



PR 2000/40 - Income tax: Great Southern Olive Project

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 This document has changed over time. This is a consolidated version of the ruling which was published on *25 June 2001*



Product Ruling

Income tax: Great Southern Olive Project

Contents	Para
What this Ruling is about	1
Date of effect	10
Withdrawal	12
Arrangement	13
Ruling	43
Explanations	49
Detailed contents list	66

Potential investors may wish to refer to the ATO's Internet site at <http://www.ato.gov.au> or contact the ATO directly to confirm the currency of this Product Ruling or any other Product Ruling that the ATO has issued.

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 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 Great Southern Olive Project, or just simply as 'the Project'.

Tax law(s)

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

- section 6-5 *Income Tax Assessment Act 1997* ('ITAA 1997');
- section 8-1 (ITAA 1997);
- section 27-5 (ITAA 1997);
- section 82KL of the *Income Tax Assessment Act 1936* ('ITAA 1936');
- section 82KZM and sections 82KZMB - 82KZMD (ITAA 1936); and
- Part IVA (ITAA 1936).

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 the announcement and others are proposed to apply from nominated dates in the future.

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 law(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 be 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).

Class of persons

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

7. 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

8. If the arrangements described in the Ruling are materially different from the arrangements that are actually carried out:

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- the Ruling will be withdrawn or modified.

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Date of effect

10. This Ruling applies prospectively from 12 April 2000, the date the 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).

11. 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

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

Arrangement

13. The arrangement that is the subject of this Ruling is described below. This description incorporates the following documents:

- Application for Product Ruling dated 23 February 2000;
- The Great Southern Olive Company Limited Draft Prospectus, dated 20 March 2000;
- Constitution for Great Southern Olive Company Limited, dated 18 February 2000;
- **Draft Management Agreement for the Great Southern Olive Project between The Great Southern Olive Company Ltd [the 'Responsible Entity'], Great Southern Management Pty Ltd ['the Manager'] and the Grower, dated 18 February 2000;**
- **Draft Lease Agreement for the Great Southern Olive Project between The Great Southern Olive Company Ltd [the 'Responsible Entity'] and the Grower, dated 1 February 2000;**
- Compliance Plan for the Great Southern Olives Project as the Responsible Entity, undated;
- Additional correspondence dated 23 February 2000 and 27 March 2000.

Note: certain information received from The Great Southern Olive Company Ltd has been provided on a commercial-in-confidence basis

and will not be disclosed or released under Freedom of Information legislation.

14. The documents highlighted are those the Growers enter into. There are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower, or any associate of the Grower, will be a party to, with the exception of finance agreements, to which paragraphs 41 to 42 apply. The effect of these agreements is summarised as follows.

Overview

15. This arrangement involves the Great Southern Olive Project.

Location	South West Region of Western Australia near Frankland
Type of business each participant is carrying on	Commercial growing, and cultivation of olive trees for producing premium olives and olive products.
Number of hectares under cultivation	500
Name used to describe the product	Great Southern Olive Project
Size of each Grove	0.2 hectares
Number of trees per hectare	250
Expected production	16.25 tons / hectare
The term of the investment in years	21
Initial cost	\$1960
Initial cost per hectare	\$9800
Ongoing costs	Management and Lease Fees.

16. Growers applying under the Prospectus enter into a Lease Agreement and a Management Agreement. The Lease Agreement gives a Grower a lease from The Great Southern Olive Company Ltd, over an identifiable area of land called a 'Grove', until the Project is

PR 2000/40

terminated pursuant to the provisions of the Constitution, or the date of the final distribution to the Communal Growers, or the date on which the Growers resolve to terminate the Management Agreement or the 30th day of June 2021, whichever happens first. Each Grove is 0.2 hectares in size.

17. The Project Land is situated in the South West Region of Western Australia. The Great Southern Olive Company Ltd is the owner of the property.

18. The Great Southern Olive Company Ltd will lease the Grove to the Grower to enable the Grower to carry on the business of running an olive grove for the commercial production of olive products. Growers are specifically granted rights to harvest the olives from time to time on their Grove for this purpose.

19. There is a minimum subscription for this Project of 250 Groves and applications made under the Prospectus will not be accepted after 21 June 2000. Each investor may subscribe for a minimum of one Grove, at a cost of \$1960 per Grove. Where Growers lodge their application within the timeframes set out in the table at paragraph 19, a minimum of 50 trees per Grove (250 trees per hectare) will be planted on or before 30 June 2000, following the execution of the Lease and Management Agreements (Cl.3.5 of Constitution).

Drop-off Date	Groves (Max)	Total Trees to be planted	Days until 30 June
May 3	2,500	125,000	58
May 10	2,500	125,000	51
May 17	2,500	125,000	44
May 24	1,500	100,000	37
May 31	1,250	75,000	30
June 7	1,000	50,000	23
June 12	700	35,000	18
June 21	250	12,500	9

20. The maximum number of Groves that will be accepted for planting as at 21 June 2000 will not exceed 250. This figure includes subscriptions which may have already been received prior to 21 June but where the planting services have not been completed by this date. Any subscriptions received in excess of 250 as at 21 June 2000 will not be accepted.

21. Each Grower must also subscribe for 1000 shares in The Great Southern Olive Company Ltd at \$0.60 per share. Shareholders may not hold more than 71.4% of the shares on issue in The Great Southern Olive Company Ltd.

22. Possible projected returns for Growers are outlined on page 15 of the Draft Prospectus. The project is of a long term nature and subject to certain risks such as agricultural risks in the nature of natural disasters, the weather, pest infestation and crop diseases as well as financial risks and general commercial market risks. However, based on the example set out on page 15 of the Prospectus, a Grower could expect to achieve an after tax internal rate of return of 13.39% per Grove. Growers will execute a Power of Attorney enabling the Responsible Entity, The Great Southern Olive Company Ltd, to act on their behalf as required, when they make an application for a Grove.

Constitution

23. The Constitution for the Project sets out the terms and conditions under which the Responsible Entity agrees to act for the Grower and to manage the Project. The Responsible Entity will keep a register of Growers (cl 7.1). Growers are entitled to assign their Grower's Interest in certain circumstances (cl 5.1). The Lease and Management Agreements are annexed to the Constitution and will be executed on behalf of a grower following them signing the Application and a Power of Attorney Form in the Prospectus. Growers are bound by the Constitution by virtue of their participation in the Project.

Compliance Plan

24. The Responsible Entity has prepared a Compliance Plan in accordance with the Corporations Law. Under the Compliance Plan, a Compliance Committee will monitor to what extent the Responsible Entity meets its obligations as the Responsible Entity of the Project and that the rights of the Growers are protected.

Interest in land

25. A lease is granted by the Land Owner, The Great Southern Olive Company Ltd, to the Grower under the terms of the Lease Agreement (Cl 2). Growers are granted an interest in land in the form of a lease to use their Groves for carrying on the business of running an Olive Grove (cl 4.1). Growers must pay rent annually to the Lessor. The term of a Grower's lease is up to 30 June 2021.

Management Agreement

26. Each grower enters into a Management Agreement with the Responsible Entity for each Grove. The termination of the project will be the date on which the Project is wound up pursuant to clause 20 of the Constitution, or the date of payment of the final distribution to the Communal Growers, or the date on which the Growers resolve to terminate the Management Agreement or the 30th day of June 2021, whichever happens first.

27. Growers contract with the Responsible Entity to cultivate and care for the olive trees consistent with Good Horticultural Practice. Growers pay a Management Fee for each Grove on subscription and an annual management fee thereafter.

28. The Manager will carry out the following services under this agreement:-

- cultivate, tend, train, prune, fertilise, replant, spray and otherwise care for the Olive Trees as and when required that is consistent with Good Horticultural Practice;
- Use all reasonable measures to keep the Grove free from vermin, noxious weeds, pests and diseases;
- maintain all trellising and fences;
- arrange for harvesting of the Olives; and
- use reasonable endeavours to arrange the processing of the Olives and packaging, marketing and sale of the Olive Products.

29. A grower may elect to collect their own harvested olives and to take sole responsibility for their processing and for marketing of any resultant Olive Oil (cl.6.1). However, where Growers do not elect, the Manager will harvest and process the Olives and package and market the Olive Products on any such terms as the Manager considers appropriate and advantageous for the Grower. (cl.7). The Manager will be responsible for paying for the cost of annual insurance on the Grove (cl. 9.1).

30. The Responsible Entity may only be removed from its appointment in accordance with section 601FL and 601FM of the *Corporations Law*.

Fees

31. The initial fee payable under the Management Agreement is the Prescription Sum of \$1,900 per Grove payable on application for land preparation and planting of the trees (cl.10 of Management

Agreement). Where Growers lodge their applications within the timeframes set out in paragraph 19, this service will be carried out by 30 June 2000. Subscriptions will not be accepted after 21 June 2000.

32. A Management Fee of \$1,400 is payable annually on 31 July for services to be carried out in the period 1 July to 30 June of the year of payment. This annual Management Fee is to be indexed by the percentage increase in the Consumer Price Index over the four quarters preceding the Annual Payment Date as from the year 1 July 2000 to 30 June 2001 and is first payable on 31 July 2000.

33. After harvest, growers must pay the Manager a Harvest Fee of \$2.00 per tree and a Processing and Packaging Fee of \$1.65 per package leader and a Marketing Fee of 3% of Sale Proceeds. These amounts will be withheld by the Responsible Entity from the Communal Grower's Proportional Interest in the Gross Proceeds before the proceeds from the sale of the Olive Products are paid out to the growers.

34. A Lease Fee of \$60 is payable on application for rent for the period up to 30 June 2000. An annual Lease Fee of \$360 is payable on 31 July of each year, for rent on the Leased Area for the period 1 July to 30 June of the year of payment. This annual Lease Fee is to be indexed to the Consumer Price Index as from the year 1 July 2000 to 30 June 2001 and is first payable on 31 July 2000.

35. The Independent Expert has stated, at pages 21 to 24 of the Draft Prospectus, that the Project has excellent chances of success. The Frankland environment is very well suited to high quality olive and olive product production and given competent management, the projected average yield after 10 years of 16.25 tons/hectare looks reasonable and achievable.

36. There are however two reservations. Firstly, olives tend to be biennial bearing which can be partly controlled by water and management. Secondly, there are the other hazards, which are to varying degrees uncontrollable, to which agriculture and horticulture enterprise is subject to.

37. The Application Monies will be banked in the Subscription Fund bank account formed under the Project's Constitution (cl 10.2).

Planting

38. During the period up to 30 June 2000 the Manager will be responsible for planting the Olive Trees on the leased area. After 30 June 2000, the Manager will maintain the trees in accordance with Good Horticultural Practice. The services to be provided by the Manager over the term of the Project are outlined in the Management Agreement (item 6 of schedule).

39. The Manager will be responsible for arranging the marketing and sale of the Olive Produce. The Harvest shall take place in each year of the Term that there is a commercially harvestable crop, at such time or times as in the opinion of the Manager will maximise the return to the Grower.

40. The Gross Proceeds of the sale of the Olive Produce will be paid into the Proceeds Fund Bank Account. Proceeds received by the Responsible Entity are to be distributed in the following order of priority:

- to the Responsible Entity for any amounts it is entitled to under clause 10.3(b) of the Constitution;
- any annual payments due by any of the Communal Growers that may be due but unpaid;
- any amounts payable by the Growers under the Lease Agreement and Management Agreement and the Constitution. (cl 10.3(b) of Constitution).
- The Net Proceeds to the Communal Growers.

Finance

41. All Growers are required to fund their investment in the Project themselves or borrow from an independent lender.

42. This Ruling does not apply if a Grower enters into a finance agreement that includes or has any of the following features:

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' are or will be granted to the borrowers, for the purposes of section 82KL, or the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;
- terms or conditions are non-arm's length;
- repayments of the principal and payments of interest are linked to the derivation of income from the Projects;
- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender, or any associate of the lender; or

- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers.

Ruling

Section 27-5 and section 27-30

43. Section 27-5 or section 27-30 of the ITAA 1997 will apply to fees incurred after 1 July 2000, to reduce a deduction that would otherwise be allowable under section 8-1, to the extent that the fee includes an amount relating to a GST input tax credit to which a Grower is entitled, or in the case of section 27-5, a decreasing adjustment that a Grower has.

Section 8-1

44. For a Grower who invests in the Project by 21 June 2000, the following deductions will be available for the years ended 30 June 2000 to 30 June 2002:

Deductions available each year

Fee Type	ITAA 1997 Section	Year 1 30/6/2000	Year 2 30/06/2001	Year 3 30/6/2002
Management Fee	8-1	\$1,900	\$1,400 (indexed)	\$1,400 (indexed)
Lease Fee	8-1	\$60	\$360 (indexed)	\$360 (indexed)

Section 82KZM, 82KZMB – 82KZMD, 82KL and Part IVA

45. For a Grower who invests in the Projects the following provisions of the ITAA 1936 have applications as indicated:

- the expenditure by the Growers does not fall within the scope of section 82KZM;
- the expenditure by the Growers does not fall within the scope of sections 82KZMB-82KZMD;
- section 82 KL does not apply to deny the deductions otherwise allowable; and
- the relevant provisions in Part IVA will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

46. Gross sales derived from the sale of Olive Produce from the Project will be assessable income of the Growers, under section 6-5.

Part 3-1: capital gains tax

47. To enter the Project, each grower or an associate will subscribe for 1000 ordinary \$0.60 shares in respect of each Grove participation interest of the Grower. Unless any shares in the Lessor are trading stock of the Grower or otherwise assessable on revenue account to the Grower, a capital gain or loss will arise on the sale of those shares.

48. In the event that the Lessor is liquidated at the conclusion of the Project, further taxation considerations arise for the Grower holding shares in the Lessor. Any distribution made to a Grower on liquidation of the Lessor would be deemed to be a dividend to the Grower, to the extent of the undistributed profits of the Lessor. This dividend would be assessable as a normal dividend and may have franking credits attached. Further, a capital gain or loss could arise, based on the difference between the Grower's indexed cost base and the amount distributed in accordance with the provisions of Part 3-1 of the ITAA 1997.

Explanations

Section 8-1

49. Consideration of whether lease and management fees are deductible under section 8-1, begins with paragraph 8-1(1)(a), 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 paragraph 8-1(1)(b) if they are incurred when the business has not commenced; and
- where all that happens in a year of income is 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 paragraph 8-1(1)(b) applies. However, that does not preclude the application of paragraph 8-1(1)(a), and determining whether the outgoings in question have a sufficient connection with activities to produce assessable income.

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

51. Generally, an investor will be carrying on a business of horticulture where:

- the investor has an identifiable interest in specific growing trees coupled with a right to harvest and sell the produce from the trees;
- the horticulture activities are carried out on the investors 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.

52. For this Project Growers have, under the Lease Agreement and the Management Agreement, rights in the form of a lease over an identifiable area of land consistent with the intention to carry on a business of growing olive trees. Under the Lease and Management Agreement Growers appoint Great Southern Management Pty Ltd, as Manager, to cultivate, tend, train, prune, fertilise, replant, spray and otherwise care for the Olive Trees as and when required that is consistent with good horticultural practice and to use all reasonable measures to keep the Grove free from vermin, noxious weeds, pests and diseases. Growers are considered to control their investment. The specific cost of these services provided by 30 June 2000 is \$1,900 per Grove.

53. The Lease and Management Agreements gives Growers at all times the full right, title and interest in the Olives and the right to have the Olives harvested, processed, packaged, marketed and/or sold for their benefit (clause 14.1) for the term of the Lease.

54. Growers have the right to use the land in question for the business of running an olive grove and to have the Manager come onto the land to carry out its obligation under the Lease and Management Agreements. The Growers' degree of control over the Manager, as evidenced by the Agreement and supplemented by the Corporations Law, is sufficient. Under the Project, Growers are entitled to receive regular progress reports on the Project by The Great Southern Olive Company Ltd. Growers are able to terminate arrangements with the Manager in certain instances, such as where

there has been a substantial breach by the Manager of any material obligation under the Management Agreement or the Manager commits an act of bankruptcy or goes into liquidation. The horticultural activities described in the Lease and Management Agreements are carried out on the Growers' behalf.

55. 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. Growers to whom this Ruling applies intend to derive assessable income from the Project. This intention is related to projections contained in the Draft 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. The independent expert's assessment was that the olive yields will be economically viable.

56. Growers will engage the professional services of a Manager with appropriate credentials. There is a means to identify which trees Growers have an interest in. These services are based on accepted horticultural practices and are of the type ordinarily found in horticultural ventures that would commonly be said to be businesses.

57. Growers have a continuing interest in the olive trees from the time they are acquired until the olives are harvested and processed. The horticultural activities, and hence the fees associated with their procurement, are consistent with an intention to commence regular activities that have an 'air of permanence' about them. The Growers' horticultural activities will constitute the carrying on of a business.

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

Section 35-55 – Commissioner's discretion

57.1 For a Grower who is an individual and who entered the Project on or after 12 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 to 30 June 2004 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.

57.2 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.

57.3 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.

57.4 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.

58. The fees associated with the horticultural activities will relate to the gaining of income from this business and, hence, have a sufficient connection to the operations by which this income (from the sale of olive produce) is to be gained from this business. They will, therefore, come within paragraph 8-1(1)(a). Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. No capital component is identifiable. The tests of deductibility under section 8-1 are met. The exclusions do not apply.

59. Section 27-5 operates to deny a deduction that would otherwise be available under section 8-1, to the extent that the loss or outgoing incurred (after 1 July 2000) includes an amount relating to a GST input tax credit to which a Grower is entitled.

Sections 82KZM and 82KZMB - 82KZMD

60. 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 to certain expenditure incurred under an agreement in return for doing of a thing under the agreement that is not wholly done within the same year of income as the execution of the relevant agreement.

61. Under the Lease and Management Agreements, fees of \$1,960 per Grove will be incurred on the execution of those Agreements. The fees are charged for providing services to a Grower by 30 June of

the year of execution of the Agreements. The fees are expressly stated to be for a number of specified services. No explicit conclusion can be drawn from the arrangement's description that the fee has been inflated to result in reduced fees being payable for subsequent years.

62. There is also no evidence that might suggest the services covered by the fees could not be provided in the same year of income as the expenditure in question is incurred. Thus, for the purposes of this Ruling, it can be accepted that no part of the initial fee is for the Project Manager doing 'things' that are not to be wholly done within the year of income of the fee being incurred. On this basis, the basic precondition for the operation of section 82KZM is not satisfied and it will not apply to the expenditure incurred by the Grower. New sections 82KZMB, 82KZMC and 82KZMD also have no application to this Project since the services to be provided in respect of the initial fee are completed in the same year of income as the expenditure is incurred (see paragraph 82KZMA(3)(c)).

Section 82KL

63. The operation of section 82KL depends, among other things, on the identification of a certain quantum of 'additional benefits'. In the Project, insufficient 'additional benefits' will be provided to trigger the application of section 82KL. It will not apply to deny the deductions otherwise allowable under section 8-1.

Part IVA

64. 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). The Project will be a 'scheme', commencing when the Prospectus is issued. The Growers will obtain an initial 'tax benefit' from entering into the scheme, in the form of the deduction for the initial fees, allowable under section 8-1, 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.

65. Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the periodic harvesting of the olives from the trees. The independent expert's report contained in the Draft Prospectus states that the Project has excellent chances of success. The Frankland environment is very well suited to high quality olive and olive product production and given competent management, the projected average yield after 10 years of 16.25 tons/hectare looks reasonable and achievable. There are no features of the Project that might suggest the Project was

so ‘tax driven’, and so designed to produce a tax deduction that would attract the operation of Part IVA.

Detailed contents list

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

	Paragraph
What this Ruling is about	1
Tax law(s)	2
Class of persons	6
Qualifications	8
Date of effect	10
Withdrawal	12
Arrangement	13
Overview	15
Constitution	23
Compliance Plan	24
Interest in land	25
Management Agreement	26
Fees	31
Planting	38
Finance	41
Ruling	43
Section 27-5	43
Section 8-1	44
Section 82KZM, 82KZMB – 82KZMD, 82KL and Part IVA	45
Part 3-1: capital gains tax	47
Explanations	49
Section 8-1	49
Division 35 – deferral of losses from non-commercial business activities	57.1
Section 35-55 – Commissioner’s discretion	57.1
Sections 82KZM and 82KZMB - 82KZMD	60
Section 82KL	63

Part IVA 64

Detailed contents list 66

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Related Rulings/Determinations:

PR 1999/95; TD 93/34; TR 92/1;
TR 97/11; TR 97/16

Subject references:

- carrying on a business
- commencement of business
- primary production
- primary production expenses
- management fee expenses
- producing assessable income
- product rulings
- public rulings
- schemes and shams
- taxation administration
- tax avoidance
- tax benefits under tax avoidance - schemes
- tax shelters
- tax shelters project

Legislative references:

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 - ITAA 1936 82KZM
 - ITAA 1936 82KZMB
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