

PR 2001/22 - Income tax: Larenta Olives Project No. 2

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 This document has changed over time. This is a consolidated version of the ruling which was published on *21 March 2001*



Product Ruling

Income tax: Larenta Olives Project No. 2

Contents	Para
What this Product Ruling is about	1
Date of effect	12
Withdrawal	14
Arrangement	15
Ruling	47
Explanations	61
Examples	107
Detailed contents list	108

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.

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.

What this Product Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates. In this Ruling this arrangement is sometimes referred to as the Larenta Olives Project No. 2, or just simply as 'the Project'.

Tax law(s)

2. The tax laws dealt with in this Ruling are:

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 8-1 (ITAA 1997);
- section 17-5 (ITAA 1997);
- Division 27 (ITAA 1997);
- Division 35 (ITAA 1997);
- section 82KL of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 82KZL (ITAA 1936);
- section 82KZM (ITAA 1936);
- sections 82KZMB - 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.

Business Tax Reform

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 laws enacted at the time it was issued, future tax changes may affect the operation of those laws and, in particular, the tax deductions that are allowable.

Where tax laws change, those changes will take precedence over the application of this Ruling and, to that extent, this Ruling will be superseded.

5. Taxpayers who are considering investing 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 investors in projects such as this. In keeping with that intention the Tax Office suggests that promoters and advisers ensure that potential investors are fully informed of any changes in tax laws that take place after the Ruling is issued. Such action should minimise suggestions that potential investors have been negligently or otherwise misled.

Class of persons

7. The class of persons to whom this Ruling applies is those who enter into the arrangement described below on or after the date this Ruling is made. They will have a purpose of staying in the arrangement until it is completed (i.e., being a party to the relevant agreement 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'.

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.

10. The class of persons defined in the Ruling may rely on its contents, provided the arrangement (described below at paragraphs 15 to 46) is carried out in accordance with details described in the Ruling. If the arrangement described in the Ruling is materially different from the arrangement that is actually carried out:

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

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Date of effect

12. This Ruling applies prospectively from 21 March 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).

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

Withdrawal

14. 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 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 incorporates the following documents:

- Application for Product Ruling, dated 3 January 2001;

- **Larenta Olives Project No. 2 Prospectus, prepared and issued by Premium Olive Managers Limited ('the Manager'), Gingin Land Company Ltd, Premium Olive Processing Ltd and Premium Olive Marketing Ltd, dated 25 January 2001;**
- **Constitution of Larenta Olives Project No. 2 by Premium Olive Managers Limited ('the Responsible Entity'), not dated;**
- **Lease and Management Agreement ('the agreement') between Premium Olive Managers Limited ('the Manager'), Gingin Land Company Limited ('the Lessor'), Premium Olive Managers Limited ('the Responsible Entity') and the Grower, not dated;**
- Draft Compliance Plan of Larenta Olives Project No. 2 adopted by Premium Olive Managers Limited as 'the Responsible Entity', dated 18 October 2000;
- Olive Oil Processing Agreement between Premium Olive Managers Limited ("the Responsible Entity") and Premium Olive Processing Limited ("the Processor"), dated 3 January 2001;
- Olive Oil Supply Agreement between Premium Olive Managers Limited ("the Responsible Entity") and Premium Olive Marketing Limited ("Marketing Company"), dated 3 January 2001;
- Put Option Agreement between Premium Olive Marketing Pty Ltd ("Marketing Company") and an international purchaser of Olive Oil , dated 6 May 1999;
- Constitution of Premium Olive Managers Limited, not dated;
- Constitution of Gingin Land Company Limited, not dated;
- Larenta Olives Project No. 2 Agency Agreement – Custodian between Premium Olive Managers Limited and ARG Custodians Limited ("the Custodian"), dated 3 January 2001;
- Olive Tree Supply Deed between Gingin Land Company Limited and the Seller of the Olive Trees, not dated; and
- Additional correspondence received from the applicant, dated 20 February 2001 and 8 March 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.

16. The documents highlighted are those that Growers may enter into. For the purposes of describing the arrangement to which this Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower, or any associate of a Grower, will be a party to, which are a part of the arrangement. The effect of this agreement is summarised as follows.

Overview

17. The arrangement is called the Larenta Olives Project No. 2.

Location	Land located in the Gingin region of Western Australia.
Type of business each participant is carrying on	Long term commercial cultivation of Olive Trees for the purpose of Olive Oil production.
Number of hectares to be under cultivation	This prospectus provides for 318 hectares to be planted.
Size of each Leased Area	0.3 hectare
Number of trees per hectare	570 trees per hectare
Expected production	An average of 14 tonnes of Olives per hectare at full production.
Term of the investment	25 years
Initial cost	Grower Category 1 - \$8,239.00 Grower Category 2 - \$2,409.00 Grower Category 3 - \$9,596.40
Initial cost per hectare	Grower Category 1 - \$27,463.00 Grower Category 2 - \$ 8,030.00 Grower Category 3 - \$31,988.00
Ongoing costs	Management Fees payable to the Manager for performing the Grove Services during the relevant year. Irrigation Fee instalments to be paid in the second and third year of the Project. Harvest fee. Cost of Processing. Managers Bonus. Additional insurance cover requested by the Grower.

18. Growers applying under this prospectus join as either Grower Category 1, Grower Category 2 or Grower Category 3 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 First Period services to which the Project Subscription Sum relates. The relevant application periods are summarised as follows:

Application lodged	Grower	Date of Execution	Total Subscription Sum	Period of provision of First Period services
On or before 31/3/2001	Grower Category 1	on or before 31/3/2001	\$8,239.00	From date of execution of Lease and Management Agreement to 30/6/2001.
After 31/3/2001 and on or before 31/5/2001	Grower Category 2	on or before 31/5/2001	\$2,409.00	From date of execution of Lease and Management Agreement to 30/6/2001.
On or after 1/6/2001	Grower Category 3	at any time between 1/7/2001 (inclusive) and the expiration of the Prospectus	\$9,596.40	From date of execution of Lease and Management Agreement to 30/6/2002.

19. The Project is to cultivate a large scale, intensive olive grove upon land which is held by the Lessor. The Project land is located in the Gingin region of Western Australia. The Project is for a period of twenty five years.

20. Growers participating in the arrangement will enter into a Lease and Management Agreement between the Manager, Gingin Land Company Limited the Lessor, the Responsible Entity and the Grower. This agreement is set out in Annexure 1 of the Constitution.

21. The Agreement gives a Grower a lease from Gingin Land Company Limited over an identifiable area of land called a 'Leased Area' until the Project is terminated on 30 June 2026.

22. Under the Prospectus, the Responsible Entity proposes to offer 1,060 Leased Areas of 0.3 hectares, which will be planted with Olive

trees by the Lessor following the payment of the Subscription Sum by the Grower. The Lessor will carry out the necessary land preparation for the planting of the Grove, plant Olive Trees on the Grove and carry out capital works as required under the Agreement. Each Leased Area will contain approximately 171 Olive Trees. The Prospectus states that there is no minimum subscription for this Project. The Responsible Entity may accept over subscriptions subject to there being suitable land and water available. Each investor may subscribe for a minimum of one Leased Area. The Responsible Entity will maintain a register of Growers, identifying the Leased Areas held by Growers.

23. Possible projected returns for Growers are outlined on pages 14 and 15 of the Prospectus. The projected returns are subject to the inherent risks of primary production and the commercial risks of a long term venture of cultivating, growing and harvesting a commercial olive grove and the processing, marketing and sale of Olive Oil. The risks associated with the project have been outlined in the Prospectus. Growers will execute a Power of Attorney enabling the Responsible Entity to act on their behalf as required when they make an application for a Leased Area.

24. The Grower engages the Manager to cultivate and maintain the Leased Area, to harvest and process the Olives and sell the Olive Oil produced. The Growers pay for the irrigation system that will be installed on the Leased Area. Unless the Grower has elected to collect the produce from their Leased Area personally, the Manager will process the Olives and market the Olive Oil on behalf of the Grower (clause 24).

25. Each Grower may purchase 416 shares in the Lessor. Growers will also receive 450 free options in the Processor with an exercise price of \$1.00 per option and 450 free options in the Marketing Company with an exercise price of \$1.00 per option.

26. The Responsible Entity has entered into an Olive Oil Supply Agreement with the Marketing Company. The Marketing Company has agreed to purchase all of the Olive Oil produced from the Olives grown in the Grove, for the term of the Olive Oil Supply Agreement.

Constitution

27. The relevant Constitution establishes the Project and operates as a deed binding on all of the Growers of the Project and the Responsible Entity. The Constitution sets out the terms and conditions under which Premium Olive Managers Limited agrees to act as Responsible Entity and thereby 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 a Power of Attorney Form in the Prospectus. Growers are bound by the Constitution by virtue of their participation in the Project. Pursuant to clause 7 of the Constitution, the Responsible Entity will keep a register of Growers. Growers may assign their interest only in certain circumstances as set out in clause 31 of the Lease and Management Agreement.

Compliance plan

28. The Responsible Entity has prepared a Compliance Plan in accordance with the Corporations Law. The Compliance Plan's purpose is to ensure that the Responsible Entity manages the Project in accordance with its obligations and responsibilities contained in the Constitution and that the interests of Growers are protected.

Lease and Management Agreement

29. The Lease and Management Agreement sets out the roles and obligations of the parties to the Agreement. It is entered into between the Manager, the Lessor, the Responsible Entity and the Grower for each Leased Area. Under the Agreement the Lessor grants a Lease to the Grower and the Grower appoints the Manager to cultivate, maintain, harvest, process the Olives and sell the Olive Oil from the Grower's Leased Area.

30. The Agreement commences on the date the Lease and Management Agreement is executed by the Responsible Entity. The Project is terminated pursuant to the provisions of the Agreement or, upon payment of the final distribution of net income to Growers (item 9 of the schedule).

31. Growers participating in the Project are granted an interest in land by the Lessor in the form of a lease to use their Leased Area for the purpose of conducting a long-term business of cultivating Olive Trees for the purpose of Olive Oil production.

32. Each Grower must pay a Licence Fee to the Lessor being an amount as specified in item 5 of the schedule to the Lease and Management Agreement.

33. Under the terms of the Lease and Management Agreement, among other things, the Grower :

- must not use or permit any other person to use the area for any purpose other than that of cultivation of Olive Trees for the purpose of Olive Oil production;
- must ensure that the Leased Area is managed in accordance with Good Horticultural Practice;

- must not do or permit to be done on the Leased Area anything that will cause a nuisance, disturbance, obstruction or damage; and
- shall not remove nor install earth, gravel, stones, sand, minerals, Olive Trees or any fixtures from the Leased Area without the consent of the Lessor.

34. The Lessor must, at its own cost, inter alia:

- establish the Grove in accordance with good horticultural and environmental practices;
- carry out appropriate land preparation for the planting of the Grove and plant Olive Trees on the Leased Area, stake and survey in a manner so that the Olive Trees can be harvested commercially; and
- provide any other capital works and services that are incidental or ancillary to the establishment of a commercial olive grove.

35. The Lease and Management Agreement provides that each Grower appoints the Manager to perform services under the agreement. The services to be performed are specified in the definition of 'Grove Services'. The Manager will supervise and manage all activities to be carried out on the Leased Area on behalf of the Grower including, but not limited to the provision of the following services:

- establish and maintain a trickle irrigation system for the Olive Trees on the Leased Area;
- cultivate, tend, train, prune, fertilise, replant, spray and otherwise care for the Olive Trees as and when required;
- establish and keep access laneways and firebreaks in good repair;
- keep the Leased Area free from vermin, noxious weeds, pests and diseases;
- replace any Olive Trees that fail to establish or that die during the first year of the Scheme;
- arrange for the harvesting of the Olives; and
- arrange the processing of the Olives and the sale of the Olive Oil.

36. Under the terms of the Agreement, the Manager has a discretion to select a more profitable use for the Olives produced in

the Leased Areas if the processing of Olives into Olive Oil is not the most profitable use of the Olives.

37. 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

38. The fees payable under the Lease and Management Agreement on a per Leased Area basis are as follows:

- **The Subscription Sum** is payable by each Grower on Application for the period from the Commencement Date to 30 June in the financial year in which execution of the Agreement takes place, being the First Period (refer to paragraph 18). The Subscription Sum is made up of the following Management Fee, Licence Fee and first instalment of the Irrigation Fee:

	Grower Category 1	Grower Category 2	Grower Category 3
Management Fee	\$7,128.00	\$1,782.00	\$8,485.40
Licence Fee	\$ 528.00	\$ 44.00	\$ 528.00
Irrigation Fee	\$ 583.00	\$ 583.00	\$ 583.00

in all other years:

- **Management Fees** are payable to the Manager for performing the Grove Services during the relevant year. After the First Period the Management Fee is payable for each Financial Year up until and including 30 June 2004. The fees are:

	Grower Category 1	Grower Category 2	Grower Category 3
2002	\$2,986.50	\$8,332.50	Subscription Sum
2003	\$2,319.90	\$2,319.90	\$4,306.50
2004	\$1,859.00	\$1,859.00	\$1,859.00

PR 2001/22

- After the Financial Year ending 30 June 2004 the Management Fee shall be the Grower's Proportional Interest of the estimated costs of managing the Grove and operating the Scheme and any other costs ancillary there to. In addition a sum of 7.5% of the estimated Gross Proceeds per Leased Area for each financial year after the Financial Year ending 30 June 2004 is payable;
- After the First Period Licence Fees are payable as follows:

	Grower Category 1	Grower Category 2	Grower Category 3
2002	\$543.40	\$1,027.40	Subscription Sum
2003	\$559.90	\$ 559.90	\$559.90
2004	\$577.50	\$ 577.50	\$577.50

The Licence Fees for Financial Years ended after 30 June 2004 are payable in accordance with the provisions of the Agreement (item 5 of the schedule to the Lease and Management Agreement);

- Irrigation Fee instalments of \$583 each are to be paid to the Manager in the second and third year of the Project;
- Harvest fee of \$2.00 per Olive Tree harvested, indexed to the Consumer Price Index (adopting the year ended 30 June 2001 as the base year);
- Processing price of the greater of :
 - 10% of the actual sale proceeds of Olive Oil for that particular season; and
 - \$65 per tonne of Olives subject to CPI adjustment using 30 June 2001 as the base year;
- Manager's Bonus equal to 40% of the excess of actual total net returns per Leased Area over the average projected total net returns per Leased Area specified in the Prospectus in any 2 financial years of the term of the project;
- Premiums for insurance cover against destruction or damage by fire, arranged by the Manager if requested by the Grower ; and
- All expenses associate with the scheme including any indemnities to which the Responsible Entity is entitled

with respect to all liabilities and expenses incurred by it in relation to the proper performance of its duties as Responsible Entity and the amount of any tax which is paid or payable by the Responsible Entity in respect of the Grower.

39. Under the terms of the Constitution, all moneys received from applications shall be paid to the Responsible Entity. The Responsible Entity shall deposit those moneys into a Subscription Fund. The Responsible Entity will instruct the Custodian to release the application moneys following execution of the Lease and Management Agreement (clause 10 of the Constitution).

Harvesting

40. The Grower has full right, title and interest in the Olives that are produced by the Grower in the Leased Area (clause 16). The Olive Trees will remain the property of the Lessor. Unless the Grower elects to take possession of their harvested Olives, the Manager will arrange the processing of the Olives and marketing of the Olive Oil.

41. The Manager will Harvest the Olives in each year that there is a commercially harvestable crop. Until such time as 90% of the Leased Areas subscribed for in a Financial Year are in Full Production, the Manager will harvest the Olives from all Leased Areas subscribed for in different Financial Year separately. In addition, the Manager will keep separate records of Olives Harvested and Olive Oil produced in respect of produce from Leased Areas subscribed for in different Financial Years. The Gross Proceeds from the sale of Olive Oil from the previously mentioned Leased Areas will be paid into separate Proceeds Funds from which the Custodian will apply the gross Proceeds pursuant to clause 26.3 of the Agreement. At the time the Responsible Entity obtains a certificate from an independent expert stating that 90% of the Leased Areas subscribed for in a Financial Year are in full production the Responsible entity will instruct the custodian to merge the Proceeds Funds.

42. Growers will share in the Gross Proceeds of Sale on a proportionate basis following the payment of the Management Fee, Licence Fee and any other amounts due and payable by the relevant Grower (clause 26.3).

43. The Responsible Entity will ensure that the Gross Proceeds from the sale of Olive Oil are paid into the Proceeds Fund trust account. The Responsible Entity will instruct the Custodian to deduct from Gross Proceeds all expenses associated with the scheme and the Manager's Bonus. The Responsible Entity will then instruct the Custodian to deduct, from the Growers' Proportional Interest of the

remaining Gross Proceeds, any Annual Payments and interest payable by the Grower that are in default and any fees payable with respect to the Relevant Year under the terms of the Lease and Management Agreement and the Constitution. The balance of the Net Proceeds will be distributed to the Non-Electing Growers on a proportionate basis. The terms 'Proceeds Fund' and 'Proportional Interest' are defined in clause 1.1 of the Lease and Management Agreement.

44. If a Grower is an Electing Grower (clauses 24 of the Lease and Management Agreement), the Manager will advise the Grower of the amount of Annual Payment and the estimated amount of the Manager's Bonus. The amounts due must be paid at least 1 week prior to collection of the Olives (clause 24 of the Lease and Management Agreement). After the sale of the Olive Oil the Manager will ascertain the actual amount of Manager's Bonus and notify the Grower of any amount payable or refundable.

Finance

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

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

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' are or will be granted to the borrowers for the 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; or
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers;

- entities associated with the Project, are involved or become involved, in the provision of finance to Growers for the Project.

Ruling

Assessable income

47. A Grower's share of the gross sale proceeds derived from the sale of Olive Oil from the Project, less any GST payable on these proceeds, will be assessable income under section 6-5 of the ITAA 1997. Section 17-5 of the ITAA 1997 excludes amounts relating to GST payable on taxable supplies from assessable income.

Section 8-1

Deductions where a Grower invests in the Project on or before 31 March 2001 and is not registered nor required to be registered for GST

48. A Grower may claim tax deductions in the Table below where the Grower

- participates in the Project by 31 March 2001 to carry on the business of growing Olives;
- incurs the fees shown in paragraph 38; and is not registered nor required to be registered for GST.

Fee Type	ITAA 1997 Section	Year 1 30/6/2001	Year 2 30/6/2002	Year 3 30/6/2003
Management Fee	8-1	\$7,128.00 – See Note (i) (below)	\$2,986.50 – See Note (i) (below)	\$2,319.90 – See Note (i) (below)
Licence Fee	8-1	\$528.00 – See Note (i) (below)	\$543.40 – See Note (i) (below)	\$559.90 – See Note (i) (below)
Interest		See Note (ii) (below)	See Note (ii) (below)	See Note (ii) (below)

Notes:

- (i) Where a Grower incurs the Management Fees and the Lease Fees as required by the Lease and Management Agreement those fees are deductible in full in the year incurred. However, if a Grower **chooses** to prepay fees

for the doing of things (eg, the provision of management services or the leasing of land) that will not be wholly done in the same income year as the fees are incurred, then the prepayments rules of the ITAA 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 91 unless the expenditure is 'excluded expenditure'. 'Excluded expenditure', being expenditure of less than \$1,000, is an 'exception' to any prepayment rules that apply and is deductible in full in the year in which it is incurred.

- (ii) The deductibility or otherwise of interest arising from agreements that Growers enter into to finance their participation in the Project is outside the scope of this Ruling. However, all Growers who enter into agreements to finance their participation in the Project should read carefully the discussion of the prepayment rules in paragraph 98 to 100 below as those rules may be applicable if interest is prepaid.

Deductions where a Grower invests in the project after 31 March 2001 and on or before 31 May 2001 and is not registered nor required to be registered for GST

49. A Grower may claim tax deductions in the Table below where the Grower

- participates in the Project after 31 March 2001 and on or before 31 May 2001 to carry on the business of growing Olives;
- incurs the fees shown in paragraph 38; and is not registered nor required to be registered for GST.

Fee Type	ITAA 1997 Section	Year 1 30/6/2001	Year 2 30/6/2002	Year 3 30/6/2003
Management Fee	8-1	\$1,782.00 – See Note (i) (below)	\$8,332.50 – See Note (i) (below)	\$2,319.90 – See Note (i) (below)
Licence Fee	8-1	\$44.00 – See Note (i) (below)	\$1,027.40 – See Note (i) (below)	\$559.90 – See Note (i) (below)
Interest		See Note (ii) (below)	See Note (ii) (below)	See Note (ii) (below)

Notes:

- (i) Where a Grower incurs the Management Fees and the Lease Fees as required by the Lease and Management Agreement those fees are deductible in full in the year incurred. However, if a Grower **chooses** to prepay fees for the doing of things (e.g., the provision of management services or the leasing of land) that will not be wholly done in the same income year as the fees are incurred, then the prepayments rules of the ITAA 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 91 unless the expenditure is 'excluded expenditure'. 'Excluded expenditure', being expenditure of less than \$1,000, is an 'exception' to any prepayment rules that apply and is deductible in full in the year in which it is incurred.
- (ii) The deductibility or otherwise of interest arising from agreements that Growers enter into to finance their participation in the Project is outside the scope of this Ruling. However, all Growers who enter into agreements to finance their participation in the Project should read carefully the discussion of the prepayment rules in paragraph 98 to 100 below as those rules may be applicable if interest is prepaid.

Deductions where a Grower invests in the project on or after 1 June 2001 and is not registered nor required to be registered for GST

50. A Grower may claim tax deductions in the Table below where the Grower

- participates in the Project on or after 1 June 2001 to carry on the business of growing Olives;
- incurs the fees shown in paragraph 38; and is not registered nor required to be registered for GST.

PR 2001/22

Fee Type	ITAA 1997 Section	Year 1 30/6/2002	Year 2 30/6/2003	Year 3 30/6/2004
Management Fee	8-1	\$8,485.40 – See Note (i) (below)	\$4,306.50 – See Note (i) (below)	\$1,859.00 – See Note (i) (below)
Licence Fee	8-1	\$528.00 – See Note (i) (below)	\$559.90– See Note (i) (below)	\$577.50 – See Note (i) (below)
Interest		See Note (ii) (below)	See Note (ii) (below)	See Note (ii) (below)

Notes:

- (i) Where a Grower incurs the Management Fees and the Lease Fees as required by the Lease and Management Agreement those fees are deductible in full in the year incurred. However, if a Grower **chooses** to prepay fees for the doing of things (e.g., the provision of management services or the leasing of land) that will not be wholly done in the same income year as the fees are incurred, then the prepayments rules of the ITAA 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 91 unless the expenditure is 'excluded expenditure'. 'Excluded expenditure', being expenditure of less than \$1,000, is an 'exception' to any prepayment rules that apply and is deductible in full in the year in which it is incurred.
- (ii) The deductibility or otherwise of interest arising from agreements that Growers enter into to finance their participation in the Project is outside the scope of this Ruling. However, all Growers who enter into agreements to finance their participation in the Project should read carefully the discussion of the prepayment rules in paragraph 98 to 100 below as those rules may be applicable if interest is prepaid.

Tax deductions for capital expenses

51. A Grower who participates in the Project by 31 March 2001 or after 31 March but on or before 31 May 2001 will also be entitled to the following tax deductions:

Fee type	ITAA 1997 section	Year 1 30/6/2001	Year 2 30/6/2002	Year 3 30/6/2003
Irrigation costs	387-125	\$583 - see note (iii) and (iv) below	\$583 - see note (iii) and (iv) below	\$583 - see note (iii) and (iv) below

Notes:

- (iii) A deduction is allowable under section 387-125 for capital expenditure incurred for acquisition and installation of the irrigation system. The deduction 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.
- (iv) A tax offset is available to certain low income primary producers under section 388-55 in respect of expenditure incurred on landcare operations and/or facilities to conserve or convey water. This is an alternative to claiming deductions under section 387-125.

52. A Grower who participates in the Project on or after 1 June 2001 will also be entitled to the following tax deductions:

Fee type	ITAA 1997 section	Year 1 30/6/2002	Year 2 30/6/2003	Year 3 30/6/2004
Irrigation costs	387-125	\$583 - see note (iii) below	\$583 - see note (iii) below	\$583 - see note (iii) below

Notes:

- (iii) A deduction is allowable under section 387-125 for capital expenditure incurred for acquisition and installation of the irrigation system. The deduction 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.

Deductions where a Grower invests in the Project on or before 31 March 2001 and is registered or is required to be registered for GST

53. Where a Grower who is registered or is required to be registered for GST:

- participates in the Project by 31 March 2001 to carry on the business of growing Olives;
- incurs the fees shown in paragraph 38; and
- is entitled to an input tax credit for the fees

then the tax deductions shown in the Tables in paragraphs 48 and 51 above will exclude any amounts of input tax credit (Division 27 of the ITAA). See Example 1 at paragraph 107.

Deductions where a Grower invests in the Project after 31 March 2001 and on or before 31 May 2001 and is registered or is required to be registered for GST

54. Where a Grower who is registered or is required to be registered for GST:

- participates in the Project after 31 March 2001 and on or before 31 May 2001 to carry on the business of growing Olives;
- incurs the fees shown in paragraph 38; and
- is entitled to an input tax credit for the fees

then the tax deductions shown in the Tables in paragraphs 49 and 51 above will exclude any amounts of input tax credit (Division 27 of the ITAA). See Example 1 at paragraph 107.

Deductions where a Grower invests in the Project on or after 1 June 2001 and is registered or is required to be registered for GST

55. Where a Grower who is registered or is required to be registered for GST:

- participates in the Project on or after 1 June 2001 to carry on the business of growing Olives;
- incurs the fees shown in paragraph 38; and
- is entitled to an input tax credit for the fees

then the tax deductions shown in the Tables in paragraphs 50 and 52 above will exclude any amounts of input tax credit (Division 27 of the ITAA). See Example 1 at paragraph 107.

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

Section 35-55 - Commissioner's discretion

56. For a Grower who is an individual and who enters the Project during the years ended 30 June 2001 or 30 June 2002, the rule in section 35-10 may apply to the business activity comprised by their involvement in the Project. Under paragraph 35-55(1)(b) the Commissioner will decide for the income years ending 30 June 2001 to 30 June 2004 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.

57. 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 78 in the Explanations part of this Ruling, below).

58. 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 the 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.

59. 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 subsection 35-55(1) (b) as an indication that the Tax Office sanctions or guarantees the Project or the product to be a commercially viable investment. An assessment of the Project or the product from this perspective has not been made.

Sections 82KZM, 82KZMB – 82KZMD, 82KZME – 82KZMF, 82KL and Part IVA

60. For a Grower who participates in the Project and incurs expenditure as required by the Lease and Management Agreement the following provisions of the ITAA 1936 have application as indicated:

- expenditure by the Grower does not fall within the scope of section 82KZM (but see paragraphs 86 to 97);
- expenditure by the Grower does not fall within the scope of sections 82KZMB-82KZMD (but see paragraphs 86 to 97);
- expenditure by the Grower does not fall within the scope of sections 82KZME-82KZMF (but see paragraphs 86 to 97);
- 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 8-1

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

- the outgoings in question must have a sufficient connection with the operations or activities that directly gain or produce the taxpayer's assessable income;
- the outgoings are not deductible under the second limb if they are incurred when the business has not commenced; and
- where all that happens in a year of income is that a taxpayer contractually commits themselves to a venture that may not turn out to be a business, there can be doubt about whether the relevant business has commenced and, hence, whether the second limb applies. However, that does not preclude the application of the first limb in determining whether the outgoing in question has a sufficient connection with activities to produce assessable income.

Is the Grower carrying on a business?

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

63. Generally, an investor will be carrying on a business of cultivating Olive Trees for the production of Olive Oil where:

- the investor has an identifiable interest in specific Olives coupled with a right to harvest and sell the Olive Oil;
- the activities of cultivating Olive Trees for the production of Olive Oil are carried out on the investor's behalf; and
- the weight and influence of the general indicators of a business, as used by the Courts, point to the carrying on of a business.

64. For this Project, Growers have rights under the Lease and Management Agreement in the form of a lease over an identifiable area of land consistent with the intention to carry on a business of cultivating Olive Trees for the production of Olive Oil. Under the same agreement Growers appoint the Manager to provide services such as cultivating, tending, fertilising, replanting, spraying and otherwise caring for the trees as and when required according to good horticultural practice. Growers are considered to control their investment. The specific cost of these services provided in the First Period will be \$7,128.00 for a Grower Category 1, \$1,782.00 for a Grower Category 2 and \$8,485.40 for a Grower Category 3.

65. The Lease and Management Agreement gives Growers an identifiable interest in specific Olives and a legal interest in leased land. Growers have the right to personally market and sell the Olives attributed to their Leased Area or they may appoint the Manager to arrange the processing and sale of the Olive Oil for them. Growers will have a continuing interest in the Olives.

66. Growers have the right to use the land in question for the purpose of cultivating Olive Trees for the production of Olive Oil and to have the Responsible Entity come onto the land to carry out its obligations under the Constitution and the Lease and Management Agreement. The Growers' degree of control over the Responsible

Entity, as evidenced by the Agreements and supplemented by the Corporations Law, is sufficient. Under the Project, Growers are entitled to receive regular progress reports on the Responsible Entity's activities. Growers are able to terminate arrangements with the Responsible Entity in certain instances, such as cases of default or neglect. The horticultural activities described in the Lease and Management Agreement are carried out on the Growers' behalf.

67. The general indicators of a business, as used by the Courts, are described in Taxation Ruling TR 97/11. Positive findings can be made from the arrangement's description for all the indicators. Growers to whom this Ruling applies intend to derive assessable income from the Project. This intention is related to projections contained in the 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.

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

69. Growers have a continuing interest in the Olives grown on the Leased Area. 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' horticultural activities will constitute the carrying on of a business.

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

Expenditure of a capital nature

71. Any part of the expenditure of a Grower entering into a business of Olive Cultivation 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 are considered to be capital in

nature. The fees for these expenditures are not deductible under section 8-1. However, this expenditure falls for consideration under specific write-off provisions of the ITAA 1997.

Subdivision 387-B – irrigation expenditure

72. Section 387-125 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.

73. As the taxpayer who can claim the deduction does not have to actually own the land but can be a tenant, a lessee or licensee who is conducting a primary production business on land in Australia, a deduction would be available to a Grower in the Project at a rate of 33.3 per cent per annum for the cost of the irrigation system.

74. However, a deduction under section 387-125 is denied where the Grower is entitled to claim a water facility tax offset under section 388-55 and chooses to do so. A Grower can only choose a water facility tax offset where:

- had the Grower chosen a deduction instead of the tax offset, the Grower's taxable income for the income year would have been \$20,000 or less; and
- the expenditure is incurred before the end of the 2000-01 income year.

A Grower who invests in the Project on or after 1 June 2001 is not entitled to claim a water facility offset under section 388-55 as the expenditure is not incurred before the end of the 2000-01 income year.

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

75. Under the rule in subsection 35-10(2), a deduction for a loss incurred by an individual (including an individual in a general law partnership) from certain business activities will not be allowable 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

PR 2001/22

- if one of the objective tests is not satisfied, the Commissioner exercises the discretion in section 35-55.

76. 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.

77. 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.

78. For the purposes of applying the objective tests, 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 Projects, they are beyond the scope of this Product Ruling and are not considered further.

79. In broad terms, the objective 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 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 are used on a continuing basis in carrying on the business activity in that year (section 35-45).

80. 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 investment of one Leased Area during the years ended 30 June 2001 or 30 June 2002 is unlikely to pass one of the objective tests until the year ended 30 June 2005. Growers who acquire more than one interest in the Project may however, pass one of the tests in an earlier income year.

81. Therefore, 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.

82. 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, for an individual Grower who acquires an interest(s) in the Project, the Commissioner will decide that it would be unreasonable not to exercise the second arm of the discretion in paragraph 35-55(1)(b) until the year ended 30 June 2004.

83. The second arm of the discretion in paragraph 35-55(1)(b) may be exercised where:

- (i) the business activity has started to be carried on; and
- (ii) there is an objective expectation that the business activity of an individual taxpayer will either pass one of the objective tests or produce a taxation profit within a period that is commercially viable for the industry concerned.

84. This Product Ruling is issued on a prospective basis (i.e., before an individual Grower's business activity starts to be carried on). Therefore, if the Project fails to be carried on during the income years specified above (see paragraph 56) in the manner described in the Arrangement (see paragraphs 15 to 46), the Commissioner's discretion will not have been exercised because one of the key conditions in paragraph 35-55(1)(b) will not have been satisfied.

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

- the report of the Independent Expert and additional evidence provided with the application by the Responsible Entity;
- the binding contract(s) with Premium Olive Marketing Limited for the sale of the Olive Oil setting out prices that realistically reflect the existing market and/or the projected market in the geographical region where the Olives are grown; and
- independent, objective and generally available information relating to the Olive Oil industry which substantially supports cash flow projections and other claims, including prices and costs, in the Product Ruling application submitted by the Responsible Entity.

Prepayments provisions - sections 82KZM, 82KZMA - 82KZMD and 82KZME - 82KZMF

86. The prepayments provisions of the ITAA operate 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. 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 is not wholly done within the same year of income as the year in which the expenditure is incurred.

87. In this Project, the Management Fee and the Licence Fee per Leased Area will be incurred on execution of the Lease and Management Agreement. The fee is charged for providing management services to a Grower by 30 June of the year of execution of the Agreements. In particular, the fee 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 fee has been inflated to result in reduced fees being payable for subsequent years.

88. There is no evidence that might suggest the management services covered by the fee could not be provided within 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 Responsible Entity doing 'things' that are not to be wholly done within the year of income of the fee being incurred. On this basis, provided a Grower incurs expenditure as required by the agreements as set out in paragraph 15, then the basic precondition for the operation of the prepayment provisions is not satisfied and fees will be deductible in the year in which they are incurred.

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

89. Although not required under the Arrangement described in this Product Ruling, a Grower participating in the Project may choose to prepay fees for a number of years. Where this occurs, contrary to the conclusion reached in paragraph 88 above, the prepayments provisions of the ITAA will operate to apportion the expenditure and allow an income tax deduction over the period that the prepaid benefits are provided.

90. The amount and timing of tax deductions for any prepaid Management Fees or prepaid Licence Fee otherwise deductible under section 8-1 will depend upon when the respective amounts are incurred and what the 'eligible service period' is, as defined in subsection 82KZL(1), in relation to these amounts. The 'eligible

service period' means, generally, the period over which the services are to be provided. The relevant provision of the ITAA will depend on a number of factors including the amount and timing of the prepayment and, where the 'eligible service period' exceeds 13 months, whether the Growers is a 'small business taxpayer'.

91. Where a Grower participating in this Project incurs expenditure in respect of an eligible service period that ends 13 months or less from the time the expenditure was incurred, but also in respect of the doing of a thing not to be wholly done within the income year in which that expenditure has been incurred, and the other tests in section 82KZME are met, then section 82KZMF will apply in the manner set out in the formula below:

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

In the formula, the 'eligible service period' means, generally, the period to which the services are to be provided.

92. Where a Grower participating in this Project incurs expenditure in respect of a period that ends more than 13 months after that expenditure has been incurred, then section 82KZM will apply if the Grower is a 'small business taxpayer' or section 82KZMD if the Grower is not a 'small business taxpayer'. For a 'small business taxpayer' (see paragraphs 94 to 96) the amount and timing of the allowable deductions will then be calculated using the formula in subsection 82KZM(1) and for non-small business taxpayers using the formula in subsection 82KZMD(2). Both formulae are the same, or effectively the same as that shown in paragraph 91 above, concerning section 82KZMF.

93. A prepaid management fee and/or a prepaid lease fee of less than \$1,000 incurred in an expenditure year is 'excluded expenditure' as defined in subsection 82KZL(1). Subsections 82KZM(1), 82KZME(7) and 82KZMA(4) all provide that 'excluded expenditure' is an exception to the prepayment rules discussed above. Therefore, a prepaid fee of less than \$1,000 is deductible in full in the year in which it is incurred. However, where a Grower acquires more than one interest in the Project and the quantum of a prepaid Management Fee or a prepaid Licence Fee is \$1,000 or more, then the amount and timing of the deduction allowable must be determined using the formula shown above.

Subdivision 960-Q - small business taxpayers

94. 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'.

95. 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.

96. '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).

97. Whether a Grower is a "small business taxpayer" depends upon the circumstances of each Grower and is beyond the scope of this Product Ruling. It is the responsibility of each Grower to determine whether or not they are within the definition of a "small business taxpayer".

Interest deductibility

98. The deductibility of interest incurred by Growers who finance their participation in the Project through a loan facility with a bank or other financier is outside the scope of this Ruling. Product Rulings only deal with arrangements where all details and documentation have been provided to, and examined by, the Tax Office.

99. While the terms of any finance agreement entered into between relevant Growers and such financiers are subject to commercial negotiation, those agreements may require interest to be prepaid. Under the prepayment rules contained in section 82KZME, 'agreement' (defined in subsection 82KZME(4)) is a broad concept and includes all activities that relate to the agreement including those that give rise to deductions or assessable income. It will encompass activities not described in the Arrangement or otherwise dealt with in the Product Ruling, such as a loan to finance participation in the Project.

100. Therefore, unless the prepaid interest is 'excluded expenditure', where such a loan facility requires interest to be prepaid and the requirements of section 82KZME are met, relevant Growers will be required to determine any tax deduction using the formula in subsection 82KZMF(1) to determine any tax deduction that may be allowable. Where a prepayment is for more than 13 months, any tax deduction that may be allowable must be determined under section 82KZM (for a "small business taxpayer") or section 82 KZMD (for a taxpayer who is not a "small business taxpayer"). The relevant formular is the same, or effectively the same as that shown above in paragraph 91 above.

Section 82KL – recouped expenditure

101. 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’.

102. ‘Additional benefit’ (see the definition of ‘additional benefit’ at subsection 82KH(1) and paragraph 82KH(1F)(b)) is, broadly speaking, a benefit 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.

103. Section 82KL’s operation depends, among other things, on the identification of a certain quantum of ‘additional benefits’. Here, there may be a loan provided to the Grower. The loan will be provided on a full recourse basis, and on commercial terms. Insufficient ‘additional benefits’ will be provided in respect of this Project, to trigger the application of section 82KL. It will not apply to deny the deductions otherwise allowable under section 8-1.

Part IVA

104. 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).

105. The Project will be a ‘scheme’ commencing with the issue of the Prospectus. A Grower will obtain a ‘tax benefit’ from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 48 to 52 that would not have been obtained but for the scheme. However, it is not possible to conclude that the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

106. Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the eventual harvesting of the trees. 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 are no non-recourse financing or round robin characteristics, and no indication that the parties are not dealing with each other at arm’s length, or, if any parties are not 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.

Examples

Example 1 – entitlement to ‘input tax credit’

107. Margaret, who is registered for GST, invests in the Green Circle Bluegums Project. The management fees are payable on 1 July each year for management services to be provided over the following 12 months. On 1 July 2000 Margaret pays her first year’s management fees of \$5,500 and is eligible to claim a tax deduction for the fees in the income year ended 30 June 2001. The extent of her deduction for the management fees however, is reduced by the amount of any input tax credit to which she is entitled. The Project Manager provides Margaret with a tax invoice which includes its ABN and shows the price of the taxable supply for management services (\$5,500). Using the details shown on the valid tax invoice, Margaret calculates her input tax credit as:

$$\frac{1}{11} \times \$5,500 = \$500$$

Therefore, the tax deduction for management fees that she can claim in her income tax return for the year ended 30 June 2001 is \$5,000 (\$5,500 less \$500).

Detailed contents list

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

	Paragraph
What this Product Ruling is about	1
Tax law(s)	2
Goods and Services Tax	3
Business Tax Reform	4
Note to promoters and advisers	6
Class of persons	7
Qualifications	9
Date of effect	12
Withdrawal	14
Arrangement	15

Overview	17
Constitution	27
Compliance plan	28
Lease and Management Agreement	29
Fees	38
Harvesting	40
Finance	45
Ruling	47
Assessable income	47
Section 8-1	48
Deductions where a Grower invests in the Project on or before 31 March 2001 and is <u>not</u> registered nor required to be registered for GST	48
Deductions where a Grower invests in the Project after 31 March 2001 and on or before 31 May and is <u>not</u> registered nor required to be registered for GST	49
Deductions where a Grower invests in the Project on or after 1 June 2001 and is <u>not</u> registered nor required to be registered for GST	50
Tax deduction for capital expenses	51
Deductions where a Grower invests in the Project on or before 31 March 2001 and is registered or is required to be registered for GST	53
Deductions where a Grower invests in the Project on or after 31 March 2001 and on or before 31 May 2001 and is registered or is required to be registered for GST	54
Deductions where a Grower invests in the Project on or after 1 June 2001 and is registered or is required to be registered for GST	55
Division 35 - deferral of losses from non-commercial business activities	56
Section 35-55 - Commissioner's discretion	56
Section 82KZM, 82 KZMB – 82KZMD, 82KZME – 82KZMF, 82KL and Part IVA	60
Explanations	61
Section 8-1	61
Is the Grower carrying on a business?	62

Expenditure of a capital nature	71
Subdivision 387-B – irrigation expenditure	72
Division 35 – deferral of losses from non-commercial business activities	75
Prepayments provisions – sections 82KZM, 82KZMA – 82KZMD, and 82KZME – 82KZMF	86
Growers who choose to pay fees for a period in excess of that required by the Project’s agreements	89
Subdivision 960-Q - small business taxpayers	94
Interest deductibility	98
Section 82KL – recouped expenditure	101
Part IVA	104
Examples	107
Example 1 - entitlement to an ‘input tax credit’	107
Detailed contents list	108

Commissioner of Taxation

21 March 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; TD 93/34;
TR 98/22*Subject references:*

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

Legislative references:

- ITAA 1936 82KH(1)
- ITAA 1936 82KH(1F)(b)
- ITAA 1936 82KL
- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZM
- ITAA 1936 82KZM(1)
- ITAA 1936 82KZMA
- ITAA 1936 82KZMA(4)
- ITAA 1936 82KZMB
- ITAA 1936 82KZMC
- ITAA 1936 82KZMD
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