


# ***PR 2001/164 - Income tax: Carina Park Almond Stage 4 Project***

 This cover sheet is provided for information only. It does not form part of *PR 2001/164 - Income tax: Carina Park Almond Stage 4 Project*

 This document has changed over time. This is a consolidated version of the ruling which was published on *19 December 2001*



## Product Ruling

### Income tax: Carina Park Almond Stage 4 Project

---

Contents	Para
What this Product Ruling is about	1
Date of effect	11
Withdrawal	13
Arrangement	14
Ruling	35
Explanations	57
Example	116
Detailed contents list	117

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

#### **Preamble**

*The number, subject heading, and the **What this Product Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. Product Ruling PR 1999/95 explains Product Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

#### **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 refers. In this Ruling this arrangement is sometimes referred to as the Carina Park Almond Stage 4 Project or simply as 'the Project'.

### Tax laws

2. The tax laws dealt with in this Ruling are:
- Section 6-5 of the *Income Tax Assessment Act 1997* ('ITAA 1997');
  - Section 8-1 (ITAA 1997);
  - Section 17-5 (ITAA 1997);
  - Section 70-35 (ITAA 1997);
  - Section 328-285 (ITAA 1997);
  - Division 27 (ITAA 1997);
  - Division 35 (ITAA 1997);
  - Division 40 (ITAA 1997);
  - Division 328 (ITAA 1997);
  - Section 82KL of the *Income Tax Assessment Act 1936* ('ITAA 1936');
  - Section 82KZL (ITAA 1936);
  - Section 82KZME (ITAA 1936);
  - Section 82KZMF (ITAA 1936); and
  - Part IVA (ITAA 1936).

### Goods and Services Tax

3. In this Ruling all fees and expenditure referred to include Goods and Services Tax ('GST') where applicable. In order for an entity (referred to in this Ruling as a Grower) to be entitled to claim input tax credits for the GST included in its expenditure, it must be registered or required to be registered for GST and hold a valid tax invoice.

**Changes in the Law**

4. The Government is currently evaluating further changes to the tax system in response to the *Ralph Review of Business Taxation* and continuing business tax reform is expected to be implemented over a number of years. Although this Ruling deals with the taxation legislation enacted at the time it was issued, later amendments may impact on this Ruling. Any such changes will take precedence over the application of this Ruling and, to that extent, this Ruling will be superseded.

5. Taxpayers who are considering participating in the Project are advised to confirm with their taxation adviser that changes in the law have not affected this Product Ruling since it was issued.

**Note to promoters and advisers**

6. Product Rulings were introduced for the purpose of providing certainty about tax consequences for participants in projects such as this. In keeping with that intention, the Tax Office suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Ruling is issued.

**Class of persons**

7. The class of persons to whom this Ruling applies is the persons who are more specifically identified in the Ruling part of this Product Ruling and who enter into the arrangement specified 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. In this Ruling, each of these persons, referred to as 'Growers', will have accepted an offer made under subsections 708(1)-(11) of the Corporations Act 2001.

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

**Qualifications**

9. The Commissioner rules on the precise arrangement identified 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. The Ruling will be withdrawn or modified.

10. A Product Ruling may only be reproduced in its entirety. Extracts may not be reproduced. As each Product Ruling is copyright, apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to the Manager, Legislative Services, AusInfo, GPO Box 1920, Canberra ACT 2601.

## Date of effect

---

11. This Ruling applies prospectively from 19 December 2001, 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).

12. If a taxpayer has a more favourable private ruling (which is legally binding), the taxpayer can rely on that private ruling if the income year to which it relates has ended or has commenced but not yet ended. However if the arrangement covered by the private ruling has not commenced, 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

---

13. This Product Ruling is withdrawn and ceases to have effect after 30 June 2004. 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 arrangement specified below. 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 person's involvement in the arrangement.

## Arrangement

---

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

- Application for Product Ruling dated 9 August 2001;
- Draft Carina Park Almond Project Stage 4 Investment Offer Details prepared by Blaxland Rural Investments Limited ("BRIL");

- **Allotment Agreement** to be entered into by each Grower and BRIL;
- **Management Agreement** to be entered into by each Grower and BRIL;
- Lease Agreement between Kyndalyn Park Pty Ltd as Lessor and the new Custodian as Lessee and BRIL as Guarantor;
- Sublease Agreement between the new Custodian as Sublessor and BRIL as Sublessee;
- Almond Orchard Management Agreement between Select Harvest Limited and BRIL; and
- Letters and attachments from the Tax Adviser and the Applicant dated 24 October 2001, 30 October 2001, 2 November 2001 and 27 November 2001.

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

15. In accordance with the above documents, a Grower who participates in the arrangement must have accepted an offer that was made under section 708 of the Corporations Act 2001. **This Ruling does not apply unless the Grower:**

- has accepted a 'personal offer' under subsections 708(1)-(7) of the Corporations Law; or
- is a 'sophisticated investor' for the purposes of subsections 708(8)-(9) of the Corporations Law; or
- has accepted an offer made by a licensed dealer where the offer meets the requirements of subsection 708(10) of the Corporations Law; or
- is a 'professional investor' for the purposes of paragraphs (a), (b) or (h) of subsection 708(11) of the Corporations Law.

16. Each of these categories is explained in paragraphs 57 to 64 in the Explanations area of this Product Ruling. The documents highlighted are those Growers enter into or become a party to. 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, to which the Grower, or an associate of the Grower, will be a party. The effect of these agreements may be summarised as follows.

**PR 2001/164****Overview**

17. This arrangement is called the ‘Carina Park Almond Project Stage 4’.

Location	Near Robinvale in Victoria bordering the Murray River 85 kms east of Mildura
Type of business each participant is carrying on	Commercial growing and cultivation of almond trees for eventual harvesting and selling of almonds
Number of hectares under cultivation	6
Size of minimum Grower’s Allotment	0.4 hectare
Number of trees per hectare	250
The term of the Project	23 years
Initial cost per allotment	\$8,242 (see paragraph 29 for details)
Initial cost on per hectare basis	\$20,605
Other costs	Processing and marketing fees

**The Project Land**

18. The Project Land is part of an area known as Carina Park and is owned by Kyndalyn Park Pty Ltd. The land will be leased to the new Custodian, which will in turn, sublease the land to BRIL. Information provided with the Application described the land for this Project as part of Irrigation block 35 of Lot 1, Parish of Annuello, Volume 9481, Folio 981.

19. Growers participating in the Project enter into an Allotment Agreement and a Management Agreement. A Grower must apply for a minimum of 1 Allotment. There is no minimum subscription that needs to be reached before the Project proceeds.

**Allotment Agreement**

20. BRIL will grant a licence to each Grower, by way of an Allotment Agreement, to conduct almond-growing activities on the Land. Information provided with the Product Ruling Application states that a licence will include the trees, internal irrigation and stakes on the allotment.

21. Pursuant to clause 1.1 of the Allotment Agreement, BRIL grants each Grower a licence to:

- to use and occupy the Grower's Allotment for the purpose only of growing, maintaining and harvesting the Trees;
- the right to use the supplied irrigation system and draw water made available to the Allotment from the Water Licences or from any other source provided by BRIL to the extent required to irrigate the Grower's Trees; and
- to use in common with all other Growers the horticultural infrastructure on the Land required for the Project.

22. The Allotment Agreement will commence on the date BRIL accepts the Grower's application under the Offer Document for the Project and will continue until the termination of the Project at 30 June 2024 (cl. 2.1). BRIL's right to require the Grower to transfer to BRIL or its nominee the Grower's trees and allotment irrigation system on termination of the Project is detailed in clause 2.2.

23. The Grower's rights and obligations are set out in clause 4. Under this agreement, the Grower may, for the better performance of its obligations under this Agreement, employ any person as an agent (cl. 4.2).

24. BRIL's obligations are set out in clause 5. Clause 6.1 provides the amount of licence fees payable by a Grower. The table in paragraph 29 shows the fees for the first three years as contemplated by the Allotment Agreement.

**Management Agreement**

25. The Management Agreement sets out the terms and conditions of BRIL's appointment by the Grower as an independent contractor to manage the Allotment (cl. 1). The Management Agreement will commence on the date BRIL accepts the Grower's application under the Offer Document for the Project and will continue until the termination of the Project at 30 June 2024 (cl. 2).



26. Clause 3.1 stipulates the management and administration duties of BRIL during the year ended 30 June 2002. Among others, these duties are as follows:

- manage the Grower's Allotment so that it will be suitable for the growing of almond trees;
- monitor the internal irrigation system for pressure, water quality, drip speed leakages, and layout of drip lines prior to transfer to Grower, repairs following first season use;
- inspect all trees for death or damage;
- destroy any trees which a reasonable horticulturist would destroy having regard to the best interests of the remaining unaffected trees and almonds on the Allotment and neighbouring land, and provide replants;
- realign stakes and irrigation lines, undertake a tree count to ensure full tree numbers are still alive and in good order;
- provide suitable irrigation, fertilisation and nutrients to the Trees as and when required in order to promote the production of almonds and to maximise yields;
- as far as reasonably possible keep the Grower's Allotment free from any competitive weeds or other vegetation which may affect growth or yield of the Trees;
- general commercial overview of the orchard development;
- eradicate as far as possible any existent weeds, pests, or diseases which may affect the growth of the almond trees;
- review the Grower's Allotment for any evidence of soil degradation or erosion and implement prevention methods and programs to improve soil quality;
- administration and compliance duties;
- maintain in good repair and condition existing buildings, machinery, fire-breaks, wind-breaks, access roads, tracks and fences which are required for managing and protecting the Grower's Allotment;
- embark on such operations as may be required to prevent or combat land and soil degradation on the Allotments and maintain soil quality on the Allotment;

- if consistent with the production of high quality almonds and, if required, then eradicate, as far as reasonably possible, any insects, pests or diseases which may affect the growth or yield of the Trees;
- comply with all laws and regulations relating to the use and occupancy of the Allotment and the actions being carried out on the Allotment; and
- comply with the Allotment Agreement for the Grower's Allotment (other than the payment of fees) (cls. 3.1(a) to (o)).

27. BRIL is also obliged to continue to manage and maintain the Grower's Allotment following the transfer of the trees to the Growers. BRIL will provide the following services:

- test the maturity of a sample of almonds at the appropriate time estimated by BRIL to determine whether the Trees are ready for harvesting;
- harvest the Trees on the Grower's Allotment at or around the time estimated by BRIL to maximise the return of produce from all of the Allotments established at or around the same time as the Grower's Allotment;
- transfer the harvested almonds to available facilities for processing;
- carry out the processing duties; and
- subject to the Grower's right to take and market produce following at least three months' written notice from the Grower to BRIL prior to a Production Period, market and sell the Almonds Attributable to the Grower's Allotment using reasonable endeavours to obtain the maximum price available (cls 3.2(a) to (n)).

28. Clause 4 of the Management Agreement provides for BRIL's remuneration in consideration of BRIL carrying out its duties under the Management Agreement.

### **Project Fees**

29. The fees per 0.4 hectare Allotment are shown in the table below.

**PR 2001/164**

<b>Fee type</b>	<b>30 June 2002</b>	<b>30 June 2003</b>	<b>30 June 2004</b>
	Year 1	Year 2	Year 3
Costs of preparing & executing the allotment licence and associated administration, etc., plus first year licence fees	\$1,440		
Licence fee		\$770	\$770
Fee for procuring and managing water licence	\$440		
1 <sup>st</sup> year irrigation water	\$563		
Provision and management of the Water Licences		\$563	\$574
Management fee	\$5,084	\$3,268	\$2,384
Management and administration	\$715		
Processing fee			\$148
Marketing fee			\$93
<b>Total</b>	<b>\$8,242</b>	<b>\$4,601</b>	<b>\$3,969</b>

30. The Management Agreement and the Allotment Agreement provide that all fees are payable in the same financial year as when the services to those fees are provided. The fees for the years ending 30 June 2002 to 30 June 2004 are due and payable on the dates shown in Schedule 1 of the Management Agreement. The processing and marketing fees are determined according to clauses 4.4, 4.5 and 4.6 of the Management Agreement.

31. Fees payable for the year ending 30 June 2005 and subsequent financial years will be paid from the gross income attributable to the Grower's Allotment from the previous financial year and if the gross income attributable to the Grower's Allotment is insufficient then the fees owing may be carried forward to a subsequent financial year until

the fees are paid in full. However, fees for any financial year are a debt due and owing by the Growers to BRIL.

### **Finance**

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

33. BRIL will inform Growers of the finance facility that is available from an institutional lender. BRIL has provided information on the terms of the financing arrangement of this facility.

34. This Ruling does not apply if the finance arrangement entered into by the Grower includes or has any of the following features:

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' are or will be granted to the borrowers for the 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 payments of 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, directly or indirectly) back to the lender or any associate of the lender;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- entities associated with the Project are involved or become involved in the provision of finance to Growers for the Project.

## **Ruling**

---

### **Application of this Ruling**

35. This Ruling applies only to Growers who are accepted to participate in the Project on or before 31 December 2001 and who

have executed an Allotment Agreement and a Management Agreement on or before that date. The Grower's participation in the Project must constitute the carrying on of a business of primary production.

36. A Grower is not eligible to claim any tax deductions until the Grower's application to enter the Project is accepted and the Project has commenced.

### **The Simplified Tax System ('STS') - Division 328**

37. For a Grower participating in the Project, the recognition of income and the timing of tax deductions, including those related to capital allowances, is different depending on whether the Grower is an 'STS taxpayer'. To be an 'STS taxpayer' a Grower:

- must be eligible to be an 'STS taxpayer'; and
- must have elected to be an 'STS taxpayer'.

### **Qualification**

38. This Product Ruling assumes that a Grower who is an 'STS taxpayer' is so for the income year in which their participation in the Project commences. A Grower may become an 'STS taxpayer' at a later point in time. Also, a Grower who is an 'STS taxpayer' may choose to stop being an 'STS taxpayer', or may cease to be eligible to be an 'STS taxpayer', during the term of the Project. These are contingencies relating to the circumstances of individual Growers that cannot be accommodated in this Ruling. Such Growers can ask for a private ruling on how the taxation legislation applies to them.

### **Tax outcomes for Growers who are not 'STS taxpayers'**

#### **Assessable Income - Section 6-5**

39. That part of the gross sales proceeds from the Project attributable to the Grower's produce, less any GST payable on those proceeds (section 17-5), will be assessable income of the Grower under section 6-5.

40. The Grower recognises ordinary income from carrying on the business of almond growing at the time that income is derived.

#### **Trading stock - Section 70-35**

41. A Grower who is not an 'STS taxpayer' may, in some years, hold almonds that will constitute trading stock on hand. Where, in an income year, the value of trading stock on hand at the *end* of an

income year exceeds the value of trading stock on hand at the *start* of an income year a Grower must include the amount of that excess in assessable income.

42. Alternatively, where the value of trading stock on hand at the *start* of an income year exceeds the value of trading stock on hand at the *end* of an income year, a Grower may claim the amount of that excess as an allowable deduction.

### **Section 8-1**

43. A Grower who is not an 'STS taxpayer' and who is accepted into the Project on or before 31 December 2001 may claim tax deductions under section 8-1 of the ITAA 1997 for the following revenue expenses.

<b>Fee type</b>	<b>30 June 2002</b>	<b>30 June 2003</b>	<b>30 June 2004</b>
	Year 1	Year 2	Year 3
Costs of preparing & executing the allotment licence and associated administration, etc., plus first year licence fees	\$1,440 – see Note (i) (below)		
Licence fee		\$770 - see Notes (i) &(ii) (below)	\$770 - see Notes (i) &(ii) (below)
Fee for procuring and managing water licence	\$440 – see Note (i) (below)		
1 <sup>st</sup> year irrigation water	\$563 – see Note (i) (below)		
Provision and management of the Water Licences		\$563 - see Notes (i) &(ii) (below)	\$574 - see Notes (i) &(ii) (below)
Management fee	\$5,084 - see Notes (i) &(ii) (below)	\$3,268 - see Notes (i) &(ii) (below)	\$2,384 - see Notes (i) &(ii) (below)
Management and administration	\$715 – see Note (i) (below)		

**PR 2001/164**

Processing fee			\$148 - see Notes (i) &(ii) (below)
Marketing fee			\$93 - see Notes (i) &(ii) (below)
Total	\$8,242	\$4,601	\$3,969

**Notes:**

- (i) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g., input tax credits): Division 27. See example at paragraph 116.
- (ii) This fee as shown in the Management Agreement is deductible in full in the year that it is incurred. However, if a Grower chooses to prepay fees for the doing of a thing (e.g., the provision of management services or the leasing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA 1936 may apply to apportion those fees. In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 93 unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000.

**Division 40 - Deductions for horticultural plant**

44. A Grower who is not an 'STS taxpayer' will also be entitled to tax deductions relating to the almond trees on the Grower's Allotment. The deductions shown in the table below are determined under Division 40.

ITAA 1997 Section	30 June 2002	30 June 2003	30 June 2004
	Year 1	Year 2	Year 3
<b>Section 40-515</b>	nil - see Note (iv) (below)	nil - see Note (iv) (below)	\$132 - see Notes (iii) & (iv) (below)

**Notes:**

- (iii) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g., input tax credits): Division 27. See example at paragraph 116.
- (iv) An almond tree is considered to be a 'horticultural plant' as defined in subsection 40-520(2). As Growers hold the land under a licence, one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. The deduction is determined using the formula in section 40-545 and is based on the capital expenditure incurred that is attributable to their establishment. If the almond trees have an 'effective life' of greater than 13 but fewer than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 13%. The deduction is allowable when the almond trees enter their first commercial season (section 40-530, item 2).

**Tax outcomes for Growers who are 'STS taxpayers'*****Assessable Income - Section 6-5***

- 45. That part of the gross sales proceeds from the Project attributable to the Grower's produce, less any GST payable on those proceeds (section 17-5), will be assessable income of the Grower under section 6-5.
- 46. The Grower recognises ordinary income from carrying on the business of almond growing at the time that income is received (paragraph 328-105(1)(a)).

***Treatment of trading stock - Section 328-285***

- 47. A Grower who is an 'STS taxpayer' may, in some years, hold almonds that will constitute trading stock on hand. Where, for such a Grower, for an income year, the difference between the value of all their trading stock at the start and a reasonable estimate of it at the end, is less than \$5,000, they do not have to account for that difference under the ordinary trading stock rules in Division 70 (subsection 328-285(1)).
- 48. Alternatively, a Grower who is an 'STS taxpayer' may instead choose to account for trading stock in an income year under the provisions of Division 70 (subsection 328-285(2)).



**PR 2001/164*****Section 8-1 and section 328-105***

49. A Grower who is an 'STS taxpayer' and who is accepted into the Project on or before 31 December 2001 may claim tax deductions under section 8-1 of the ITAA 1997 for the following revenue expenses.

<b>Fee type</b>	<b>30 June 2002</b>	<b>30 June 2003</b>	<b>30 June 2004</b>
	Year 1	Year 2	Year 3
Costs of preparing & executing the allotment licence and associated administration, etc., plus first year licence fees	\$1,440 - see Notes (v) & (vi) (below)		
Licence fee		\$770 - see Notes (v), (vi) & (vii) (below)	\$770 - see Notes (v), (vi) & (vii) (below)
Fee for procuring and managing water licence	\$440 - see Notes (v) & (vi) (below)		
1 <sup>st</sup> year irrigation water	\$563 - see Notes (v) & (vi) (below)		
Provision and management of the Water Licences		\$563 - see Notes (v), (vi) & (vii) (below)	\$574 - see Notes (v), (vi) & (vii) (below)
Management fee	\$5,084 - see Notes (v), (vi) & (vii) (below)	\$3,268 - see (v), (vi) & (vii) (below)	\$2,384 - see Notes (v), (vi) & (vii) (below)
Management and administration	\$715 - see Notes (v) & (vi) (below)		
Processing fee			\$148 - see Notes (v), (vi) & (vii) (below)

Marketing fee			\$93 - see Notes (v), (vi) & (vii) (below)
Total	\$8,242	\$4,601	\$3,969

**Notes:**

- (v) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g., input tax credits): Division 27. See example at paragraph 116.
- (vi) If, for any reason, an amount shown in the table above is not fully paid in the year in which it is incurred by a Grower who is an 'STS taxpayer' then the amount is only deductible to the extent to which it has been paid, or has been paid for the Grower. Any amount or part of an amount shown in the table above which is not paid in the year in which it is incurred will be deductible in the year in which it is actually paid.
- (vii) Where a Grower who is an 'STS taxpayer', pays the fees in the relevant income years shown in the Management Agreement, those fees are deductible in full in the year that they are paid. However, if a Grower **chooses** to prepay fees for the doing of a thing (e.g. the provision of management services or the leasing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA may apply to apportion those fees (see paragraphs 87 to 94). In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 93, unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules, and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000.

***Division 40 - Deductions for horticultural plant***

50. A Grower who is an 'STS taxpayer' will also be entitled to tax deductions relating to the almond trees on the Grower's Allotment. The deductions shown in the table below are determined under Division 40.

**PR 2001/164**

<b>ITAA 1997 Section</b>	<b>30 June 2002</b>	<b>30 June 2003</b>	<b>30 June 2004</b>
	Year 1	Year 2	Year 3
<b>Section 40-515</b>	nil - see Note (ix) (below)	nil - see Note (ix) (below)	\$132 - see Notes (viii) & (ix) (below)

**Notes:**

- (viii) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g., input tax credits): Division 27. See example at paragraph 116.
- (ix) An almond tree is considered to be a 'horticultural plant' as defined in subsection 40-520(2). As Growers hold the land under a licence, one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. The deduction is determined using the formula in section 40-545 and is based on the capital expenditure incurred that is attributable to their establishment. If the almond trees have an 'effective life' of greater than 13 but fewer than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 13%. The deduction is allowable when the almond trees enter their first commercial season (section 40-530, item 2).

**Tax outcomes that apply to all Growers*****Interest on loans***

51. The deductibility or otherwise of interest arising from any loan agreements entered into by a Grower is outside the scope of this Ruling. However Growers should read the discussion of the prepayment rules in paragraphs 87 to 94 (below) as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the prepayment is required under the relevant loan agreement or is at the Grower's choice.

**Division 35 – Deferral of losses from non-commercial business activities*****Section 35-55 – Commissioner's discretion***

52. For a Grower who is an individual and who enters the Project during the year ended 30 June 2002 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 will decide for the income years ending 30 June 2002 to 30 June 2005 that the rule in section 35-10 does not apply to this activity provided that the Project is carried out in the manner described in this Ruling.

53. 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 (see paragraph 104 in the Explanations part of this ruling, below).

54. 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.

55. 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 commercially viable. An assessment of the Project or the product from this perspective has not been made.

### **Sections 82KZME – 82KZMF, 82KL, and Part IVA**

56. For a Grower who participates in the Project and incurs expenditure in accordance with the Allotment Agreement and Management Agreement, the following provisions of the ITAA 1936 have application as indicated:

- expenditure by a Grower does not fall within the scope of sections 82KZME - 82KZMF (but see paragraphs 87 to 94);
- 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

---

### Section 708 of the Corporations Act 2001

57. For this Ruling to apply, an offer for an interest in the project must have been made to, and accepted by the Grower under one of four categories in subsections 708(1)-(11) of the Corporations Act 2001. These provisions set out situations where a prospectus or similar disclosure document is not required.

58. Under subsections 708(1)-(7) a Grower may participate in the project by accepting a 'personal offer' for an interest in the Project. Offers under these provisions cannot be accepted by more than 20 investors in any 12 month period and these investors, in aggregate, must not invest more than \$2 million dollars.

59. An offer will be a personal offer where it can only be accepted by the person to whom it is made, and it is made to a person who is likely to be interested in the offer because of previous contact, or professional or other connection with the person making the offer, or because they have indicated that they are interested in offers of that kind (subsection 708(2)).

60. Offers made under other exclusions in section 708 (see below) are not counted for the purposes of the 20 investors limit.

61. Alternatively, a Grower who is a 'sophisticated investor' may accept an offer for interests in the Project under subsections 708(8)-(10). Under subsection 708(8), an investor in a managed investment scheme, referred to below as 'the person' or 'the person to whom the offer is made', will be a 'sophisticated investor' where :

- the minimum amount payable for the interests in the project on acceptance of the offer by the person to whom the offer is made is at least \$500,000; or
- the amount payable for the interests in the project on acceptance by the person to whom the offer is made and the amounts previously paid by the person for interests in the project of the same class that are held by the person add up to at least \$500,000; or
- it appears from a certificate given by a qualified accountant no more than 6 months before the offer is made that the person to whom the offer is made:
  - (i) has net assets of at least \$2.5 million; or

- (ii) has a gross income for each of the last 2 financial years of at least \$250,000 a year.

62. A Grower may also participate in the project where the offer is made by a licenced dealer under subsection 708(10). Under this provision the dealer must be satisfied that the person to whom the offer is made has previous experience in investing which allows them to assess the merits of the offer, the value of the interests in the project, the risks involved in accepting the offer, their own information needs and the adequacy of the information provided.

63. The licenced dealer must provide a written statement of reasons for being so satisfied. Where a Grower is accepted into the project under this provision he or she must sign an acknowledgment that they did not receive a prospectus in relation to the offer.

64. Under subsection 708(11) an offer may be made to and accepted by a person who is considered to be a professional investor. Growers who participate in the project under this provision will be, at the time the offer is made:

- a person who is a licensed or exempt dealer and who is acting as a principal ;
- a person who is a licensed or exempt investment adviser and who is acting as a principal ; or
- a person who controls at least \$10 million for the purposes of investment in securities.

### **Is the Grower carrying on a business?**

65. For the amounts set out in paragraph 29 above to constitute allowable deductions the Grower's almond growing activities as a participant in the Carina Park Almond Stage 4 Project must amount to the carrying on of a business of primary production. These activities will fall within the definitions of 'horticulture' and 'commercial horticulture' in section 40-535 of the ITAA 1997.

66. For schemes such as that of the Carina Park Almond Stage 4 Project, Taxation Ruling TR 2000/8 sets out in paragraph 89 the circumstances in which the Grower's almond growing activities can constitute the carrying on of a business. As Taxation Ruling TR 2000/8 sets out, these circumstances have been established in court decisions such as *FCT v. Lau* 84 ATC 4929, (1984) 16 ATR 55.

67. Generally, a Grower will be carrying on a business of almond growing, and hence primary production, if:

- the Grower has an identifiable interest (by lease or by licence) in the land on which the Grower's almond trees are established;
- the Grower has a right to harvest and sell almonds produce from those trees;
- the activities are carried out on the Grower's behalf;
- the almond growing activities of the Grower are typical of those associated with an almond growing business; and
- the weight and influence of general indicators point to the carrying on of a business.

68. In this Project, each Grower enters into an Allotment Agreement and a Management Agreement.

69. Under the Allotment Agreement, each individual Grower will have rights over a specific and identifiable area of land. The Allotment Agreement provides the Grower with an ongoing interest in the specific trees on the licenced area for the term of the Project. Under the licence, the Grower must use the land in question for the purpose of carrying out almond growing activities, and for no other purpose. The licence allows the Manager to come onto the land to carry out its obligations under the Management Agreement.

70. Under the Management Agreement the Manager is engaged by the Grower to maintain an Allotment on the Grower's identifiable area of land during the term of the Project. The Manager has provided evidence that it holds the appropriate professional skills and credentials to provide the management services to maintain the Allotment on the Grower's behalf.

71. The Manager has also been engaged to harvest and sell, on the Grower's behalf, the almonds grown on the Grower's Allotment.

72. 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 Project's description for all the indicators.

73. The activities that will be regularly carried out during the term of the Project demonstrate a significant commercial purpose. Based on reasonable projections, a Grower in the Project will derive assessable income from the sale of almonds that will return a before-tax profit, i.e., a profit in cash terms that does not depend in its calculation on the fees in question being allowed as a deduction.

74. The pooling of almonds from trees grown on the Grower's Allotment with the almond of other Growers is consistent with general almond growing business practices. Each Grower's proportionate share of the sale proceeds of the pooled almonds will reflect the proportion of the trees contributed from their Allotment.

75. The Manager's services are also consistent with general almond growing practices. They are of the type ordinarily found in almond growing ventures that would commonly be said to be businesses. While the size of a Allotment is relatively small, it is of a size and scale to allow it to be commercially viable (see Taxation Ruling IT 360).

76. The Grower's degree of control over the Manager as evidenced by the Management Agreement, and supplemented by the Corporations Act, is sufficient. During the term of the Project, the Manager will provide the Grower with regular progress reports on the Grower's Allotment and the activities carried out on the Grower's behalf. Growers are able to terminate arrangements with the Manager in certain instances, such as cases of default or neglect.

77. The almond 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. For the purposes of this Ruling, the Grower's almond growing activities in the Carina Park Stage 4 Project will constitute the carrying on of a business.

### **The Simplified Tax System - Division 328**

78. Subdivision 328-F sets out the eligibility requirements that a Grower must satisfy in order to enter the STS and Subdivision 328-G sets out the rules for entering and leaving the STS.

79. The question of whether a Grower is eligible to be an 'STS taxpayer' is outside the scope of this Product Ruling. Therefore, any Grower who relies on those parts of this Ruling that refer to the STS will be assumed to have correctly determined whether or not they are eligible to be an 'STS taxpayer'.

### **Section 8-1: Deductibility of fees**

80. Consideration of whether the fees payable under the Allotment Agreement 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 outgoing in question must have a sufficient connection with the operations or activities that directly gain or produce the taxpayer's assessable income;
- the outgoings are not deductible under the second limb if they are incurred when the business has not commenced; and



- where all that happens in a year of income is that a taxpayer is contractually committed to a venture that may not turn out to be a business, there can be doubt about whether the relevant business has commenced, and hence, whether the second limb applies. However, that does not preclude the application of the first limb in determining whether the outgoing in question has a sufficient connection with activities to produce assessable income.

81. The fees associated with the almond growing activities will relate to the gaining of income from the Grower's business of almond growing (see above), and hence have a sufficient connection to the operations by which income (from the harvesting and sale of almonds) is to be gained from this business. It 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. The fee appears to be reasonable. There is no capital component of the fees. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

#### *Possible application of prepayment provisions*

82. Under the Allotment Agreement and the Management Agreement the fees are not for things to be done beyond 30 June in the year in which the relevant amounts are incurred. In these circumstances, the prepayment provisions in sections 82KZME and 82KZMF have no application to these fees.

83. However, where a Grower **chooses** to prepay these fees for a period beyond the income year in which the expenditure is incurred, the prepayment provisions (see paragraphs 87 to 94) will apply to determine the amount and timing of the deductions regardless of whether the Grower is an 'STS taxpayer' or not. These provisions apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes 'STS taxpayers' from the operation of section 82KZMF. This is subject to the 'excluded expenditure' exception. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000.

#### *Timing of deductions*

84. In the absence of any application of the prepayment provisions, the timing of deduction for the management fee will depend upon whether a Grower is an 'STS taxpayer' or is not an 'STS taxpayer'.

85. If the Grower is not an 'STS taxpayer', the management fee is deductible in the year in which it is incurred.

86. If the Grower is an 'STS taxpayer' the management fee is deductible in the income year in which it is paid, or is paid for the Grower (paragraph 328-105(1)(b)). If any amount that is properly incurred in an income year remains unpaid at the end of that income year, the unpaid amount is deductible in the income year in which it is actually paid or is paid for the Grower.

### **Prepayment provisions - sections 82KZL to 82KZMF**

87. The prepayment provisions contained in Subdivision H of Division 3 of Part III of the ITAA 1936 affect the timing of deductions for certain prepaid expenditure. These provisions apply to certain expenditure incurred under an agreement in return for the doing of a thing under the agreement (e.g., the performance of management services or the leasing of land) that will not be wholly done within the same year of income as the year in which the expenditure is incurred. If expenditure is incurred to cover the provision of services to be provided within the same year, then it is not expenditure to which the prepayment rules apply.

88. For this Project only section 82KZL (an interpretive provision) and sections 82KZME and 82KZMF are relevant. Where the requirements of sections 82KZME and 82KZMF are met, taxpayers determine deductions for prepaid expenditure under section 82KZMF using the formula in subsection 82KZMF(1). These provisions also apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes 'STS taxpayers' from the operation of section 82KZMF.

### *Sections 82KZME and 82KZMF*

89. Where the requirements of subsections 82KZME(2) and (3) are met, the formula in subsection 82KZMF(1) (see below) will apply to apportion expenditure that is otherwise deductible under section 8-1 of the ITAA 1997. The requirements of subsection 82KZME(2) will be met if expenditure is incurred by a taxpayer in return for the doing of a thing that is not to be wholly done within the year the expenditure is made. The year in which such expenditure is incurred is called the 'expenditure year' (subsection 82KZME(1)).

90. The requirements of subsection 82KZME(3) will be met where the agreement (or arrangement) has the following characteristics:

- the taxpayer's allowable deductions under the agreement for the 'expenditure year' exceed any

**PR 2001/164**

assessable income attributable to the agreement for that year; and

- the taxpayer does not have effective day to day control over the operation of the agreement. That is, the significant aspects of the arrangement are managed by someone other than the taxpayer; and
- either:
  - a) there is more than one participant in the agreement in the same capacity as the taxpayer; or
  - b) the person who promotes, arranges or manages the agreement (or an associate of that person) promotes similar agreements for other taxpayers.

91. For the purpose of these provisions, the agreement includes all activities that relate to the agreement (subsection 82KZME(4)). This has particular relevance for a Grower in this Project who, in order to participate in the Project may borrow funds from a financier. Although undertaken with an unrelated party, that financing would be an element of the arrangement. The funds borrowed and the interest deduction are directly related to the activities under the arrangement. If a Grower prepays interest under such financing arrangements, the deductions allowable will be subject to apportionment under section 82KZMF.

92. There are a number of exceptions to these rules, but for Growers participating in this Project, only the 'excluded expenditure' exception in subsection 82KZME(7) is relevant. 'Excluded expenditure' is defined in subsection 82KZL(1). However, for the purposes of Growers in this Project, 'excluded expenditure' is prepaid expenditure incurred under the arrangement that is less than \$1,000. Such expenditure is immediately deductible.

93. Where the requirements of section 82KZME are met, section 82KZMF applies to apportion relevant prepaid expenditure. Section 82KZMF uses the formula below, to apportion prepaid expenditure and allow a deduction over the period that the benefits are provided.

$$\text{Expenditure} \quad X \quad \frac{\text{Number of days of eligible service}}{\text{period in the year of income}} \\ \text{Total number of days of eligible service period}$$

94. In the formula 'eligible service period' (defined in subsection 82KZL(1)) means, the period during which the thing under the agreement is to be done. The eligible service period begins on the day on which the thing under the agreement commences to be done or on the day on which the expenditure is incurred, whichever is the later,

and ends on the last day on which the thing under the agreement ceases to be done, up to a maximum of 10 years.

*Application of the prepayment provisions to this Project*

95. In this Project, the fees (see paragraph 29) will be incurred on execution of the Allotment Agreement and Management Agreement. These fees are charged for providing management services or licensing the land to a Grower by 30 June of the year of execution of the Agreements.

96. In particular, fees for management services is expressly stated to be for a number of specified services. No explicit conclusion can be drawn from the description of the arrangement that the Year 1 fees for management services have been inflated to result in reduced fees being payable for management fees in subsequent years.

97. There is also no evidence that might suggest the management services covered by the fee could not be provided within the relevant expenditure year. Thus, for the purposes of this Ruling, it can be accepted that no part of the Year 1 fee and the fees for subsequent years, is for the Manager doing 'things' that are not to be wholly done within the expenditure year.

98. On this basis, provided a Grower incurs expenditure as required under the Project agreements, as set out in paragraph 29, then the basic precondition in subsection 82KZME(2) is not satisfied and, in these circumstances, section 82KZMF will have no application.

*Growers who **choose** to pay fees for a period in excess of that required by the Project's agreements*

99. Although not required under either the Allotment Agreement or the Management Agreement, a Grower participating in the Project may **choose** to prepay fees for a period beyond the 'expenditure year'. Similarly, Growers who borrow funds may either choose, or be required to prepay interest. Where this occurs, contrary to the conclusion reached in paragraph 98 above, section 82KZMF will apply to apportion the expenditure and allow a deduction over the period in which the prepaid benefits are provided.

100. For these Growers, the amount and timing of deductions for any prepaid fees or prepaid interest will depend upon when the respective amounts are incurred and what the 'eligible service period' is in relation to these amounts.

**Division 35 - Deferral of Losses from non-commercial business activities**

101. Division 35 applies to losses from certain business activities for the income year ended 30 June 2001 and subsequent years. Under the rule in subsection 35-10(2), a deduction for a loss made by an individual (including an individual in a general law partnership) from certain business activities will not be taken into account in an income year unless:

- the 'Exception' in subsection 35-10(4) applies;
- one of four objective tests in sections 35-30, 35-35, 35-40 or 35-45 is met; or
- if one of the objective tests is not satisfied, the Commissioner exercises the discretion in section 35-55.

102. Generally, a loss in this context is, for the income year in question, the excess of an individual taxpayer's allowable deductions attributable to the business activity over that taxpayer's assessable income from the business activity.

103. Under the loss deferral rule in subsection 35-10(2) the relevant loss is not able to be taken into account in the calculation of taxable income in the year that loss arose. Instead, in a later year it may be offset against any income from the same or similar business activity, or, if one of the objective tests is passed, or the Commissioner's discretion exercised, against other income.

104. For the purposes of applying Division 35, subsection 35-10(3) allows taxpayers to group business activities 'of a similar kind'. Under subsection 35-10(4), there is an 'exception' to the general rule in subsection 35-10(2) where the loss is from a 'primary production business' activity and the individual taxpayer has other assessable income for the income year from sources not related to that activity, of less than \$40,000 (excluding any net capital gain). As both subsections relate to the individual circumstances of Growers who participate in the Project they are beyond the scope of this Product Ruling and are not considered further.

105. In broad terms, the tests require:

- (a) at least \$20,000 of assessable income in that year from the business activity (section 35-30);
- (b) the business activity results in a taxation profit in 3 of the past 5 income years (including the current year)(section 35-35);
- (c) at least \$500,000 of real property, or an interest in real property, (excluding any private dwelling) is used on a

continuing basis in carrying on the business activity in that year (section 35-40); or

- (d) at least \$100,000 of certain other assets (excluding cars, motor cycles and similar vehicles) are used on a continuing basis in carrying on the business activity in that year (section 35-45).

106. A Grower who participates in the Project will be carrying on a business activity that is subject to these provisions. Information provided with the application for this Product Ruling indicates that a Grower who acquires the minimum allocation of one Allotment in the Project is unlikely to have their activity pass one of the tests until the income year ended 30 June 2009. Growers who acquire more than one interest in the Project may however, find that their activity meets one of the tests in an earlier income year.

107. Prior to this time, unless the Commissioner exercises an arm of the discretion under paragraphs 35-55(1)(a) or (b), the rule in subsection 35-10(2) will apply to defer to a future income year any loss that arises from the Grower's participation in the Project.

108. The first arm of the discretion in paragraph 35-55(1)(a) relates to 'special circumstances' applicable to the business activity, and has no relevance for the purposes of this Product Ruling. However, the second arm of the discretion in paragraph 35-55(1)(b) may be exercised by the Commissioner where:

- (i) the business activity has started to be carried on; and
- (ii) because of its nature, it has not yet met one of the tests set out in Division 35; and
- (iii) there is an expectation that the business activity of an individual taxpayer will either pass one of the tests or produce a taxation profit within a period that is commercially viable for the industry concerned.

109. Information provided with this Product Ruling indicates that a Grower who acquires the minimum investment of one Allotment in the Project is expected to be carrying on a business activity that will either pass one of the tests, or produce a taxation profit, for the year ended 30 June 2006. The Commissioner will decide for such a Grower that it would be reasonable to exercise the second arm of the discretion until the year ended 30 June 2005. Subsection 35-55(2) prevents the Commissioner exercising the discretion beyond this year.

110. This Product Ruling is issued on a prospective basis (ie, before an individual Grower's business activity starts to be carried on). The Project, however, may fail to be carried on during the income years specified above (see paragraph 52), in the manner described in the Arrangement (see paragraphs 14 to 34). If so, this Ruling, and

specifically the decision in relation to paragraph 35-55(1)(b), that it would be unreasonable that the loss deferral rule in subsection 35-10(2) not apply, may be affected, because the Ruling no longer applies (see paragraph 9). Growers may need to apply for private rulings on how paragraph 35-55(1)(b) will apply in such changed circumstances.

111. In deciding that the second arm of the discretion in paragraph 35-55(1)(b) will be exercised on this conditional basis, the Commissioner has relied upon:

- 12 Month Expert Report on the Carina Park Almond Project; and
- independent, objective, and generally available information relating to almond production and the Carina Park Almond Project in particular.

#### **Section 82KL – recouped expenditure**

112. The operation of section 82KL depends, among other things, on the identification of a certain quantum of ‘additional benefits(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 – general anti-avoidance provisions**

113. 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).

114. The Carina Park Stage 4 Project will be a ‘scheme’. A Grower will obtain a ‘tax benefit’ from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 43, 44, 49 and 50, 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 obtaining this tax benefit.

115. Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the harvesting and sale of almonds. There are no facts that would suggest that Growers have the opportunity of obtaining a tax advantage other than the tax advantages identified in this Ruling. There is no non-recourse financing or round robin characteristics, and no indication that the parties are not dealing at arm’s length or, if any parties are not dealing at arm’s length, that any adverse tax consequences result. Further, having regard to the factors to be considered under paragraph 177D(b) it cannot be concluded, on the

information available, that participants will enter into the scheme for the dominant purpose of obtaining a tax benefit.

## **Example**

### **Example – Entitlement to GST input tax credits**

116. Susan, who is a sole trader and registered for GST, contracts with a manager to manage her viticulture business. Her manager is registered for GST and charges her a management fee payable every six months in advance. On 1 December 2001 Susan receives a valid tax invoice from her manager requesting payment of a management fee in advance, and also requesting payment for an improvement in the connection of electricity for her vineyard that she contracted him to carry out. The tax invoice includes the following details:

Management fee for period 1/1/2002 to 30/6/2002	\$4 400*
Carrying out of upgrade of power for your vineyard as quoted	<u>\$2 200*</u>
Total due and payable by 1 January 2002 (includes GST of \$600)	<u>\$6 600</u>

\*Taxable supply

Susan pays the invoice by the due date and calculates her input tax credit on the management fee (to be claimed through her Business Activity Statement) as:

$$1/11 \times \$4400 = \$400.$$

Hence her outgoing for the management fee is effectively \$4400 *less* \$400, or \$4000.

Similarly, Susan calculates her input tax credit on the connection of electricity as:

$$1/11 \times \$2200 = \$200.$$

Hence her outgoing for the power upgrade is effectively \$2200 *less* \$200, or \$2000.

In preparing her income tax return for the year ended 30 June 2002, Susan is aware that the management fee is deductible in the year incurred. She calculates her management fee deduction as \$4000 (not \$4400).

Susan is aware that the electricity upgrade is deductible 10% per year over a 10 year period. She calculates her deduction for the power upgrade as \$200 (one tenth of \$2000 only, not one tenth of \$2200).



**Detailed contents list**

---

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

	Paragraph
<b>What this Ruling is about</b>	<b>1</b>
Tax laws	2
Goods and Services Tax	3
Changes in the Law	4
Note to promoters and advisers	6
Class of persons	7
Qualifications	9
<b>Date of effect</b>	<b>11</b>
<b>Withdrawal</b>	<b>13</b>
<b>Arrangement</b>	<b>14</b>
Overview	17
The Project Land	18
Allotment Agreement	20
Management Agreement	25
Project Fees	29
Finance	32
<b>Ruling</b>	<b>35</b>
Application of this Ruling	35
The Simplified Tax System ('STS') – Division 328	37
Qualification	38
Tax outcomes for Growers who are not 'STS taxpayers'	39
<i>Assessable Income – section 6-5</i>	39
<i>Trading stock – Section 70-35</i>	41
<i>Section 8-1</i>	43
<i>Division 40 – Deductions for horticultural plant</i>	44
Tax outcomes for Growers who are 'STS taxpayers'	45
<i>Assessable Income – section 6-5</i>	45
<i>Treatment of trading stock – Section 328-285</i>	47
<i>Section 8-1 and section 328-105</i>	49

<i>Division 40 – Deductions for horticultural plant</i>	50
Tax outcomes that apply to all Growers	51
<i>Interest on loans</i>	51
Division 35 – Deferral of losses from non-commercial business activities	52
<i>Section 35-55 – Commissioner’s discretion</i>	52
Sections 82KZME – 82KZMF, 82KL and Part IVA	56
<b>Explanations</b>	<b>57</b>
Section 708 of the Corporations Act 2001	57
Is the Grower carrying on a business?	65
The Simplified Tax System – Division 328	78
Section 8-1: Deductibility of fees	80
<i>Possible application of prepayment provisions</i>	82
<i>Timing of deductions</i>	84
Prepayment provisions – sections 82KZL to 82KZMF	87
<i>Sections 82KZME and 82KZMF</i>	89
<i>Application of the prepayment provisions to this Project</i>	95
<i>Growers who <b>choose</b> to pay fees for a period in excess of that required by the Project’s agreements</i>	99
Division 35 – Deferral of Losses from non-commercial business activities	101
Section 82KL – recouped expenditure	112
Part IVA – general anti-avoidance provisions	113
<b>Example</b>	<b>116</b>
Example – Entitlement to GST input tax credits	116
<b>Detailed contents list</b>	<b>117</b>

---

**Commissioner of Taxation**19 December 2001

---

*Previous draft:*

Not previously issued in draft form

*Related Rulings/Determinations:*PR 1999/95; TR 92/1; TR 92/20;  
TR 97/11; TR 97/16; TR 98/22;  
TR 2000/8; TD 93/34; IT 360

*Subject references:*

- carrying on a business
- commencement of business
- fee expenses
- interest expenses
- management fee expenses
- producing assessable income
- product rulings
- public rulings
- schemes and shams
- taxation administration
- tax avoidance

- ITAA 1997 35-10(2)
- ITAA 1997 35-10(3)
- ITAA 1997 35-10(4)
- ITAA 1997 35-30
- ITAA 1997 35-35
- ITAA 1997 35-40
- ITAA 1997 35-45
- ITAA 1997 35-55
- ITAA 1997 35-55(1)
- ITAA 1997 35-55(1)(a)
- ITAA 1997 35-55(1)(b)
- ITAA 1997 35-55(2)
- ITAA 1997 Div 40
- ITAA 1997 Subdiv 40-F
- ITAA 1997 40-515
- ITAA 1997 40-515(1)(b)
- ITAA 1997 40-520(2)
- ITAA 1997 40-525(2)
- ITAA 1997 40-530
- ITAA 1997 40-535
- ITAA 1997 40-545
- ITAA 1997 Div 70
- ITAA 1997 70-35
- ITAA 1997 Div 328
- ITAA 1997 Subdiv 328-E
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- ITAA 1997 328-105
- ITAA 1997 328-105(1)(a)
- ITAA 1997 328-105(1)(b)
- ITAA 1997 328-285
- ITAA 1997 328-285(1)
- ITAA 1997 328-285(2)
- Corporations Act 2001 708

*Legislative references:*

- TAA 1953 Part IVAAA
- ITAA 1936 Subdivision H of Div 3 of Part III
- ITAA 1936 82KL
- ITAA 1936 82KL(1)
- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZME
- ITAA 1936 82KZME(1)
- ITAA 1936 82KZME(2)
- ITAA 1936 82KZME(3)
- ITAA 1936 82KZME(4)
- ITAA 1936 82KZME(7)
- ITAA 1936 82KZMF
- ITAA 1936 82KZMF(1)
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 17-5
- ITAA 1997 Div 27
- ITAA 1997 Div 35
- ITAA 1997 35-10

*Case references:*

- FCT v. Lau 84 ATC 4929, (1984) 16 ATR 55

---

ATO references:

NO: T2001/013708  
BO:  
ISSN: 1441-1172