



PR 2000/62 - Income tax: Kallamar Olive Project

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 This document has changed over time. This is a consolidated version of the ruling which was published on *24 May 2000*



Product Ruling

Income tax: Kallamar Olive Project

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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 and Qualifications sections**), **Date of effect**, **Withdrawal**, **Previous Rulings**, **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.*

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 laws' 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 Kallamar Olive Project, or just simply as 'the Project' or the 'product'.

Tax law(s)

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

- section 6-5 of the *Income Tax Assessment Act 1997* ('ITAA 1997');
- section 8-1 of the ITAA 1997;
- section 27-5 of the ITAA 1997;
- section 27-30 of the ITAA 1997;
- section 42-15 of the ITAA 1997;
- section 387-125 of the ITAA 1997;
- section 387-165 of the ITAA 1997;
- Part 2-25 of the ITAA 1997;
- Part 3-1 of the ITAA 1997;
- section 82KL of the *Income Tax Assessment Act 1936* ('ITAA 1936');
- section 82KZM of the ITAA 1936;
- section 82KZMA of the ITAA 1936;
- section 82KZMB of the ITAA 1936;
- section 82KZMC of the ITAA 1936;
- section 82KZMD of the ITAA 1936; and
- Part IVA of the 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 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. The Commissioner rules on the precise arrangement identified in this ruling.

9. 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

11. This Ruling applies to the Project that was ruled on in Product Ruling PR 2000/35. PR 2000/35 is now withdrawn on and from the date this Ruling is made. The former ruling applies to investors who entered into the arrangement prior to 24 May 2000. This Ruling applies to Growers wishing to take up an interest or interests that were not sold prior to 24 May 2000.

12. 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).

Previous Rulings

13. This Ruling replaces Product Ruling PR 2000/35, which is withdrawn on and from the date this Ruling is made. Product Ruling 2000/35 will continue to apply to investors who entered into the Project on or before 24 May 2000.

Withdrawal

14. 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

15. 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 a Product Ruling, received 15 May 2000;
- **Draft Kallamar Olive Project Prospectus, issued by Wandoo Horticulture Limited dated 1 January 2000;**
- **Draft Kallamar Olive Project Supplementary Prospectus, dated 12 May 2000;**
- Draft Kallamar Olive Project Constitution between Wandoo Horticulture Limited (the Manager) and Kallamar Estate Limited (the Lessor), dated 5 January 2000;
- **Draft Second Schedule Lease and Management Agreement** between Wandoo Horticulture Limited Kallamar Estate Limited and the Grower, received 8 March 2000;
- Kallamar Olive Project First Supplemental Deed between Wandoo Horticulture Ltd and Kallamar Estate Limited, received 15 March 2000;
- Lease between the Lessor, Kallamar Estate Limited, and the Lessee, Charters Securities Pty Ltd (the Custodian), undated;
- Sublease between the Lessor, Charters Securities Pty Ltd, and the Lessee, Kallamar Estate Ltd, undated;
- Olive Processing Agreement between Wandoo Olive Processing Pty Ltd (the Processor) and Wandoo Horticulture Limited, undated;
- Confirmation of verbal advice by Wandoo Horticulture Limited to engage ARM Nominees Pty Ltd as the Horticultural Contractor, dated 28 January 2000;
- Letter of intent between Wandoo Horticulture Limited and Gwydir Olives Pty Limited for the supply of Extra Virgin Olive Oil, dated 28 January 2000;
- Custodian Agreement between Wandoo Horticulture Limited (the Manager) and the Custodian, Charters Securities, undated;
- Compliance Plan for Kallamar Olive Project for Wandoo Horticulture Limited as the Responsible Entity, undated;

- Option Agreement for the Purchase of Land between the current owners of the land and Kallamar Estate Limited, dated 20 December 1999;
- Undertaking by Wandoo Horticulture Limited regarding the assignment of Growers' Interests, dated 8 March 2000, and
- Additional correspondence received from the applicant dated 22 February 2000, 23 February 2000, 8 March 2000 and 15 May 2000.

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

16. The documents highlighted are those 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 party to. The effect of these agreements is summarised as follows.

Overview

17. This arrangement is called the Kallamar Olive Project.

Location	45km north of Gingin, Western Australia
type of business each participant is carrying on	Establishment and operation of an irrigated, water efficient, capital intensive orchard growing oil olives.
Number of hectares under cultivation	150 hectares
Names used to describe the product	Kallamar Olive Project
size of the leased grove	0.5 hectares
Number of trees per hectare	350 trees
Expected production	13.7 tonnes of Olive Fruit per hectare at full production. 3007 litres of Olive Oil per hectare at full production.
the term of the investment in years	25 Years
initial cost Year 2000 Growers	\$16,143 (GST inclusive)

initial cost per hectare	\$32,286 (GST inclusive)
Year 2000 Growers	
initial cost Year 2001 Growers	\$18,701 (GST inclusive)
initial cost per hectare Year 2001 Growers	\$37,402 (GST inclusive)
ongoing costs	Management and Administration fees to the Manager and Rent to the Lessor.
other costs	Insurance (on request by the Grower), Harvesting Fees, Processing Fees of 10% of oil produced, Responsible Entity Bonus

18. Growers applying under this prospectus join as either Year 2000 Growers or Year 2001 Growers, depending on their date of application. The date of application also determines the date of execution of the Lease and Management Agreement and the period of provision of initial period services to which the Project Subscription Monies relates. The relevant application periods are summarised as follows:

Application lodged	Grower	Date of Execution	Total Initial Period Fee	Portion of Initial Period Fee for services to be provided by 30/6/2000	Period of provision of initial period services
On or before 31/5/2000	2000	on or before 31/5/2000	\$13,582	\$2,975	From date of execution of Lease and Management Agreement to 30/6/2001.
On or after 01/7/2000	2001	at any time between 1/7/2000 (inclusive) and the expiration of the Prospectus	\$15,501	\$0	From date of execution of Lease and Management Agreement to 30/6/2001.

(Note: All figures shown are exclusive of GST)

19. The Project is to carry out a large scale planting of olive trees upon land which is to be held by the Lessor and located 45 kilometres North of Gingin, in Western Australia. The Project is for a period of twenty five years. Under the Project, the Lessor leases to the Growers, to use and occupy, areas for growing olive trees for the production of olives and olive oil. The Growers engage the Manager to establish and maintain the Project and to harvest and process the olive fruit and market the olive produce of the Project. A Grower

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pays for the irrigation and trellising and staking system that will be installed on their leased grove. Unless the Grower has elected to sell the produce from their leased grove personally, the Manager will process the olive fruit and sell the olive oil on behalf of the Grower.

20. The establishment of the Project is subject to a minimum subscription of 100 leased groves. This ruling does not apply if the minimum subscription requirement is not achieved by 31 December 2000. The Manager may take oversubscriptions of up to 100 Leased Groves.

21. Each Grower must also subscribe for a minimum of one thousand five hundred shares in Kallamar Estate Limited at \$1 per share.

22. The minimum individual holding is one leased grove of 0.5 hectare. Overall, it is proposed that 150 hectares will be planted. Each leased grove will be identified by a reference number on a plan of the total grove. Upon acceptance of applications, each Grower receives a certificate for the leased grove(s) acquired. The Manager will maintain a register of Growers, identifying the leased groves held by Growers. Approximately 175 trees per leased grove (350 trees per hectare) will be planted. The Year 2000 Growers' trees will be planted in the September to October 2000 period. These trees are expected to be ready for the first commercial harvest in the year ended 30 June 2004. The Year 2001 Growers' trees will be planted in May to June 2001. These trees are expected to be ready for the first commercial harvest in the year ended 30 June 2005.

23. Possible projected returns for Growers are outlined in the Draft Prospectus. The projected returns depend on a range of assumptions and the Manager does not give any assurance or guarantee whatsoever in respect of the future success of or financial returns associated with entering into the Project. Based on the information supplied in the Draft Prospectus, a grower could expect to achieve a before tax internal rate of return of 14.6%. Growers will execute a Power of Attorney enabling Wandoo Horticulture Limited to act on their behalf as required when they make an application for Leased Groves.

24. Kallamar Estate Limited has entered into an Option Agreement for the Purchase of the Project Land with the current Land Owners. The agreement expires on 24 August 2000. The option must not be exercised before 31 May 2000. Upon minimum subscription being achieved, Kallamar Estate Limited shall purchase the land on which the orchard is to be established. Kallamar Estate Limited will lease the land to Charters Securities Pty Ltd who will sub-lease the Land to Kallamar Estate Limited. Kallamar Estate Limited will lease Leased Groves to the Growers.

Constitution

25. The Constitution is between the Project Manager, the Lessor and each Grower. It sets out the terms and conditions under which the Project Manager agrees to act for the Growers and to manage the Project. The Lease and Management Agreement is annexed to the Constitution and will be executed on behalf of a Grower following them signing the Application and Limited Power of Attorney Form in the Prospectus. Growers are bound by the Constitution by virtue of their participation in the Project.

Lease and Management Agreement

26. The Lease and Management Agreement sets out the roles and obligations of the parties to the agreement. It is entered into between the Manager and each Grower for each Leased Grove. The term of the agreement is until 30 June 2025. Under the agreement the Lessor grants a lease to each Grower and each Grower appoints the Manager to manage, administer, maintain, harvest and process the olive fruit and market the olive produce of the Project.

27. Under the terms of the Lease and Management Agreement a Grower agrees, amongst other things, not to:

- use or permit any other person to use the area for any purpose other than that of commercial horticulture and the Project;
- install or remove any trees, earth, gravel, stones, sand or minerals, or any fixtures from the leased grove without the consent of the Lessor;
- do anything which would invalidate or increase the premiums of any insurance policies in respect of the leased area; and
- cause nor permit anything on the leased grove that will cause a nuisance, disturbance, obstruction or cause damage.

28. In return, the Grower has the right to possess the leased grove without disturbance and to use common areas for purposes incidental to the use of the leased grove for commercial horticulture purposes. A Grower will at all times have full right, title and interest to the trees, fixtures and any olive produce from the leased grove and the right to have the olive produce from the leased grove sold for the benefit of the Grower. If Growers wish to remove trees or fixtures from the leased grove, they must make a request in writing to the Lessor.

29. Growers have a right of exclusive occupation of the leased grove. At the expiration of the term of the Lease and Management

Agreement, the trees and fixtures and any improvements remaining on the leased grove shall vest in the Lessor. Within 28 days of the expiry date of the Lease and Management Agreement, the Lessor may elect to acquire the trees and irrigation system at tax written down value.

30. Each Grower appoints the Manager to administer, establish, manage and maintain the trees on the leased grove, to harvest the olive fruit produce and to process or arrange for the processing of the olive fruit from the leased grove. The Manager accepts the appointment upon the terms and conditions in the Lease and Management Agreement and undertakes to provide the Services on behalf of each Grower. The Manager must arrange to plant, train, maintain, supervise and manage all the trees, the orchard and the commercial horticultural activities to be carried out by the Growers in accordance with good commercial practice. The Manager is responsible for the day to day running of the Project including, but not limited to the provision of the following services:

- ensure the Lessor has planted olive trees on the Leased Groves at a rate of not less than 350 trees per hectare;
- install and maintain the micro sprinkler or trickle irrigation system to the trees in the leased groves;
- cultivate, tend, train, prune, fertilise, replant, spray and otherwise care for the trees as and when required;
- keep in good repair access laneways within the leased groves;
- maintain in good repair and condition adequate fire-breaks in and about the leased groves;
- replace any trees that fail to establish or that die during the first three years of the Project;
- harvest the olives grown on the leased groves each year and deliver them to the processor; and
- market and sell the olive produce on behalf of the Growers.

31. Unless a Grower elects to collect and market the produce personally, the Manager is authorised to enter into contracts as agent for the Grower to collect, process and market the olive produce from the leased groves. The Manager will process and sell or market the olive produce on the Growers' behalf, for the best possible commercial price.

32. The Project does not involve guaranteed returns or non-recourse financing. There are no risk reduction mechanisms or express or implied undertakings to reverse the transactions if tax deductions are not allowed by the Commissioner.

Fees

33. The Growers will make the following payments per leased grove area for the first three years, commencing during the year ended 30 June 2000:

(a) For Year 2000 Growers

	Year ended 30/6/2000	Year ended 30/6/2001	Year ended 30/6/2002
Administration Fee	775	992	1,061 (refer para 34)
Management Fee	2,200	4,970	2,255 (refer para 35)
Irrigation	-	2,500	-
Tree purchase & planting	-	1,080	-
Ground preparation	-	285	-
Trellising & Staking	-	630	-
Rent	-	150	155
Shares in Property Co.	1,500	-	-
Total	4,475	10,607	3,471

(Note: All figures shown are exclusive of GST)

34. The administration fee payable by the Year 2000 Growers for the financial year ended 30 June 2002 is calculated using the base fee of \$1,030 indexed by the greater of:

- (a) 1.03; and
- (b) the inflation adjustment factor, which is calculated using the formula:
The CPI last published before 30 September/The CPI last published before 30 September of the previous year.

35. The management fee payable by the Year 2000 Growers for the financial year ended 30 June 2002 is calculated using the base fee of \$2,189 indexed by the greater of:

- (a) 1.03; and
- (b) the inflation adjustment factor, which is calculated using the formula:
The CPI last published before 30 September/The CPI last published before 30 September of the previous year.

(b) For Year 2001 Growers

	Year ended 30/6/2000	Year ended 30/6/2001	Year ended 30/6/2002
Administration Fee	-	1,978	1,189 (refer para 35)
Management Fee	-	8,347	2,526 (refer para 36)
Irrigation	-	2,800	-
Tree purchase & planting	-	1,220	-
Ground preparation	-	325	-
Trellising & Staking	-	705	-
Rent	-	126	173
Shares in Property Co.	-	1,500	-
Total	-	17,001	3,888

(Note: All figures shown are exclusive of GST)

36. The administration fee payable by the Year 2001 Growers for the financial year ended 30 June 2002 is calculated using the base fee of \$1,154 indexed by the greater of:

- (a) 1.03; and
- (b) the inflation adjustment factor, which is calculated using the formula:
The CPI last published before 30 September/The CPI last published before 30 September of the previous year.

37. The management fee payable by the Year 2001 Growers for the financial year ended 30 June 2002 is calculated using the base fee of \$2,452 indexed by the greater of:

- (a) 1.03; and
- (b) the inflation adjustment factor, which is calculated using the formula:
The CPI last published before 30 September/The CPI last published before 30 September of the previous year.

38. The Year 2000 fees will include payment for certain services which will be completed between 1 June 2000 and 30 June 2000.

39. For the initial period, being the date of execution of the Lease and Management Agreement to 30 June 2001, all fees will be payable in instalments as stipulated in the Lease and Management Agreement. Any Year 2001 Grower subscription made after 31 October 2000 must be accompanied by payment for all instalments due on or before the

date of application. For the remainder of the term, the Management Fees, Administration Fees and Rents for each year will be payable by 30 September of that year.

40. The Manager will not undertake any work on behalf of a Grower on a leased grove prior to the Grower subscribing for an interest in the Project.

41. The annual Harvesting Fee will be the actual cost of harvesting and transporting the olive fruit to a processing facility increased by 15%.

42. The Processing Company will retain 10% of all olive oil derived from the processing of olives from the Project as a Processing Fee.

43. A Responsible Entity Bonus shall be paid to Wandoo Horticulture Ltd, for the duration of the Project notwithstanding that it may have retired or resigned as the Responsible Entity. Where the Grower is a Non-electing grower, a bonus of 25% of the olive fruit harvest which is in excess of the projected yield tonnage will be payable each calendar year in which the olive fruit harvested from leased groves exceeds the projected yield tonnages set out in the Prospectus. Where the Grower is an Electing Grower the bonus payable is the greater of:

- 25% of the olive fruit harvest which is in excess of the projected yield tonnage in each calendar year in which the olive fruit harvested from leased groves exceeds the projected yield tonnages set out in the prospectus; and
- 25% of the excess of the actual yield volume over the projected yield volume of olive produce in each calendar year, in which the olive produce from leased groves exceeds the projected yield volumes set out in the prospectus.

44. The Manager will obtain insurance for a Grower's leased grove if requested to do so by the Grower in writing. The Grower will pay insurance premiums for such insurance.

45. The Application Monies will be banked into a trust account held by Charters Securities Pty Ltd which acts as Custodian. The application monies will only be released by Charters Securities Pty Ltd following:

- Minimum subscription being achieved; and
- The Manager and the Lessor being able to issue interests in the Project (i.e., the Lessor owns the land).

46. The proceeds of sale of the olive produce will be paid to the Custodian, and the Custodian will deposit those proceeds into the produce fund. Proceeds received by the Custodian are to be distributed in the following order of priority:

- to the Manager for any outstanding Annual Fees and to reimburse the Manager for its out of pocket expenses; then
- to the Growers under each Project Agreement and the Constitution.

Option Agreement for the Purchase of Land

47. This agreement is between the current owners of the land and Kallamar Estate Limited. The agreement provides an option for the Lessor to purchase the Property being that part of Portion of Swan Location 1375 and being Lot 5 on Plan 13245 and being the whole of the land comprised of Title Volume 1807 Folio 992. The Lessor must not exercise the option prior to 31 May 2000 and no later than 24 August 2000.

Compliance Plan

48. The Manager has prepared a Compliance Plan in accordance with the Corporations Law. Its purpose is to ensure that the Manager meets its obligations as the Responsible Entity of the Project and that the rights of the Growers are protected.

Finance

49. Growers can fund their investment in the Project themselves or borrow from an independent lender.

50. This Ruling does not apply if a Grower enters into a finance agreement that includes 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 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 or rate of interest is non-arm's length;
- 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.

51. There is no agreement, arrangement or understanding between any entity or party associated with the Project and any financial or other institution for the provision of any finance to the Grower for any purpose associated with the Project.

Ruling

Goods and services tax

52. For a Grower who invests in the Project, sections 27-5 or 27-30 of the ITAA 1997 will apply to reduce the amount of any deduction allowable by any GST input tax credit to which the Grower is entitled or, in the case of section 27-5, a decreasing adjustment that a Grower has.

Allowable deductions

53. For a Grower who invests in the Project on or before 31 May 2000, the deductions shown in the Table below will be available for the years ended 30 June 2000 to 30 June 2002.

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Expenses	Legislation ITAA 1997	Refer Note	Year 1 30/6/2000	Year 2 30/6/2001	Year 3 30/6/2002
Administration Fee	8-1	(i)	775	992	1,061
Management Fee	8-1	(i)	2,200	4,970	2,255
Irrigation	387-125	(ii)	-	833	833
Tree Purchase and Planting	387-165	(iii)	-	-	-
Ground Preparation	387-165	(iii)	-	9 mths	-
Trellising & Staking	42-15	(iv)	-	189	252
Rent	8-1	-	-	150	155
Insurance	8-1	(v)	-	-	-
Harvesting Fee	8-1	(v)	-	-	-
Processing Fee	8-1	(v)	-	-	-
Responsible Entity Bonus	8-1	(v)	-	-	-
Total	-	-	2,975	7,134	4,556

(Note: All figures shown are exclusive of GST)

54. For a Grower who invests in the Project after 31 May 2000, the deductions shown in the Table below will be available for the years ended 30 June 2001 and 30 June 2002.

Expenses	Legislation ITAA 1997	Refer Note	Year 1 30/6/2000	Year 2 30/6/2001	Year 3 30/6/2002
Administration Fee	8-1	(i)	-	1,978	1,189
Management Fee	8-1	(i)	-	8,347	2,526
Irrigation	387-125	(ii)	-	933	933
Tree Purchase and Planting	387-165	(iii)	-	-	-
Ground Preparation	387-165	(iii)	-	-	-
Trellising & Staking	42-15	(iv)	-	47	282
Rent	8-1	-	-	126	173
Insurance	8-1	(v)	-	-	-
Harvesting Fee	8-1	(v)	-	-	-
Processing Fee	8-1	(v)	-	-	-
Responsible Entity Bonus	8-1	(v)	-	-	-
Total	-	-	-	11,431	5,103

(Note: All figures shown are exclusive of GST)

Notes:

- (i) The deduction for the Administration Fee and the Management Fee for the financial year ended 30 June 2002 has been calculated by indexing the base fee using the adjustment factor of 1.03. If the inflation adjustment factor for the year ended 2002 is greater than 1.03 a greater deduction will be allowable.
- (ii) A deduction under section 387-125 for capital expenditure for the irrigation system is calculated on the basis of one third of the capital expenditure in the year in which the expenditure is incurred, and one third in each of the next 2 years of income.
- (iii) A deduction under section 387-165 for expenditure on acquiring and planting the olive trees will be calculated on the basis of the olive trees, as horticultural plants, entering their first commercial season in the year ended 30 June 2004 or 30 June 2005 and a Grower determining, under section 387-175, that they have an 'effective life' for the purposes of section 387-185 of 30 years or more. This results in a write-off rate of 7%. The Manager is to advise Growers when the olive trees enter their first commercial season.
- (iv) For Growers who are 'small business taxpayers' and who comply with the conditions in section 42-345, the deduction for depreciation of trellising and staking is determined using the rates in section 42-125 and the formula in either subsection 42-160(1), 'diminishing value method', or subsection 42-165(1), 'prime cost method'. For the year ended 30 June 2001 the deduction allowed will depend upon the number of 'days owned', being the number of days in the income year in which the Grower owned an interest in the trellising and staking. Where the Grower is a Year 2000 Grower the trellising and staking is to be installed in the September to October 2000 period. Where the Grower is a Year 2001 Grower the trellising and staking is to be installed in May to June 2001. The Manager is to advise Growers of the number of days in which the Growers owned an interest in the trellising and staking. The trellising and staking has an effective life of 3 to 4 years. The deductions available for succeeding years have been calculated using the prime cost method at a rate of 40%, assuming that is the method that the Grower has chosen under section 42-25. If the Grower elects to use the diminishing value method the rate for calculating the

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deduction will be 60%. The deductions available in Years 2 and 3 if the diminishing value method is used are estimated to be:

- (a) For a Grower who invests on or before 31 May 2000:

Expenses	Legislation ITAA 1997	Year 1	Year 2	Year 3
Trellising & Staking	42-15		284	208

- (b) For a Grower who invests after 31 May 2000:

Expenses	Legislation ITAA 1997	Year 1	Year 2	Year 3
Trellising & Staking	42-15		71	381

- (v) The amount will be deductible in the year in which they are incurred

Deduction for depreciation for Growers who are not small business taxpayers

55. The following is an estimate of deductions available for trellising and staking to a Grower, who is not a 'small business taxpayer' and is carrying on a business, over the first three years of a Grower's investment:

- (a) For a Grower who invests on or before 31 May 2000:

Expenses	Legislation ITAA 1997	Refer Note	Year 1 30/6/2000	Year 2 30/6/2001	Year 3 30/6/2002
Trellising & Staking	42-15	(vi)	-	119	158

(Note: All figures shown are exclusive of GST)

- (b) For a Grower who invests after 31 May 2000:

Expenses	Legislation ITAA 1997	Refer Note	Year 1 30/6/2000	Year 2 30/6/2001	Year 3 30/6/2002
Trellising & Staking	42-15	(vi)	-	30	176

(Note: All figures shown are exclusive of GST)

Notes:

- (vi) For Growers who are not 'small business taxpayers' the deduction for depreciation of trellising and staking is determined using the formula in either subsection 42-160(3), 'Diminishing value method', or subsection 42-165(2A), 'Prime cost method'. Those formulae use 'effective life' to determine the deduction for depreciation. For the year ended 30 June 2001 the deduction will depend upon the number of 'days

owned', being the number of days in the income year in which the Grower owned an interest in the trellising and staking. The Manager is to advise any affected Growers of the relevant details of their depreciation deductions for the year ended 30 June 2001. The deduction for succeeding years has been calculated using the prime cost method at a rate of 25% on the assumption that the effective life of the trellising is 4 years. If the Grower elects to use the diminishing value method, the rate for calculating the deduction will be 37.5%. The deductions available in Years 2 and 3 are estimated to be:

(a) For a Grower who invests on or before 31 May 2000:

Expenses	Legislation ITAA 1997	Year 1	Year 2	Year 3
Trellising & Staking	42-15		178	169

(b) For a Grower who invests after 31 May 2000:

Expenses	Legislation ITAA 1997	Year 1	Year 2	Year 3
Trellising & Staking	42-15		45	248

Assessable income

56. For a Grower who invests in the Project, any income received from the sale of Olive Produce from the Leased Groves will be assessable income under section 6-5.

Sections 82KZM, 82KZMB, 82KL and Part IVA

57. For a Grower who invests in the Project the following provisions have application as indicated:

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

Explanations

Sections 27-5 and 27-30 - Goods and Services tax

58. Section 27-30 of the ITAA 1997 operates 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 on or before 1 July 2000) includes an amount relating to an input tax credit to which a Grower will be entitled on or after 1 July 2000.

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

Subdivision 960-Q - Small business taxpayers

60. In this product ruling the term 'small business taxpayer' is relevant for the purposes of depreciation of trellising.

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

62. 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.

63. '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).

Section 8-1

64. It is appropriate, as a starting point, to consider whether the rent, and the administration and management fees are deductible under paragraph 8-1(1)(a). This consideration proceeds on the following basis:

- the outgoing in question must have a sufficient connection with the operations or activities that directly gain or produce the taxpayer's assessable income;

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

65. Olive growing activities 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 olives from the scheme will constitute gross assessable income under section 6-5. 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 olive trees.

66. Generally, a Grower will be carrying on a business of growing olives where:

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

67. Under the Lease and Management Agreement, Growers have rights in the form of a lease over an identifiable area of land consistent with the intention to carry on a business of commercial olive growing. Under the Lease and Management Agreement, Growers appoint Wandoo Horticulture Ltd, as Manager, to provide services such as harvesting. The agreement gives Growers full right, title and interest in the olives produced and the right to have the olives processed and the olive oil sold for their benefit.

68. Under the Agreement, Growers appoint the Manager to provide services such as arranging the pre-planting and planting of olive trees (which are owned and paid for by the lessee), installing the trellising and irrigation, and all operations necessary to develop and

maintain a mature fruit bearing tree. The Manager is also responsible for harvesting and processing the olive fruit and selling the olive oil.

69. The Lease and Management Agreement gives Growers an identifiable interest in specific olive trees and a legal interest in the land by virtue of a lease. Growers have the right personally to market the produce attributed to their leased grove or they can elect to use the Manager, Wandoo Horticulture Ltd, to process and market the produce for them.

70. Growers have the right to use the land in question for horticultural purposes and to have the Manager come onto the land to carry out its obligations under the Agreement. 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 Manager's activities. Growers are able to terminate arrangements with the Manager in certain instances, such as cases of default or neglect. The activities described in the Agreement are carried out on the Growers' behalf.

71. The general indicators of a business, as used by the Courts, are described in Taxation Ruling TR 97/11. Growers to whom this Ruling applies intend to derive assessable income from the Project. This intention is related to projections in the Prospectus that suggest the Project should return a 'before-tax' profit to the Growers, i.e., a 'profit' in cash terms that does not depend in its calculation on the fees in question being allowed as a deduction.

72. Growers will engage the professional services of a Manager with appropriate credentials. The services are based on accepted horticultural practices and are of the type ordinarily found in horticulture activities.

73. Growers have a continuing interest in the olive trees from the time they are acquired until they reach the end of the most productive period of their life. There is a means to identify which olive trees Growers have an interest in. The olive growing 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' olive growing activities will constitute the carrying on of a business.

74. The management fees, administration fees and rent fees associated with the olive growing 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, 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 paragraph 8-1(1)(a) are met. The exclusions of subsection 8-1(2) do not apply.

Expenditure of a capital nature

75. Any part of the expenditure of a Grower entering into a horticultural business that is attributable to acquiring an asset or advantage of an enduring kind is generally capital or capital in nature and will not be an allowable deduction under section 8-1. In this Project, the costs of irrigation, trellising, tree purchase and planting and ground preparation are considered to be capital in nature. The fees for these expenditures are not deductible under section 8-1. However, expenditure of this nature can fall for consideration under specific capital write-off provisions of the ITAA 1997.

Section 42-15: trellising and staking expenditure

76. Growers accepted into the Project incur expenditure on trellising and staking upon which the olive trees are attached. The trellising and staking is to be used on their behalf in the operation of the olive growing business and is attached to the land as a fixture. This expenditure is of a capital nature.

77. Under section 42-15, a taxpayer can deduct an amount for depreciation of a unit of plant used for the purpose or purposes of producing assessable income where they are the owner or quasi-owner of that plant. However, where an item is affixed to land so that it becomes a fixture, at common law it becomes part of the land and is legally, absolutely owned by the owner of the land.

78. It is, however, accepted in certain circumstances that a lessee is entitled to claim depreciation where they are considered to be the owner of those improvements. Income Tax Ruling IT 175 sets out the Australian Taxation Office's (ATO's) views on this issue. Where a lessee is considered to own the improvements under a state law, as detailed in the Ruling, or where they have a right to remove the fixture or are entitled to receive compensation for the value of the fixture, the ATO accepts the lessee is entitled to claim depreciation for the fixture.

79. Under section 42-15, Growers are entitled to depreciation deductions for expenditure of \$630 for year 2000 Growers and \$705 for year 2001 Growers, relating to the acquisition and installation of trellises and stakes on the land. The deduction available, however, will depend on whether or not a Grower is a 'small business taxpayer' as defined in section 960-335 and, if so, whether the Grower complies with the conditions contained in section 42-345.

80. The depreciation deduction available to a Grower, who is a 'small business taxpayer' and who complies with the conditions

contained in section 42-345, is calculated using the cost of the trellising and a rate of 40% prime cost or 60% diminishing value. These accelerated rates of depreciation are shown in section 42-125 and apply to plant with an effective life of between 3 and 5 years.

81. Growers who are not 'small business taxpayers' will have entered the Project after 11:45am, AEST, 21 September 1999, and will not be able to claim accelerated depreciation on plant used in the Project because of section 42-118. The deduction for such Growers is calculated using the cost of the trellising and its effective life only. Subdivision 42-C provides the choice of methods available for determining the effective life of plant.

82. A Grower accepted into the Project enters into a lease for a right to occupy certain land upon which they are entitled to grow olive trees to conduct a horticultural business. Subject to the terms and conditions of the Lease and Management Agreement, they have a right to remove the olive trees and fixtures within their leased grove.

83. The Manager will advise Growers of the date the trellising and staking is installed and from when it begins to be used for the purpose of producing assessable income. Therefore, the cost that relates to the acquisition and installation of trellises and stakes on the land will be eligible for depreciation deduction by the Growers, who are small business taxpayers, under section 42-125, at a rate of 40% prime cost or 60% diminishing value from this date. Growers, who are not small business taxpayers, will be eligible for a depreciation deduction under subsections 42-160(3) or 42-165(2A), based on an effective life of 4 years, at a rate of 25% prime cost or 37.5% diminishing value from this date.

Subdivision 387-B: irrigation expenditure

84. 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.

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

Section 387-165: horticulture expenditure

86. Section 387-165 allows capital expenditure on establishing horticultural plants for use in a horticultural business to be written off for tax purposes. Costs of establishing horticultural plants may include the cost of acquiring the plants, the cost of establishing the plants, and the costs of ploughing, contouring, top dressing, fertilising and stone removal. Expressly excluded is expenditure incurred on draining swamps or clearing land. Under subsection 387-170(3), the definition of 'horticulture' includes the cultivation of olive trees. For the purpose of this Subdivision, a lessee or licensee of land carrying on a business of horticulture is treated as owning the plants growing on that land rather than the actual owner of the land.

87. The write-off commences from the time the olive trees are used or held ready for use for the purpose of producing assessable income in commercial horticulture. The write-off deductions will commence when the olive trees enter their first commercial season. Where the olive trees are planted in or about September to October 2000 and May to June 2001, it is projected that these olive trees will become commercially productive after a period of 4 years. The Manager will advise the Grower of this event.

88. Under this Subdivision, if the effective life of the plant is more than 3 years, an annual deduction is allowable on a prime cost basis during the plant's maximum write-off period.

89. The effective life of a plant is to be determined objectively and should take into account all relevant circumstances. It is estimated that the olive trees will have an effective life in excess of 30 years. The write-off rate for horticultural plants with an effective life of 30 years or more is 7%.

Alternative view

90. The applicant has indicated disagreement with the view that the olive trees do not commence to be used for the purpose of producing assessable income in a horticultural business until their first commercial season. The applicant has submitted an alternative view that the olive trees commence to be so used immediately after their establishment. This view is submitted by the applicant on the basis that the olive trees can begin to be used for the purpose of producing assessable income in a horticulture business once they have been planted.

Sections 82KZM and 82KZMB to 82KZMD

91. 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 to be wholly done within the same year of income as the execution of the relevant agreement.

92. Under the Lease and Management Agreement, administration and management fees of \$2,975 per Leased Grove for year 2000 Growers and \$10,325 per Leased Grove for year 2001 Growers will be incurred on execution of the Agreement. This fee is charged for providing services to a Grower by 30 June of the year of execution of the Agreement. The fee is expressly stated to be for a number of specified services. For this Ruling's purposes, no explicit conclusion can be drawn from the arrangement's description that the fee has been inflated to result in reduced fees being payable for subsequent years.

93. There is also no evidence that might suggest the services covered by the fee 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 a Grower who is a small business taxpayer. Sections 82KZMB, 82KZMC and 82KZMD also have no application to Growers in the Project who are not small business taxpayers since the services to be provided in respect of the initial fee are to be wholly done in the same year of income as the expenditure is incurred (see paragraph 82KZMA(3)(c)).

94. Subparagraph 82KZM(b)(ii) excludes expenditure of less than \$1,000 from the scope of section 82KZM. The rent fee in respect of the years ended 30 June 2001 and 2002, payable by Year 2000 Growers and Year 2001 Growers, who are small business taxpayers is less than \$1,000. Again, the basic precondition for the operation of section 82KZM is not satisfied and it will not apply to the expenditure for the rent fee. For those Growers who are not small business taxpayers, subsection 82KZMA(4) has the effect of ensuring that sections 82KZMA to 82KMAD do not apply to expenditure of less than \$1,000.

Section 82KL

95. 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’.

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

97. Section 82KL’s operation depends, among other things, on the identification of a certain quantum of ‘additional benefit(s)’. Insufficient ‘additional benefits’ will be provided to trigger the application of section 82KL. It will not apply to deny the deduction otherwise allowable under section 8-1.

Part IVA

98. For Part IVA to apply there must be a ‘scheme’ (section 177A), a ‘tax benefit’ (section 177C), and a dominant purpose of entering into or carrying out the scheme to enable the relevant taxpayer to obtain a tax benefit in connection with the scheme (section 177D).

99. The Kallamar Olive Project will be a ‘scheme’. The Growers will obtain a ‘tax benefit’ from entering into the scheme, in the form of the tax deductions per leased area that would not have been obtained but for the scheme. However, it is not possible to conclude the scheme will be entered into or carried out with the dominant purpose of enabling the relevant taxpayer to obtain this tax benefit.

100. Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the sale of the olive fruit from the olive trees. Further, there are no features of the Project, such as the payment of excessive management fees and non-recourse loan financing by any entity associated with the Project, that might suggest the Project was so ‘tax driven’, and so designed to produce a tax deduction of a certain magnitude, that it would attract the operation of Part IVA. No ruling is given on the application of Part IVA to financing arrangements entered into between investors and other financiers in respect of lending arrangements to invest in the Project.

Section 6-5: assessable income

101. Gross sale proceeds derived from the sale of olive oil from the Project will be assessable income of the Growers, under section 6-5.

102. Once harvested, a Grower's olive produce can be trading stock of the Grower. As a consequence, if olive produce is on hand at the end of the income year, the Grower will need to account for that trading stock in accordance with the trading stock provisions in Part 2-25 of the ITAA 1997. In Income Tax Ruling IT 2001, it is accepted that costs associated with the establishment of an olive grove do not form part of the trading stock ultimately produced by the olive grove.

Part 3-1: capital gains tax

103. To enter the Project, each Grower or an associate will subscribe for 1,500 ordinary \$1 shares in respect of each 0.5 hectare leased 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.

104. 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.

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Related Rulings/Determinations:

PR 1999/95; PR 2000/35; TR 92/1;
TR 92/20; TR 94/25; TR 98/22;
TR 97/11; TR 97/16; TD 93/34;
IT 175; IT 2001

Subject references:

- carrying on a business
- commencement of business
- fee expenses
- interest expenses
- management fees expenses
- primary production
- primary production 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:

- ITAA 1936 82KH(1)
- ITAA 1936 82KH(1F)(b)
- ITAA 1936 82KL
- ITAA 1936 82KL(1)
- ITAA 1936 82KZM
- ITAA 1936 82KZM (b) (ii)
- ITAA 1936 82KZMA
- ITAA 1936 82KZMA (3) (c)
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- ITAA 1936 82KZMB
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- ITAA 1997 6-5
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- ITAA 1997 8-1(1)(a)
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- ITAA 1997 27-30
- ITAA 1997 42-15
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- ITAA 1997 Subdiv 42-C
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- ITAA 1997 42-125
- ITAA 1997 42-160(1)
- ITAA 1997 42-160(3)
- ITAA 1997 42-165(1)
- ITAA 1997 42-165(2A)
- ITAA 1997 Subdiv 42-K
- ITAA 1997 42-345
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- ITAA 1997 Pt 3-1
- ITAA 1997 Subdiv 387-B
- ITAA 1997 387-125
- ITAA 1997 387-165
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- ITAA 1997 387-175
- ITAA 1997 387-185
- ITAA 1997 Subdiv 960-Q
- ITAA 1997 960-335
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- ITAA 1997 960-345
- ITAA 1997 960-350

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