

PR 2000/50 - Income tax: The Paulownia West Coast Project No 3

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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: The Paulownia West Coast Project No 3

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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**, **Previous Rulings 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 Paulownia West Coast Project No 3, or just simply as 'the Project', or the 'product'.

Tax law(s)

2. The tax law(s) dealt with in this Ruling are sections 8-1 and 27-5 of the *Income Tax Assessment Act 1997* ('ITAA 1997') and sections 82KL and 82KZM and Part IVA of the *Income Tax Assessment Act 1936* ('ITAA 1936').

Class of persons

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

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

Qualifications

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

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

7. The class of persons defined in the Ruling may rely on its contents, provided the arrangement (described below at paragraphs 13 to 31) is carried out in accordance with details described in the Ruling.

If the arrangement described in the Ruling is materially different from the arrangement that is actually carried out:

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- the Ruling will be withdrawn or modified.

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Date of effect

9. This Ruling applies prospectively from 3 May 2000, the date this Ruling is made. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

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

Withdrawal

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

Previous Rulings

12. This ruling applies to the Project that was ruled upon in Product Ruling PR 1999/39. PR 1999/39 is now withdrawn on and from the date this Ruling is made. The former ruling applies to investors who entered into the arrangement during the period 6 May 1999 to 1 February 2000 inclusive. This Ruling applies to Growers wishing to take up an interest or interests that were not sold prior to 1 February 2000.

Arrangement

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

- Product Ruling request dated 2 March 2000;
- Prospectus issued by Plantation Equity Services Limited ('PESL'), dated 6 May 1999;
- Supplementary Prospectus issued by PESL dated 2 February 2000;
- Constitution for The Paulownia West Coast Project executed by PESL, dated 14 January 2000;
- Compliance Plan for The Paulownia West Coast Project executed by the directors of PESL;
- Agency Agreement for the Paulownia West Coast Project between Gillard Turner & O'Brien Pty Ltd as Custodian and PESL, dated 16 April 1999;
- **Lease and Management Agreement** between PESL, Western Property Holdings Pty Ltd (the Lessor) and the Grower (this agreement forms the Schedule to the Constitution);
- **Offer to Borrow** between Paulownia WA Pty Ltd ('PWAPL') as lender and the Grower; and
- letters from PESL dated 7 April 1999; 27 April 1999; 10 May 1999; and 11 April 2000.

NOTE: certain information received from Plantation Equity Services Limited 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 that Growers enter into. For the purposes of describing the arrangement to which this Ruling

applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower, or any associate of a Grower, will be a party to, other than any finance agreements to which paragraph 29 refers. The effect of these agreements is summarised as follows.

15. This arrangement is called The Paulownia West Coast Project No 3. Growers participating in the Project enter into a Lease and Management Agreement ('LMA'). Under this agreement Growers sublease an area of land called a 'Timber Lot' from Western Property Holdings Pty Ltd in Western Australia. The property, known as 'Whitfield Springs', is leased by the landowner to Farmtech Management Pty Ltd who leases the land to Western Property Holdings Pty Ltd who grants a sub-lease to the Growers. Under the Lease and Management Agreement the Growers also contract with PESL to have certain paulownia trees (*paulownia fortunei*) planted on the Timber Lot for the purpose of eventual felling and sale, no later than 12 years from the date of execution of their respective agreements (cl 16 of the LMA).

16. There is no minimum amount that must be raised under the Prospectus and, thus, no minimum subscription level. Each Timber Lot has an area of 0.4 hectares and at a total cost of \$9,000, payable in two instalments being an amount of \$4,000 on execution of the LMA and a subsequent payment of \$5,000 due and payable on 1 July 2000. PESL has the right to accept over subscriptions. A minimum of 110 trees per Timber Lot (275 per hectare) will be planted in the Initial Period following execution of the Lease and Management Agreement. Possible projected returns for Growers are outlined on page 4 of the Supplementary Prospectus. The projected returns depend on a range of assumptions and PESL does not give any assurance or guarantee whatsoever in respect of the future success of or financial returns associated with entering into Lease and Management Agreements being offered pursuant to the Prospectus. Based on the example set out on page 4 of the Supplementary Prospectus, a Grower could expect to achieve an internal rate of return of 13.8% per Timber Lot. Growers execute a power of attorney enabling PESL to act on their behalf as required, when they make an application for a Timber Lot.

17. It is indicated on page 11 of the Prospectus that only the first 300 Timber Lots sold to Growers will be located on the 'Blue Lake' property. Should subscriptions exceed this, further land will be secured, subject to the satisfaction of the Manager. Such an event is not envisaged to affect the proceeds payable to a Grower due to the pooling of Forest Produce. The Project prospectus closes on 5 May 2000. No Growers can be accepted into the Project after this date.

Lease and Management Agreement

18. The Lease and Management Agreement is entered into between PESL, the Lessor and the Grower for each Timber Lot. Growers are granted an interest in land in the form of a lease to use their Timber Lot (identified in Schedule Items 1 to 3), for the purpose of conducting their afforestation business (cl 6.1). At all times the Grower has full right, title and interest in the Forest Produce and the right to have the Forest Produce sold for their benefit (cl 19.1). Each grower must pay to the Lessor rent in an amount equal to 2.5% of the Net Proceeds of sale (cl 4) within 5 days (cl 20.3). This agreement is subject to the terms of the Constitution.

19. Part III of the Lease and Management Agreement provides that each Grower contracts with PESL to establish and maintain the plantation until maturity for an annual fee. Growers may elect to collect their own Collectable Produce (cl 17) or PESL will sell the Forest Produce on the Grower's behalf, for the best possible commercial price (cl 18). Growers will share on a proportionate basis, the Proceeds of Sale of the Forest Produce following the payment of Harvest and Processing Costs, other Costs of Sale, rent to the Lessor and payment of amounts due to PESL (cl 20).

Constitution

20. The Constitution establishes the Project and operates as a deed binding on all of the Growers and the PESL. The Constitution sets out the terms and conditions under which PESL agrees to act as Responsible Entity and thereby manage the Project. Growers are bound by the Constitution by virtue of their participation in the Project. Pursuant to clause 26 of the Constitution, PESL keeps a register of Growers. Growers are entitled to assign the Lease and Management Agreement in certain circumstances (cl 33 of the LMA). The Lease and Management Agreement must be entered contemporaneously by Applicants signing the Application and Limited Power of Attorney Form in the Prospectus.

Compliance Plan

21. As required by the Corporations Law a Compliance Plan has been prepared by PESL. Broadly, the Plan encapsulates the Constitution; its purpose to ensure that PESL meets its obligations as 'Responsible Entity' for the Project and that the rights of Growers are protected. The latter includes documentation of the details of Lease and Management Agreements in the Register, reporting to Growers and the handling of any proceeds from the sale of timber.

Agency Agreement

22. The Agency Agreement is the means by which PESL appoints the Custodian, Gillard Turner & O'Brien Pty Ltd, to act as its agent to hold the Scheme Property as that term is defined in section 9 of the Corporations Law. It imposes certain standards and obligations on the Custodian and PESL, including maintaining proper records.

Fees

23. The fees payable under the Lease and Management Agreement are:

- \$4,000 per Timber Lot for the plantation and maintenance services provided in the period to 30 June 2000 (referred to as the Initial Period as set out in cl 21.1 and Item 9 of the Schedule);
- \$5,000 per Timber Lot for the plantation and maintenance services provided in the 12 months commencing 1 July 2000, the due date for payment being on or before the expiration of the Initial Period (referred to as the First Period as set out in cl 21.2 and Item 10 of the Schedule);
- \$500 per Timber Lot per annum (indexed) for the plantation and maintenance services provided for each 12 month period commencing on 1 July 2001, the expiration of the First Period (cl 22, cl 1: 'Annual Fee' is a defined term);
- the cost of annual insurance premiums for insurance effected by PESL on the Grower's behalf (cl 35);
- any Incentive Fee due to the Manager, calculated to be 25% of the Net Proceeds of Sale that exceed the Prospectus forecast of \$38,623 (cl 24, cl 1: 'Incentive Fee' is a defined term);
- a fee to the Manager of an amount equal to 2.5% of the Net Proceeds generated from the sale of the Grower's Forest Produce (cl 25); and
- rent to the Lessor of an amount equal to 2.5% of the Net Proceeds generated from the sale of the Grower's Forest Produce (cl 4).

Note: A 10% Goods and Services Tax (GST) component will apply in respect of all services provided from 1 July 2000. The above amounts do not include this component.

24. The Independent Forester has stated, at page 21 of the Prospectus:

'The Manager's estimates of the funds required to establish and manage the Project are reasonable and compare with the cost estimates for projects of a similar nature and should permit the project to proceed on a normal commercial basis'.

25. Under the terms of the Constitution, PESL must deposit all monies it receives from applications into an Application Fund in the name of the Custodian. The application price will be released to PESL when the Custodian is reasonably satisfied that certain specified criteria in the Constitution have been met (cls 14 and 15.1 of the Constitution).

Planting

26. During the period to 30 June 2000, PESL will be responsible for planting *paulownia fortunei* on the Timber Lot. From this period on, PESL will maintain the trees in accordance with good silvicultural practice. The services to be provided by PESL over the term of the Project are outlined in Items 8A and 8B of the Schedule to the Lease and Management Agreement. PESL will be responsible for arranging the marketing and sale of the Forest Produce. Harvesting and Processing of Trees will generally take place no later than 11 years from the Commencement Date, the maximum period of deferral is an additional 12 months (cl 16 of the LMA).

27. The gross proceeds of sale of the Forest Produce of Non-Electing Growers will be paid direct to PESL who must within 2 business days either forward such amounts to the Custodian for depositing into a Proceeds Fund or make a direct deposit into the Proceeds Fund (cl 20.1 of LMA and cl 6.2(a) of the Compliance Plan). Within 10 business days of receiving the gross proceeds of sale the Custodian must pay to PESL the relevant Grower's proportional share of the costs of harvest, processing and costs of sale (cl 20.2 of LMA and cl 6.2(b) of the Compliance Plan). This is to be supported by an auditor's certificate obtainable within 5 business days, which verifies gross proceeds of sale, volume of Forest Produce included in the sale and harvest, processing and sale costs (cl 20.4 of the LMA). Within a further 5 business days, the Custodian will pay, on behalf of the Growers, rent owed to the Lessor, PESL's remuneration and other amounts owing to PESL. The balance of the Net Proceeds of Sale will be distributed to the Non-Electing Growers. The terms 'Proceeds Fund' and 'Proportional Share' are defined in clause 1 of the LMA.

28. If a Grower is an 'Electing Grower' (cls 1 and 17 of the LMA), the Grower's proportional share of the costs of harvesting and processing, rent owed to the Lessor, PESL's remuneration and other

amounts owing to PESL, are due for payment on the day specified by PESL for collection of the Grower's collectable produce (cls 17.2 and 17.3 of the LMA).

Finance

29. Growers may invest in the Project using their own funds or funds borrowed from a lender. As indicated at page 11 of the Prospectus and page 3 of the Supplementary Prospectus, a time payment option is available to approved applicants at the time the application is made. An 'Offer to Borrow' may be obtained from the Dealer and duly completed by the applicant, the lender involved being Paulownia WA Pty Ltd ('PWAPL'). The loan is interest-free and is fully repayable within a 12 month period. It is envisaged on page 11 of the Prospectus that such a financial arrangement would involve an initial payment of \$1,000 per Timber Lot followed by 12 equal monthly payments of \$666.67 per Timber Lot. Payments received from Growers by PWAPL are regularly transferred to the Application Fund in the name of the Custodian, who will then pay such amounts to PESL on a regular basis in the manner set out in paragraph 24 above.

30. Clause 11.9 of the Constitution sets out PESL's rights on default in payment of an application price.

31. PWAPL will have full recourse to the Borrower's assets should the Borrower (Grower) default, and it will pursue appropriate legal action against defaulting Growers. This Ruling does not apply if a Grower enters into a finance agreement with any of the following features:

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- entities associated with the Project, other than PWAPL, are involved in the provision of finance for the Project;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' will be granted to the borrowers for the purpose of section 82KL, or the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;
- the loan terms are of a non-arm's length nature;
- repayments of the principal and interest are linked to the derivation of income from the Project;
- 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) 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.

Ruling

Sections 8-1 and 27-5

32. For the year ended 30 June 2000 section 8-1 will apply to Growers entering into this Project, to allow a deduction for the plantation and maintenance fee of \$4,000 per Timber Lot incurred by a Grower on execution of the Lease and Management Agreement on or before 5 May 2000.

33. For the year ended 30 June 2001 section 8-1 will apply to Growers entering into this Project, who will be entitled to a GST input tax credit, to allow a deduction for the second instalment of the plantation and maintenance fee of \$5,000 per Timber Lot incurred by a Grower on 1 July 2000. Section 27-5 of the ITAA 1997 will apply to reduce the amount of the deduction otherwise allowable by any GST input tax credit to which the Grower is entitled, or any decreasing adjustment that a Grower has.

34. For the year ended 30 June 2002 section 8-1 will apply to Growers entering into this Project, who will be entitled to a GST input tax credit, to allow a deduction for annual maintenance fees of \$500 per Timber Lot, indexed, incurred by a Grower on 1 July 2001. Section 27-5 of the ITAA 1997 will apply to reduce the amount of the deduction otherwise allowable by any GST input tax credit to which the Grower is entitled, or any decreasing adjustment that a Grower has.

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

Section 35-55 – Commissioner’s discretion

34.1 For a Grower who is an individual and who entered the Project on or after 3 May 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 2008 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.

34.2 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.

34.3 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.

34.4 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 82KZM

35. The expenditure incurred by Growers, as described in paragraphs 32 to 34 above, does not fall within the scope of section 82KZM.

Section 82KL

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

Part IVA

37. 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.

Explanations

Sections 8-1 and 27-5

38. Consideration of whether fees payable under the Lease and Management Agreement 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 a taxpayer contractually commits themselves to a venture that may not turn out to be a business, there can be doubt about whether the relevant business has commenced and, hence, whether the second limb applies. However, that does not preclude the application of the first limb and determining whether the outgoings in question have a sufficient connection with activities to produce assessable income.

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

40. Generally, an investor will be carrying on a business of afforestation where:

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

41. For this Project Growers have, under the Lease and Management Agreement, rights in the form of a lease over an identifiable area of land consistent with the intention to carry on a business of growing trees. Under the same agreement Growers appoint PESL, as Manager, to provide services such as planting, cultivating, tending, culling, pruning, fertilising, replanting, spraying, maintaining and otherwise caring for the trees. Growers control their investment. The specific cost of these services provided in the Initial Period to 30 June 2000 will total \$4,000. Growers may either collect their own Forest Produce and arrange for its sale or they have the option of PESL arranging marketing and sale for a fee from the gross sale proceeds.

42. The Lease and Management Agreement gives Growers more than a chattel interest in the timber on harvest. The Project documentation contemplates Growers will have an ongoing interest in the growing trees; though there may not arise any legal interest in the land there is an interest in the nature of a *profit à prendre* which, coupled with the licence, confers an equitable interest in the trees in question upon the Grower.

43. Growers have the right to use the land in question for afforestation purposes and to have PESL come onto the land to carry out its obligations under the Constitution and the Lease and Management Agreement. The Growers' degree of control over PESL, as evidenced by the Agreements and supplemented by the Corporations Law, is sufficient. Under the Project, Growers are entitled to receive regular progress reports on PESL's activities. Growers are able to terminate arrangements with PESL in certain instances, such as cases of default or neglect. The afforestation activities described in the Lease and Management Agreement are carried out on the Growers' behalf.

44. The general indicators of a business, as used by the Courts, are described in Taxation Ruling TR 97/11. Positive findings can be made from the arrangement's description for all the indicators. The Independent Forester's report is that the Project's success is expected. Growers to whom this Ruling applies intend to derive assessable income from the Project. This intention is related to projections contained in the Prospectus that suggest the Project should return a 'before-tax' profit to the Growers, i.e., a 'profit' in cash terms that does not depend in its calculation, on the fees in question being allowed as a deduction.

45. 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 silvicultural practices and are of the type ordinarily found in afforestation ventures that would commonly be said to be businesses.

46. Growers have a continuing interest in the trees from the time they are acquired until harvest. The afforestation 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' afforestation activities will constitute the carrying on of a business.

47. The fees associated with the afforestation 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 timber) is to be gained from this business. They will, thus, be deductible under the first limb of section 8-1. 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 the first limb of section 8-1 are met. The exclusions do not apply. Section 8-1 is however, subject to section 27-5 of the ITAA 1997. The latter operates to deny a deduction that would otherwise be allowable under section 8-1, to the extent that the loss or outgoing incurred on or after 1 July 2000 includes an amount relating to a GST input tax credit to which a Grower is entitled, or a decreasing adjustment that a Grower has.

Section 82KZM

48. Under the Lease and Management Agreement the fee of \$4,000 per Timber Lot will be incurred on execution of that Agreement. This fee is charged for providing the Initial Services (as defined in item 8A of the Schedule to the LMA) to a Grower only for the period to 30 June 2000. For the purpose of this Ruling, no explicit conclusion can be drawn from the arrangement's description, that the fee has been inflated to result in reduced fees being payable for subsequent years. The fee is expressly stated to be for a number of specified services. There is no evidence that might suggest the services covered by the fee could not be provided by 30 June 2000. Thus, for the purposes of this Ruling, it can be accepted that no part of the fee of \$4,000 is for PESL doing 'things' that are not to be wholly done before 30 June 2000. On this basis, the basic precondition for section 82KZM's operation is not satisfied and it will not apply to the expenditure by Growers of \$4,000 per Timber Lot.

49. The same conclusion can be drawn regarding the second plantation and maintenance fee of \$5,000, applying to the Ongoing Services (as defined in item 8B of the Schedule to the LMA) to be provided in the 12 months commencing upon the expiration of the Initial Period.

Section 82KL

50. Section 82KL's operation depends, among other things, on the identification of a certain quantum of 'additional benefit(s)'. Here, there may be a loan provided by PWAPL to the Grower. However the loan is provided on a full recourse basis and is discharged within a twelve month period. Insufficient 'additional benefits' will be provided to trigger the application of section 82KL. It will not apply to deny the deduction otherwise allowable under section 8-1.

Part IVA

51. 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 Paulownia West Coast Project No 3 will be a 'scheme'. It commenced generally on 2 February 2000 when the Supplementary Prospectus was issued. The Growers will obtain a 'tax benefit' from entering into the scheme, in the form of the deduction for the amount of \$4,000 per Timber Lot, 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.

52. Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the eventual harvesting of the trees. Further, there are no features of the Project, for example, such as the initial period fee of \$4,000 and first period fee of \$5,000 or the annual fee of \$500 being 'excessive', and uncommercial, and predominantly financed by a non-recourse loan, that might suggest the Project was so 'tax driven', and so designed to produce a tax deduction of a certain magnitude that would attract the operation of Part IVA.

Detailed contents list

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Commissioner of Taxation

3 May 2000

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

PR 98/1; TR 92/1; TR 92/20;

TR 97/11; TR 97/16; TD 93/34;

TR 98/22

Subject references:

- carrying on a business

- commencement of business
- fee expenses
- interest expenses
- management fees
- producing assessable income
- product rulings
- public rulings
- taxation administration
- tax avoidance

- tax benefits under tax avoidance schemes
 - tax shelters
 - tax shelters project
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