditure in respect of activities to be undertaken before the end of the year ended 30 June 2001. They may also incur expenditure in respect of the following year which will be subject to various prepayment rules discussed below.

The application of the legislation to prepayments

58. The application of the prepayment rules and how those rules apply is dependent on whether:

- the expenditure exceeds $1000,
- the expenditure covers a period in excess of 13 months,
- the expenditure is other than capital, private or domestic expenditure
- a taxpayer is a "small business taxpayer", and
- proposed changes to prepayment rules in respect of ‘tax shelter arrangements’ becomes law.

Small business taxpayers - Section 82KZM

59. For a "small business taxpayer" (as defined in section 960-335 of ITAA 1997) and under current legislation, prepayments that cover a period in excess of 13 months and are in excess of $1000 are to be apportioned over the period for which the arrangement relates. For example Management Fees paid prior to 30 April 2000 which cover the years ended 30 June 2000, 2001 and 2002 will exceed $1000 and

cover a period in excess of 13 months, and will be apportioned over those periods.

60. On the other hand, any fee which is less than $1000 such as the Farm Administration Fee is deductible in the year paid.

61. Equally any fee paid which is over $1000 but relates only to services to be provided in the next 13 months is also deductible when paid. For example the Management Fee for year ended 30 June 2001 if paid in June 2000, will also be deductible in the year paid and not apportioned because the period covered is less than 13 months.

Business taxpayers other than small business taxpayers

Sections 82KZMA, 82KZMB, 82KZMC, and 82KZMD

62. Business taxpayers, other than small business taxpayers, are required under these provisions to apportion expenditure, even if for a period of less than 13 months, over the period covered by the arrangement. For an explanation of these provisions see paragraphs 107 to 110 and Example 1 at the end of this ruling.

63. Under section 82KZMD prepayments that cover a period in excess of 13 months and are in excess of $1000 are also to be apportioned over the period for which the arrangement relates.

Proposed changes to prepayment rules

64. While this ruling is based upon the law applicable at the date of the ruling, current proposed amendments to the law are likely to impact on parts of this ruling.

65. On 11 November 1999 the Government announced a number of proposed changes to the deductibility of certain prepaid expenditure incurred in respect of 'tax shelter arrangements'. Provided the proposed changes are enacted as announced, the Project will be a 'tax shelter arrangement' and all Grower/Processors, including 'small business taxpayers', who invest in the Project after 1pm, AEST, 11 November 1999 will be subject to these changes. For an explanation of these pproposed changes see paragraphs 111 to 115 and Example 2 at the end of this ruling.

Summary

General fees for a Grower/Processor who is a "small business taxpayer" and who subscribes pre 30 April 2000:

66. For Grower/Processors who subscribe to the Project by 30 April 2000 and who pay the fees only on the due dates, the following deductions will be available under section 8-1 of the

ITAA 1997 for the years ended 30 June 2000, 30 June 2001 and 30 June 2002:

			Deductions available		
	Description of fees	ITAA 1997 section	Period to 30/06/2000	Year 1 30/06/2001	Year 2 30/06/2002
Payable to BOGL	Farm administration	8-1	-	88	75
	Factory access	8-1	-	225	225
Payable to BOML	Irrigation	387-125	342	342	341
	Processing and marketing	8-1		1,175 *	1,175 *
	Management – excluding capital	8-1	2,308	875 *	875 *
	Landcare	387-55	100	-	-
	Brand name licence	8-1	-	500	**

(i) If the `tax shelter' prepayment measures do not become law, then deductions for farm administration fee, factory access fee, processing and marketing fee, management fee or brand name licence fee may be deductible in an earlier year to that shown in the last two columns of the table if paid management fee within 13 months of the services being provided or if the amount is less than $1000 but not if a taxpayer prepays for two years.

(ii) *These amounts apply where payments are made by the due dates. For amounts paid after the due dates a further 10% is added.

(iii) **In accordance with the Year 2 table in paragraph 31, the brand name licence fee will be the lesser of $500 or the gross income generated from the sale of the processed olives attributable to the Grower/Processor's allocation.

General fees for a Grower/Processor who is a "small business taxpayer" and who subscribes post 30 April 2000:

67. For Grower/Processors who subscribes to in the Project after 30 April 2000 and who pay the fees by the due dates, the following

deductions will be available under the ITAA 1997 for the years ended 30 June 2000, 30 June 2001 and 30 June 2002:

			Deductions available in respect of Years 1 and 2		
	Description of fees	ITAA 1997 section	Period to 30/06/2000	Year 1 30/06/2001	Year 2 30/06/2002
Payable to BOGL	Farm administration	8-1	-	88	75
	Factory access	8-1	-	225	225
Payable to BOML	Irrigation	387-125	-	342	342
	Processing and marketing	8-1	-	1,175	1,175
	Management – excluding capital	8-1	-	3,183	875
	Landcare	387-55	-	100	-
	Brand name licence	8-1	-	500	

(i) If the 'tax shelter' prepayment measures do not become law, then deductions for farm administration fee, factory access fee, processing and marketing fee, management fee or brand name licence fee may be deductible in an earlier year to that shown in the last two columns of the table if paid management fee within 13 months of the services being provided or if the amount is less than $1000.

General fees for a Grower/Processor who is not a "small business taxpayer" and who subscribes pre 30 April 2000:

68. For Grower/Processors who subscribes to the Project by 30 April 2000 and who pay the fees by the due dates, the following deductions will be available under section 8-1 of the ITAA 1997 for the years ended 30 June 2000, 2001 and 2002:

	Deductions available

	Description of fees	ITAA 1997 section	Period to 30/06/2000	Year 1 30/06/2001	Year 2 30/06/2002
Payable to BOGL	Farm administration	8-1	-	88	75
	Factory access	8-1	-	225	225
Payable to BOML	Irrigation	387-125	342	342	341
	Processing and marketing	8-1		1,175	1,175
	Management – excluding capital	8-1	2,308	875	875
	Landcare	387-55	100	-	-
	Brand name licence	8-1	-	500	-

General fees for a Grower/Processor who is not a "small business taxpayer" and who subscribes post 30 April 2000:

69. For Grower/Processors who subscribes to the Project after 30 April 2000 and who pay the fees by the due dates, the following deductions will be available under section 8-1 of the ITAA 1997 for the years ended 30 June 2000, 30 June 2001 and 30 June 2002:

			Deductions available in respect of Years 1 and 2		
	Description of fees	ITAA 1997 section	Period to 30/06/2000	Year 1 30/06/2001	Year 2 30/06/2002
Payable to BOGL	Farm administration	8-1	-	88	75
	Factory access	8-1	-	225	225
Payable to BOML	Irrigation	387-125	-	342	342
	Processing and marketing	8-1	-	1,175	1,175
	Management – excluding capital	8-1	-	3,183	875
	Landcare	387-55	-	100	-
	Brand name licence	8-1	-	500	-

70. Where a Grower/Processor subscribes after 30 April 2000 and before 1 July 2000, there would be no eligible service period for the

year ended 30 June 2000 as no part of the services will be carried out until -1 July 2000.

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

Section 35-55 – Commissioner's discretion

70.1 For a Grower who is an individual and who entered the Project on or after 4 April 2000 and prior to any withdrawal of this Product Ruling 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 and 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.

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

- a Grower's business activity satisfies one of the objective tests in sections 35-30, 35-35, 35-40 or 35-45; or
- the 'Exception' in subsection 35-10(4) applies.

70.3 Where, either the Grower's business activity satisfies one of the objective tests, the discretion in subsection 35-55(1) is exercised, or the Exception in subsection 35-10(4) applies, 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.

70.4 Growers are reminded of the important statement made on Page 1 of this Product Ruling. Therefore, 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.

Section 82KL

71. Section 82KL does not apply to deny the deductions otherwise allowable under section 8-1.

Part IVA

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

Trading stock

73. Where BOML performs all functions for Grower/Processors, the trading stock provisions do not apply as the olives or processed products are trading stock of BOML.

74. In contrast, Grower/Processors who elect to do their own harvesting or processing must account for the olives as trading stock.

Income

75. Income derived from the sale of raw olives is primary production income. Income from the sale of processed olives and olive products is income from non-primary production activities.

76. Where BOML buys produce from Grower/Processors or sells produce on their behalf, income will be derived when the amounts owing to Grower/Processors have been determined and finalised.

77. Other Grower/Processors will need to return income on a cash basis or on the accruals basis as applicable.

Applicable Tax Law

78. This ruling is based upon the law applicable at the date of the ruling. In particular, the ruling does not deal with the consequences or effects of any reforms proposed under *A New Tax System.*

Note to promoters and advisers

79. **Product rulings were introduced for the purpose of providing certainty about tax consequences for investors in projects such as this. In keeping with that intention, the Australian Taxation Office suggests that promoters and advisers ensure that potential investors are fully informed of the announcement requiring prepayments in respect of 'tax shelter' arrangements to be deductible over the period services are provided. Such action should minimise suggestions that potential investors have been negligently or otherwise misled.**

Explanations

Section 8-1

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

- the outgoings in question must have a sufficient connection with the operations or activities that directly gain or produce the taxpayer's assessable income;
- the outgoings are not deductible under the second limb if they are incurred when the business has not commenced; and
- where all that happens in a year of income is that a taxpayer contractually commits himself 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 and determining whether the outgoings in question have a sufficient connection with activities to produce assessable income.

81. The growing of olive trees can constitute the carrying on of a primary production business. Where there is a business, or a future business, the gross sale proceeds from the sale of the olives or olive products from the Project 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 and maintaining of the olive trees and the harvesting, processing and marketing of the produce.

82. For this Project, Grower/Processors have rights in the form of a licence over an identifiable area of land consistent with the intention to carry on a business of growing olives trees to produce olives for commercial exploitation. Grower/Processors also have rights to process and market olives and olive products. Under the Management Agreement, Grower/Processors appoint BOML to provide services related to the cultivation of olive trees and the processing and marketing of olive products. From the information provided, Grower/Processors control their investment in the Project.

83. Grower/Processors will not use the land for any purpose other than the growing of olive trees for producing olives. They will

appoint BOML to perform the obligations and duties imposed on it under the Management Agreement. The Grower/Processors' degree of control over BOML, as evidenced by the Compliance Plan and Constitution of the Project, and supplemented by the Corporations Law, is sufficient. Under the Project, Grower/Processors are entitled to receive regular progress reports on BOML's activities. In addition, they are able to terminate arrangements with BOML in certain instances, such as cases of default or neglect. The business activities described in the Management Agreement are carried out on the Grower/Processors' behalf.

84. 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 discussed in that Ruling. Grower/Processors 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 Grower/Processors, i.e., a "profit" in cash terms that does not depend on its calculation on the fees in question being allowed as a deduction.

85. Grower/Processors have a continuing interest in the Project until 30 June 2020. The 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/Processors' activities of cultivating olive trees and marketing olive products will constitute the carrying on of a business.

86. The activities the Manager is required to undertake are listed in the Management Agreement between the Grower/Processor and Manager (see summary at paragraphs 26 to 28). Some of these activities (to be carried out in the period from the date of application to 30 June 2001) will be of a capital nature.

87. 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. FC of T (1949) 78 CLR 47; (1949) 8 ATD 431 provides authority for the apportionment of the management fee in determining deductibility under section 8-1. In accordance with section.8-1(2)(a) of the ITAA 1997, the management fee is not an allowable deduction to the extent it is a loss or outgoing of capital or of a capital nature.

88. 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 objects 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/Processors is an example of such an expenditure.

89. From the information supplied by the applicant, the management fee for the period from application to 30 June 2001 is apportioned as follows:

Capital	Landcare operations (drainage works, pests and plant control, prevention of land degradation)	$100.00
	Preparation of ground and planting of olive trees	$150.00
Revenue	Balance management fees (Note 1)	$3,183.00
Total		$3,433.00

Note 1: For investors prior to 30 April 2000 $2,558.00 is payable on 30 April 2000 for services for the period from the date of application to 30 June 2000 and $875.00 is payable on 1 July 2000 for the year ending 30 June 2001.

Subdivision 387-A

90. Some of the management fee for the period from application to 30 June 2001 is attributable to landcare.

91. Subdivision 387-A allows a taxpayer, who is carrying on a business of primary production on land in Australia, to claim a deduction for capital expenditure on "landcare operations". The term "landcare operations" is defined in section 387-60.

92. "Landcare operations", as relevant to the Project, comprises constructing surface or subsurface drainage works on the land primarily and principally for controlling salinity or assisting in drainage control. In order to qualify for a deduction under section 387-55, a business must be carried on at the time that the expenditure is incurred. A business will be carried on by a Grower/Processor from the time that the Grower/Processor enters into the contractual arrangements for conduct of that Grower's farm. That will generally be the time at which the Grower executes the applicable agreements. The amount of the deduction is as stated in the appropriate table at paragraphs 66,67, 68 or 69.

Subdivision 387-B

93. 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.

94. In accordance with the Management Agreement, an irrigation fee is payable by a Grower/Processor. This is considered to be capital expenditure incurred on the construction, manufacture, installation or acquisition of a "water facility" primarily and principally for the purpose of conveying water for use in a primary production business, as set out in section 387-125. Examples of a water facility include a dam tank bore, irrigation channel (or similar improvement), pipe and pump. Under section 387-125 there is no requirement that the taxpayer actually own the "water facility".

95. The growing of olive trees to produce olives for commercial exploitation is considered to be a primary production business provided that the taxpayer is actually carrying on a business. The Grower/Processors in the Project satisfy the requirements of section 387-125. Accordingly, the irrigation fee is deductible in equal amounts over three (3) years of income, commencing the year of income that the Grower/Processors incur that expenditure, which will be the year of income ending 30 June 2000 or 2001, as the case may be.

Subdivision 387-C

96. 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.

97. 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 is first used to produce assessable income. The write-off rate is detailed in section 387-185. For a plant with an effective life in excess of 30 years, as in this Project, that rate is 7%.

98. The establishment cost of the trees is the $90 purchase cost mentioned in paragraph 47, together with other establishment costs mentioned in that paragraph. The total cost amounts to $240.00. This is considered to be capital expenditure attributable to the establishment of horticultural plants for use in a horticulture business as set out in Subdivision 387-C. It is considered that the necessary conditions for the application of section 387-165 are satisfied having regard to the following matters:

- olive trees fall within the definition of a horticultural plant;
- the Grower/Processors are treated as owners of the horticultural plant on the basis that they hold a licence over the relevant lands to which the plant is attached (section 387-210);
- expenditure of a capital nature will be incurred in the establishment of the olive trees, such expenditure not being deductible under any other provision of the ITAA;
- the olive trees are considered to have an effective life in excess of 30 years;
- the activities being carried on by the Grower/Processors constitute a horticultural business; and
- no part of the expenditure is in respect of draining swamp or low-lying land or the clearing of land.

99. A deduction is only available in the year in which the plant is first used or held ready for use. A plant is considered to be first used or held ready for use from the beginning of what is expected to be its first commercial season. In the case of this Project, that is expected to be the year ended 30 June 2004.

Interest, loan principal and borrowing expenses

100. Growers may (subject to approval) finance their participation by way of loans from Barkworth Finance Pty Ltd or any other lender. Whether the resulting interest charges are deductible under section 8-1 depends on the same reasoning as that applied in determining whether the fees are deductible as discussed above. Interest charged by the lender will be in respect of a loan to finance the purchase of shares in BOGL and the establishment and operation of the Grower's farm. Accordingly, the loan will be directly connected with the gaining of business income and will, therefore, have a sufficient connection with the gaining of assessable income. The tests of deductibility under the

first limb of section 8-1 are, therefore, met. If any interest is prepaid, refer to paragraphs 107 to 115 for explanation of treatment.

101. Repayments of loan principal will be capital in nature and therefore not deductible under section 8-1.

102. Expenses incurred in borrowing loan funds will be deductible under section 25-25. Section 25-25 provides that a deduction is available for expenditure incurred for borrowing money, to the extent that the money is used for the purpose of producing assessable income. As referred to, the loans will be used for that purpose. If the total amount of the borrowing expenses is $100.00 or less, the full amount will be deductible in the income year in which it is incurred. If the total amount is more than $100.00 the expenditure will be deducted over the period of the loan or 5 years, whichever is the shorter period, commencing on the first day on which the funds are borrowed. The amount allowable in the first year of income will be the amount of the fee multiplied by the number of days from the first day on which the funds are borrowed until the next 30 June, divided by the number of days in the loan period or 5 years, whichever is the shorter period.

Section 82KL

103. 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".

104. "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.

105. Section 82KL's operation depends, among other things, on the identification of a certain quantum of "additional benefit(s)". For the purposes of the section, there are no additional benefits that will apply to deny the deductions otherwise allowable under section 8-1.

Section 82KZM

106. 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.

Sections 82KZMA, 82KZMB, 82KZMC, 82KZMD

107. For a Grower/Processor who is not a 'small business taxpayer' and is carrying on a business sections 82KZMA to 82KZMD determine the amount of a deduction otherwise allowable under section 8-1 where expenditure is incurred under an agreement for the doing of a thing that is not to be wholly done within the income year in which the expenditure is incurred (the expenditure year). Generally, these provisions operate to limit the amount of deduction available in the expenditure year to the amount that relates to that income year.

108. Section 82KZMA is a gateway provision that sets out when the new treatment will apply. Sections 82KZMB and 82KZMC set out the rules for prepayments incurred in the transitional period, for things to be done wholly within 13 months. For Grower/Processors investing in the Project transitional treatment applies to prepayments initially incurred in the 1999-2000 income year. Section 82KZMD governs the deductibility of prepayment expenditure where the eligible service period ends more than 13 months after the date the expenditure was incurred, and does not apply to the Project.

109. The deduction available to Grower/Processors for prepaid fees will be determined in accordance with the rules contained in section 82KZMB. Because the quantum of some fees are lower in the second and subsequent years, the capping provisions contained in section 82KZMC will have no practical effect on the deduction available.

110. During the transitional period the amount of the deduction available to Grower/Processors is determined using the formula in subsection 82KZMB(3) and the percentages shown in the table in subsection 82KZMB(5).

Proposed changes to prepayment rules

111. The changes announced by the Government to apply from 11 November 1999 but not yet enacted will affect all taxpayers that participate in a 'tax shelter arrangement' and prepay expenditure for up to 13 months. It is proposed that deductions otherwise allowable under section 8-1 of the ITAA 1997 be spread over the period to which the prepayment relates. Under the proposed changes, there will be no exemption for small business taxpayers and no transitional rules will apply.

112. For these Grower/Processors the amount of deduction available in respect of any prepayments is calculated using the formula shown below. In the calculation, the term 'expenditure' refers to expenditure otherwise allowable under section 8-1 ITAA 1997 whose 'eligible service period' ends not more than 13 months after it is incurred by the taxpayer. The 'eligible service period' (defined in subsection 82KZL(1)) means, generally, the period over which the services are to be provided.

$$\text{Deduction} = \text{Expenditure} \times \frac{\text{Number of days the prepayment covers in the expenditure}}{\text{Total number of days of the eligible service period}}$$

113. The excess remaining after the application of this formula is deductible in the year that the services to which the excess relates are performed.

114. A tax shelter arrangement is described as existing where:

- under the arrangement, the taxpayer's allowable deductions exceed the assessable income for that year; and
- all significant aspects of the arrangement during the income year are conducted by people (e.g.; a manager) other than the taxpayer; and
- either:
  - more than one taxpayer participates in the arrangement; or
  - the manager, or an associate of the manager, also manages similar arrangements on behalf of others.

115. The arrangement relating to the Project and described at paragraphs 17 to 38 of this product ruling is within the description of a 'tax shelter arrangement'. Therefore, any fees which are prepaid by Grower/Processors who invest in the Project after 11 November 1999 will be deductible over the period the services are provided. The formula for this apportionment is expected to be the same as that currently shown in section 82KZMD(2).

Part IVA

116. For Part IVA to apply there must be a "scheme" (section 177A of ITAA 1936); a "tax benefit" (section 177C); and a dominant

purpose of entering into the scheme to obtain a tax benefit (section 177D). The Barkworth Olive Groves Project No 4 is a "scheme" commencing when the Prospectus was issued. However, it is not possible to conclude that Grower/Processors will enter into the scheme with the dominant purpose of obtaining a tax benefit.

117. Grower/Processors to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the eventual harvesting and sale of the olives. Further, there are no features of the Project, for example, where fees are considered to be "excessive" and uncommercial, and predominantly financed by a non-recourse loan, and resulting in insufficient "real money" coming into the Manager's hands that might suggest the Project was so "tax driven", and so designed to produce a tax deduction of a certain magnitude that the Project would attract the operation of Part IVA.

Trading stock

118. Taxation Ruling TR 94/13 considers trading stock in relation to various marketing arrangements as they apply to cotton Growers. One of the marketing arrangements discussed in that ruling is similar to the arrangement that exists between BOML and Grower/Processors.

119. Under the Project's Constitution, raw olives are "pooled" prior to sale and processing. When this pooling occurs, BOML takes possession of the olives. Given that the arrangement is in effect the same as the "pooled" arrangements described in TR 94/13, the tax consequences will be the same.

120. Grower/Processors who have agreed with BOML to have their olives "pooled" no longer have dispositive power over the olives and will not be in possession of trading stock.

121. Grower/Processors who harvest and/or process their own olives will not take part in the "pooled" arrangement with BOML. If they retain dispositive power over their produce, they will have to account for trading stock as is the case in TR 94/13.

Sections 27-5 and 27-30

122. Section 27-5 of the ITAA 1997 will operate to deny a deduction, that would be otherwise available under section 8-1, to the extent that the loss or outgoing incurred (after 1 July 2000) includes an amount relating to an input tax credit to which a taxpayer is entitled or a decreasing adjustment that a taxpayer has.

123. Section 27-30 of the ITAA 1997 will operate to deny a deduction that would be otherwise available under section 8-1 for the year ended 30 June 2000 to the extent that the loss or outgoing

(incurred after 30 November 1999 and before 1 July 2000) includes an amount relating to an input tax credit to which a taxpayer will be entitled after 1 July 2000.

Subdivision 960-Q - Small business taxpayers

124. In this product ruling the term 'small business taxpayer' is relevant for the purposes of certain prepaid expenditure.

125. Whether a participant is a 'small business taxpayer' depends upon the individual circumstances of each participant and is beyond the scope of this product ruling. It is the individual responsibility of each participant to determine whether or not they are within the definition of a 'small business taxpayer'.

126. A 'small business taxpayer' is defined in section 960-335 of the ITAA 1997 as a taxpayer who is carrying on a business and either their 'average turnover' for the year is less than $1,000,000 or their turnover recalculated under section 960-350 is less than $1,000,000.

127. 'Average turnover' is determined under section 960-340 by reference to the average of the taxpayer's 'group turnover'. The group turnover is the sum of the 'value of business supplies' made by the taxpayer and entities connected with the taxpayer during the year (section 960-345).

Examples

Example 1: Obligation to prepay expenditure arising on or after 11.45am AEST 21 September 1999 and before 1 pm AEST 11 November 1999 – applies to taxpayers who are not small business taxpayers and are carrying on a business:

128. Joseph Gardener has extensive business interests and his turnover for the 1999/2000 income year exceeds $1 million. Therefore, he is not a small business taxpayer and is subject to the 21 September 1999 changes to the tax laws relating to prepaid expenditure. Joseph enters into a contract with Pinetree Pty Ltd to manage his one hectare interest in the No 2 Pine Plantation. Joseph's management contract is executed on 20 October 1999 for management services to be provided from 1 June 2000. Under the contract, the first five year's management fees, payable 12 months in advance on 1 June each year, are $6,000 in the first year and $1,200 for each of the following four years. Joseph is unable to deduct the whole of his prepaid management fees in the years in which they are incurred. The fees are instead deductible over the eligible service period over which the management services will be provided. However, as the law currently stands, Joseph is able to take advantage of certain

transitional rules that 'shade-in' the effect of the changes to the prepayment laws.

For 1999/2000 Joseph can claim a deduction of $4899 for expenditure incurred before 30 June 2000 on management fees. This amount is calculated as A + B where:

$$A = \text{Management fee} \times \frac{\text{Number of days of eligible service period in the expenditure year}}{\text{Total number of days of the eligible service period}}$$

$$= \$6{,}000 \times \frac{30}{365} = \$493$$

B = (Management fee *less* A) X 80%

= ($6,000 - $493) X 80% = $4,406

The balance of the $6,000 management fees that were prepaid on 1 June 2000 (i.e., $1,101) is carried forward and can be claimed as a deduction in the 2000/2001 income year.

Joseph can claim a deduction of $1861 for expenditure incurred after 1 July 2000 and before 30 June 2001 on management fees. This amount is calculated as A + B + C where:

$$A = \$1{,}200 \times \frac{30}{365} = \$99$$

B = ($1,200 - $99) X 60% = $661

C = $1,101

Note that the third component (Part C) is the amount carried forward from 1999/2000. As in the first year, the balance of the $1,200 management fees prepaid on 1 June 2001 (i.e., $440) is carried forward and can be claimed as a deduction in the 2001/2002 income year. It should also be noted that in certain circumstances, not present in most projects with product rulings, 'capping provisions' will apply in the second and subsequent transitional years. These are complex and are not explained in this example.

Similarly, for 2001/2002, Joseph can claim a deduction of $980 for expenditure incurred after 1 July 2001 and before 30 June 2002 on management fees. This amount is calculated as A + B + C where:

$$A = \$1{,}200 \times \frac{30}{365} = \$99$$

B = ($1,200 - $99) X 40% = $441

C = $440

Note that the third component (Part C) is again the amount carried forward from 2000/2001. As in the first two years, the balance of the $1,200 management fees prepaid on 1 June 2002 (i.e., $660) is carried forward and can be claimed as a deduction in the 2002/2003-income year.

Example 2: Obligation arising after 1 pm AEST 11 November 1999 to prepay expenditure – applies to all taxpayers investing in 'tax shelter arrangements':

129. Assume the same facts as above except that the management agreement is executed after 11 November 1999. Assume also that the No 2 Pine Plantation is a 'tax shelter arrangement'. For the Management fee of $6,000 incurred on 1 June 2000 for management services to be provided between that date and 31 May 2001, Joseph can claim a deduction for the 1999/2000 income year determined in the following way:

$$\text{Management fee} \times \frac{\text{Number of days of eligible service period in the expenditure year}}{\text{Total number of days of the eligible service period}}$$

$$\$6{,}000 \times \frac{30}{365} = \$493$$

In the following year Joseph can claim the balance of the $6,000 prepayment (ie $5,507) because that is the year in which the services are to be provided. The second and third year's management fees are calculated using the same method.

Detailed contents list

130. Below is a detailed contents list for this Product Ruling:

Commissioner of Taxation
5 April 2000

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

TR 92/1; TR 92/20; TD 93/34; TR 94/13; TR 97/11; TR 97/16; PR 1995/95; PR 1999/27;

Subject references:

- carrying on a business
- commencement of business
- crops as trading stock
- fee expenses
- horticulture
- irrigation expenses
- management fees expenses
- plantation forestry
- primary production
- primary production expenses
- primary production income
- producing assessable income
- product rulings
- public rulings
- schemes and shams
- tax administration
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters
- tax shelters project
- trading stock

Case references:

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

Legislative references:

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