



# ***PR 2001/25 - Income tax: The Timber Australia Project***

 This cover sheet is provided for information only. It does not form part of *PR 2001/25 - Income tax: The Timber Australia Project*

 This document has changed over time. This is a consolidated version of the ruling which was published on *16 January 2002*



## Product Ruling

### Income tax: The Timber Australia Project

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Contents	Para
What this Product Ruling is about	1
Date of effect	13
Withdrawal	15
Arrangement	16
Ruling	48
Explanations	65
Examples	104
Detailed contents list	105

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

#### *Preamble*

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

*[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]*

#### **No guarantee of commercial success**

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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**

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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.

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## What this Product Ruling is about

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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 Timber Australia Project, 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. All fees and expenditure referred to in this Ruling include the 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 and on or before 31 December 2001. They will have a purpose of staying in the arrangement until it is completed (i.e., being a party to the relevant agreements until their term expires) and deriving assessable income from this involvement as set out in the description of the arrangement. In this Ruling, these persons are referred to as 'Growers'.

8. As the offer is a stapled security, the shares cannot be separated from a Woodlot. Although a Grower may also subscribe for shares in the Land Owner, this Ruling does not apply to persons or entities who **only** own shares in the Land Owner company. These persons or entities are referred to as 'Shareholders'.

9. 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**

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

11. The class of persons defined in the Ruling may rely on its contents, provided the arrangement (described below at paragraphs 16 to 47) 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**

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13. 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).

14. 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**

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15. This Product Ruling is withdrawn and ceases to have effect after 30 June 2003. 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**

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

- Application for Product Ruling dated 18 October 2000;
- Draft Prospectus prepared by ARG Management Ltd (Responsible Entity) dated 10 October 2000;
- Consolidated Draft Prospectus for The Timber Australia Project dated 9 February 2001;
- Management Agreement between ARG Management Ltd and the Grower, being incorporated in Schedule 2 of the Constitution and in section 13 of the Draft Prospectus dated 10 October 2000;
- The Timber Australia Project Prospectus draft dated 23 November 2000;
- **Management Agreement between ARG Management Ltd, Timber Australia Properties Ltd (as grantor of licence to occupy each Woodlot) and the Grower, being incorporated in section 12 of the Draft Prospectus dated 9 February 2001;**
- Compliance Plan for Timber Australia Project executed by the directors of ARG Management Ltd dated 30 October 2000 with Ref 12/09/00;
- Custodian Agreement between the Responsible Entity and Australian Rural Group Ltd (Custodian), undated with Ref 12/09/00;
- Operational Management Agreement between the Responsible Entity and Timber Australia Pty Ltd dated 22 December 2000 with Ref 07/09/00;
- Constitution of Timber Australia Project dated 21 November 2000 with Ref 17/10/00;
- Amendment to Constitution of Timber Australia Project dated 28 January 2001;
- Constitution of Timber Australia Properties Ltd registered 3 October 2000;
- Amendment to Constitution of Timber Australia Properties Ltd dated 18 January 2001;
- Option Agreement for subject Land between the original Land Owner and Timber Australia Properties Ltd dated 4 October 2000;

- Option Agreement for additional land (if required) between the original owner and Timber Australia Properties Ltd dated 16 January 2001;
- Lease between the original Land Owner and Timber Australia Properties Ltd as lessee dated 1 October 2000;
- Draft Lease between Australian Rural Group Ltd and Timber Australia Properties Ltd as lessee, undated;
- Draft Sub-lease between Timber Australia Properties Ltd and Australian Rural Group Ltd as lessee, undated;
- Finance package provided by ARG Financial Group Ltd detailing the St George Bank loan facility;
- Silviculture Report dated October 2000; and
- Additional correspondence received from the Applicant up to and including correspondence received on 8 March 2001; 29 May 2001, 30 May 2001, 3 October 2001, 26 November 2001 21 December 2001 and 4 January 2002;
- **Management Agreement "B" between ARG Management Ltd, Timber Australia Properties Ltd (as grantor of the licence to occupy each Woodlot) and the Grower, being incorporated in section 12 of the Prospectus dated 23 April 2001; and**
- The Timber Australia Project - Fourth Supplementary Prospectus, dated 28 December 2001.
- The Timber Australia Project – First Supplementary Prospectus, dated 4 April 2001;
- The Timber Australia Project – Second Supplementary Prospectus, dated 12 April 2001; and
- The Timber Australia Project - Third Supplementary Prospectus, undated; and

**NOTE: certain information received from Timber Australia Pty Ltd has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.**

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

arrangement. The effect of these agreements is summarised as follows.

### Overview

18. This arrangement is called the Timber Australia Project.

Location	The Northern Rivers Area of NSW (see below)
Type of business each participant is carrying on	Commercial growing and cultivation of eucalyptus trees for the purpose of harvesting, milling and selling timber.
Number of hectares under cultivation	1,000
Size of each Woodlot	1.0 hectare
Number of trees per hectare	1,600 approximately
Minimum Subscription	2,000 A Class shares representing 200 Woodlots
Expected production	344.4 cubic metres per Woodlot
The term of the investment	15 years
Initial plantation cost	\$5,500 plus \$1,000 for shares in the Land Owner which may be owned by the Grower or an associate. Payment by cheque or by credit card facility.
Initial cost per hectare	\$5,500
Ongoing costs	Planting Fee of \$550 in Year 2 plus Plantation Fees of \$770 in Year 3 and \$660 in each of Years 4 to 6.

19. This is a “Stapled Security” in that to subscribe for 1 Woodlot a Grower or his associate must also take 10 A Class shares in the Land Owner (Timber Australia Properties Ltd). The Grower may hold the shares in the Land Owner directly or indirectly through an associate. Growers participating in the arrangement will hold Woodlots by way of a licence incorporated as part of the Management Agreement. Under this arrangement Growers will hold a licence over a ‘Woodlot’ until the final distribution of the sale proceeds is made to the Grower or until the Project is terminated. Each Woodlot will be 1.0 hectare and will be planted with approximately 1,600 trees. The Woodlots will

be separately identified on an aerial photographic map. Applications will not be accepted after 23 April 2002.

20. Overall, it is proposed to plant up to 1,000 hectares representing 1,000 Woodlots. However the Responsible Entity is able to accept subscriptions to the extent that suitable land is available. The minimum subscription for the Project is 2000 A Class Shares representing 200 Woodlots. If minimum subscription is not reached within four months of the date of the Prospectus no shares will be issued and all application money will be returned within seven days. This ruling does not apply to any arrangement in which the minimum subscription of 2000 A class shares is not reached.

21. Subject to the Project achieving minimum subscription, the Land Owner intends to acquire the "Project Land" known as "Taylor's" being Lots 94, 96, 97, 104 & 114 in Deposited Plan 14126 (NSW) pursuant to an Option Agreement between the original Land Owner and Timber Australia Properties Ltd, dated 4 October 2000. In addition, the Land Owner has an option over additional land if required due to a high level of subscriptions.

22. Growers will execute a Power of Attorney enabling the Land Owner to act on their behalf as required when they make an application for a Woodlot. Growers will enter into a Management Agreement contract with the Responsible Entity for the management of their Woodlot, and with the Land Owner to licence the land.

23. The Responsible Entity will be responsible for planting and growing the trees and harvesting, milling and marketing the finished timber. Thinnings will occur in years 6 and 10 and final harvest in year 15.

### **Constitution**

24. The Constitution establishes the Project and operates as a deed binding on all of the Growers and the Responsible Entity. The Constitution sets out the terms and conditions under which ARG Management Ltd agrees to act as Responsible Entity and thereby manage the Project. Growers are bound by the Constitution by virtue of their participation in the Project. Pursuant to clause 17 of the Constitution, the Responsible Entity will keep a register of Growers. Growers may assign their interest in certain circumstances as set out in clause 16 of the Constitution.

### **Compliance plan**

25. As required by the Corporations Law a Compliance Plan has been prepared by the Responsible Entity. Its 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. The Compliance Plan among other things sets out the procedures for dispute handling, the safekeeping of scheme property, keeping of accounts and records, and disaster recovery plans.

### **Custodian Agreement**

26. The Custodian Agreement is the means by which the Responsible Entity appoints the Custodian, Australian Rural Group Ltd, to act as its custodian to hold the Scheme Property as that term is defined in section 9 of the Corporations Law. It imposes certain standards and obligations on the Custodian and the Responsible Entity, including maintaining a trust account and proper records. All moneys received from applications for Woodlots shall be paid to the Custodian and held until minimum subscription has been reached and the project has commenced. The Custodian shall deposit those moneys into an Application Fund in the name of the Custodian.

27. Application moneys for Woodlots will be released to the Responsible Entity when the Custodian is reasonably satisfied that certain specified criteria in the Constitution have been met.

28. All moneys received from applications for shares in the Land Owner are to be paid to the Land Owner.

### **Management Agreement**

29. Growers participating in the arrangement will enter into a Management Agreement with the Responsible Entity. The Management Agreement provides that each Grower appoints the Responsible Entity to perform services under the agreement. Growers who do not enter into the Management Agreement and do not appoint the Responsible Entity to perform management functions pertaining to his/her Woodlot, are outside the class of persons to whom this Ruling applies. Schedules 2, 3 and 4 of the Management Agreement specify the services to be performed by the Responsible Entity. The Responsible Entity will establish, maintain and manage the Project on behalf of each Grower in accordance with good silvicultural practice.

30. At all times the Grower has full rights, title and interest in the forest produce and the right to have the trees sold for his/her benefit (section 4). Growers may elect to market their own timber if they so wish. Such an election must be made by 30 June 2002, pursuant to clause 4.6. See also paragraph 63 below dealing with trading stock.

31. The Responsible Entity will be entitled to a share of profit, being 10% of the net income from each Woodlot in any year. The Responsible Entity is also entitled to a Profit Incentive equal to 25%

(but not in addition to the 10% profit share mentioned above) of any excess over and above the Net Income projected in the Prospectus per Woodlot in the years 6, 10 and 15.

32. Pursuant to Clause 19 of the Management Agreement, the Land Owner grants a licence to the Grower for respective allotments (Woodlots) for the purpose of conducting the Grower's afforestation business.

### **Operational Management Agreement**

33. The Operational Management Agreement is made between the Responsible Entity and Timber Australia Pty Ltd as Operational Manager. The Responsible Entity agrees to engage the Operational Manager to perform all the works required to establish the plantation on the prepared land. This includes:

- obtaining all necessary regulatory approvals to establish a plantation forestry;
- evaluating the site, selecting suitable tree species, maintaining the plantation in accordance with good silvicultural practice;
- preparation of the land including deep ripping and/or mounding;
- planting the tree seedlings on the land; and
- ensuring adequate fire, pest and disease prevention measures are in place.

34. In consideration for these services, the Responsible Entity agrees to pay fees to the Operational Manager as detailed in the Operational Management Agreement.

### **Fees**

35. As per clauses 5.1 and 5.2 of the Management Agreement, the following fees are due and payable on the dates specified for the respective period and may be paid by cheque or through the use of a credit card facility. The fee structure assumes a Grower will make application during Year 1 i.e., before 30 June 2001 and minimum subscription has been reached by 15 June 2001. If a Grower makes application after that date, then Year 1 and 2 fees are combined and payable on application. The fees payable per Woodlot are as follows:

- Year 1 Plantation Fee of \$5,500 payable at the time of application to the Responsible Entity, for the establishing then managing and maintaining the Grower's Woodlot for the period from the date of execution of the Management Agreement to

30 June 2001, or to 31 July 2001 where a Grower is accepted into the project between 16 June 2001 and 30 June 2001 (clause 5.2);

- Year 2 Planting Fee of \$550 for planting of trees by 31 December 2001 payable by 30 September 2001 or on application where a Grower subscribes after 1 October 2001 (clause 5.2);
- There is no plantation fee in respect of the period 1 July 2001 and 30 June 2002;
- Year 3 Plantation Fee of \$770, for managing and maintaining the Grower's Woodlot for the period 1 July 2002 to 30 June 2003 payable on 30 June 2002 (clause 5.2(a) and 15);
- Year 4 Plantation Fee of \$660 for managing and maintaining the Grower's Woodlot for the period 1 July 2003 to 30 June 2004 payable on 30 June 2003 (clause 5.2(b) and 15);
- Year 5 Plantation Fee of \$660 for managing and maintaining the Grower's Woodlot for the period 1 July 2004 to 30 June 2005 payable on 30 June 2004 (clause 5.2(c) and 15);
- Year 6 Plantation Fee of \$660 for managing and maintaining the Grower's Woodlot for the period 1 July 2005 to 30 June 2006 payable on 30 June 2005 (clause 5.2(d) and 15); and
- From Year 7 to Year 15, in accordance with clause 5.3(a) of the Management Agreement, the Plantation Fee will be:
  - (a) 10% of the net income attributable to the Grower's Woodlot in any year, being gross income less all operational costs (without any margin being charged on such costs); plus
  - (b) 25% of the net income for that part of the net income that exceeds projections of the net income shown in the Prospectus in any year.

36. 35A. Growers who make application and are accepted into the Project after 1 January 2002 will become a party to Management Agreement "B". As per clauses 5.1 and 5.2 of the Management Agreement "B", the following fees are due and payable on the dates specified for the respective period and may be paid by cheque or through the use of a credit card facility. The fee structure as per Management Agreement "B" is for Growers

who enter the Project between 1 January 2002 and 23 April 2002. The fees payable per Woodlot are as follows:

- Year 1 Plantation Fee of \$5,500 payable at the time of application to the Responsible Entity, for the establishing then managing and maintaining the Grower's Woodlot for the period from the date of execution of the Management Agreement to 30 June 2002, (clause 5.2);
- Year 2 Planting Fee of \$550 for planting of trees by 31 December 2002 payable by 30 September 2002 (clause 5.2);
- There is no plantation fee in respect of the period 1 July 2002 and 30 June 2003;
- Year 3 Plantation Fee of \$770, for managing and maintaining the Grower's Woodlot for the period 1 July 2003 to 30 June 2004 payable on 30 June 2003 (clause 5.2(a) and 15);
- Year 4 Plantation Fee of \$660 for managing and maintaining the Grower's Woodlot for the period 1 July 2004 to 30 June 2005 payable on 30 June 2004 (clause 5.2(b) and 15);
- Year 5 Plantation Fee of \$660 for managing and maintaining the Grower's Woodlot for the period 1 July 2005 to 30 June 2006 payable on 30 June 2005 (clause 5.2(c) and 15);
- Year 6 Plantation Fee of \$660 for managing and maintaining the Grower's Woodlot for the period 1 July 2006 to 30 June 2007 payable on 30 June 2006 (clause 5.2(d) and 15); and
- From Year 7 to Year 15, in accordance with clause 5.3(a) of the Management Agreement, the Plantation Fee will be:
  - (a) 10% of the net income attributable to the Grower's Woodlot in any year, being gross income less all operational costs (without any margin being charged on such costs); plus
  - (b) 25% of the net income for that part of the net income that exceeds projections of the net income shown in the Prospectus in any year.

36. If a Grower pays any of the plantation and/or planting fees referred to paragraph 35 above by a credit card facility, then in

addition to those plantation and/or planting fees, the Grower must pay to the Responsible Entity a once only administration fee of \$165.

37. The Responsible Entity will arrange insurance of the harvested timber to protect against risks associated with the transport and storage of the timber attributable to the Grower's Woodlot. The Grower will be responsible for insuring the Woodlot against fire, storm, or any risk the Grower wishes to be insured against (Clause 7.1 & 7.2 of Constitution).

38. As per Clause 10.1 of the Constitution, all moneys received from applications for Woodlots shall be paid to the Custodian. The Custodian shall deposit those moneys into an Application Fund in the name of the Custodian.

39. The money for the 10 A Class shares in the Land Owner (\$1,000) payable as part of the application monies is an expense of a capital nature and therefore not deductible. In accordance with clause 10.1 of the Prospectus, application moneys for Woodlots will be released to the Responsible Entity and the application money for shares in the Land Owner when the Custodian is reasonably satisfied that certain specified criteria in the Constitution have been met, including:

- (a) A Woodlot has been issued to that Grower;
- (b) The Responsible Entity is in a position to discharge its obligations under the Management Agreement;
- (c) The Land Owner has procured land for the Woodlot, noting that the subscription money for shares in the Land Owner is to be utilised to purchase the land;
- (d) The Responsible Entity and the Land Owner have attended to all matters necessary for the establishment of the Project and can attest that to the best of their knowledge (on the date of the direction to the Custodian) that there are no material breaches of the Constitution, the Compliance Plan or the Law; and
- (e) There is a lease over the Project land.

### **Planting fee**

40. For each Woodlot, in consideration of the Responsible Entity carrying out its duties in Section B of Schedule 3 of the Management Agreement prior to 31 December 2001 (Management Agreement "B" prior to 31 December 2002), the Responsible Entity is entitled to be paid \$550 for planting of each Grower's Woodlot. This payment is due on 30 September 2001 for those Growers who apply on or before 30 September 2001. Where a Grower applies for a Woodlot on or

after 1 October 2001, the planting fee of \$550 will be payable on application.

41. The duties outlined in Sections B of Schedule 3 of the Management Agreement must be carried out prior to 30 June 2002.

### **On-going Management**

42. From Year 2, the Responsible Entity will maintain the trees in accordance with good silvicultural practice. This is outlined in Schedule 4 of the Management Agreement.

43. Unless the Grower elects to take possession of their timber the Responsible Entity will be responsible for arranging the harvesting, milling and sale of the timber. Harvesting and milling of trees will take place during Year 6, Year 10 and Year 15.

44. The gross proceeds of sale of the Growers' timber will be paid direct to the Custodian who must within 7 business days either forward such amounts to the Responsible Entity for depositing into a Proceeds Fund or make a direct deposit into the Proceeds Fund (clause 6.2(a) of Compliance Plan). Within a further 7 business days, the Responsible Entity will pay to itself any fees or amounts owing to it. The balance of the net proceeds of sale will be distributed to the Growers on a proportionate basis.

### **Carbon credits**

45. All net income from the sale of carbon credits or any benefits from the application of carbon taxes will accrue to Growers as part of this arrangement.

### **Finance**

46. All Growers are required to fund their investment in the Project themselves or borrow from an independent lender. The Responsible Entity has indicated that an associated company, ARG Financial Group Ltd, may source third party finance through the St George Bank suitable for intending investors, on normal commercial broker terms. Any such finance arrangement will be on a full recourse basis from the St George Bank. No funds from the Project will be used to provide such loans.

47. 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;

- entities associated with the Project (other than ARG Financial Group Ltd as broker for the St George Bank) are involved in the provision of finance to the Grower for the Project;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' will be granted to the borrowers for the purpose of section 82KL, or the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;
- the loan terms or rate of interest are of a non-arm's length nature;
- repayments of the principal and interest are linked to the derivation of income from the Project;
- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism) back to the lender or any associate; or
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers.

## **Ruling**

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### **Assessable income**

48. A Grower's share of the gross sales proceeds from the Project, less any GST payable on these proceeds, will be assessable income under section 6-5. Section 17-5 excludes from assessable income an amount relating to GST payable on a taxable supply.

### **Minimum subscription**

49. A Grower will not incur the fees shown in the Table below before the minimum subscription for the Project is reached and the Grower's application to enter the Project is accepted (the date the investment is made). A Grower's application will not be accepted and the Project will not proceed until the minimum subscription of 2,000 A Class Shares representing 200 Woodlots is achieved. If minimum subscription is not obtained within four months of the date of the Prospectus, the Project will not proceed and all monies paid to the Responsible Entity for the Woodlot(s), and to the Land Owner for the

shares, will be returned to the Grower within seven days. Tax deductions are not allowable until the minimum subscription requirements are met. If the Project's minimum subscription requirements (described above) are reduced or altered in any way (for example, through the issue of a supplementary prospectus), this Product Ruling, including the deductions it describes, will have no application to any Grower. In such a case, Growers who are considering an investment in the Project should ensure that the Responsible Entity has obtained a new Product Ruling describing the changed arrangement.

### **Section 8-1**

50. Deductions available under Section 8-1 are only available to Growers. The deductions are not available to Shareholders i.e., persons or entities who only own shares in the Land Owner as part of the stapled security on offer.

51. If a Grower pays any of the plantation and/or planting fees by a credit card facility, then in addition to the plantation and/or planting fees, the Grower must pay to the Responsible Entity a once only administration fee of \$165 per application. This administration fee is deductible when incurred and is in addition to any other deductions available under paragraph 53 to 57 below.

### **Prepaid fees**

52. Some expenditure incurred in relation to plantation fees by a Grower who is accepted into this Project is subject to the prepayment rules contained in sections 82KZME and 82KZMF. In this Ruling these provisions apply to the initial Plantation Fee incurred by Growers who are accepted into the Project between 16 June 2001 and 30 June 2001 and to the annual on-going plantation fees of \$770 and \$660 incurred on 30 June 2002 and 30 June 2003 by all Growers accepted into the Project in respect of the financial years 30 June 2003 and 30 June 2004 respectively. Although not the subject of this Ruling, the same provisions also apply to the plantation fees relating to the financial years ended 30 June 2005 and 30 June 2006. A Grower who prepays plantation fees that are otherwise allowable under section 8-1 **cannot** claim a tax deduction for the fees in the year in which the expenditure is incurred unless it is 'excluded expenditure' (see paragraph 54(ii) below). The amount and timing of tax deductions allowable each year for such fees must be determined using the formula in subsection 82KZMF(1). In that formula, which is shown below, the 'eligible service period' means, generally, the period over which the services are to be provided.

Expenditure X Number of days of eligible service period in the year of income

Total number of days of eligible service period

In this Project, the tax deductions allowable in relation to that part of the Plantation Fees that are prepaid must be calculated by applying the formula to the amount incurred each year by the Grower.

**Deductions where a Grower is not registered nor required to be registered for GST**

53. A Grower may claim the deductions in the following tables, where the Grower:

- participates in the Project by 23 April 2002 to carry on the business of afforestation;
- subscribes for one Woodlot;
- incurs the fees shown in the table below; and
- is not registered nor required to be registered for GST.

**Table A**

54. Subject to the minimum subscription requirements set out in paragraph 49 above, where a Grower who subscribes for at least one Woodlot is accepted into the Project by 15 June 2001, the Grower is entitled to the deductions shown in Table A.

Fee Type	ITAA 1997 Section	Year 1 30/6/2001	Year 2 30/6/2002	Year 3 30/6/2003
<b>Plantation Fee</b>	8-1	\$5,500	\$770 See notes (i), (ii) & (iv) below	\$660 See notes (i), (ii) & (iv) below
<b>Planting Fee</b>	8-1		\$550	
<b>Interest</b>	8-1	See notes (iii) & (iv) below	See notes (iii) & (iv) below	See notes (iii) & (iv) below

**Notes:**

- (i) A Grower who acquires **one Woodlot** incurs \$770 on 30 June 2002 in respect of the plantation fee for the period 1 July 2002 to 30 June 2003 and \$660 on 30 June 2003 in respect of the period 1 July 2003 to

30 June 2004. Accordingly these fees are prepaid. However as the on-going annual plantation fee for a Grower who has one Woodlot is less than \$1,000, the amount is 'excluded expenditure' and is therefore deductible when incurred i.e., in the year preceding the year in which the services are performed.

- (ii) A Grower who acquires **more than one Woodlot** incurs \$770 on 30 June 2002 in respect of the plantation fee for the period 1 July 2002 to 30 June 2003, and \$660 on 30 June 2003 in respect of the period 1 July 2003 to 30 June 2004 in relation to each Woodlot. As these prepaid plantation fees do not qualify as 'excluded expenditure', they are subject to the prepayment rules. The respective deduction will be apportioned over the period of the 'eligible service period'. As the 'eligible service period' commences on 1 July 2002 and 1 July 2003 respectively, the deduction is not available in the year the fee is incurred but in the year the services are performed. (Refer to paragraph 90 below.)
- (iii) 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, Growers should read carefully the discussion of the prepayment rules in paragraphs 97 to 99 below, as those rules may be applicable if interest is prepaid.
- (iv) Where a Grower **chooses** to prepay fees beyond 13 months, sections 82KZME and 82KZMF will not apply to set the amount and timing of that Grower's tax deductions. Instead, unless the expenditure is 'excluded expenditure', the amount and timing of the tax deductions is determined under either subsection 82KZM(1) or subsection 82KZMD(2) (see paragraphs 89 to 93). To apportion the expenditure over the eligible service period, these provisions, which apply respectively to 'small business taxpayers' and taxpayers who are not 'small business taxpayers', effectively use the same formula as that shown in paragraph 52.

#### **Table B**

55. Subject to the minimum subscription requirements set out in paragraph 49 above, where a Grower who subscribes for at least one Woodlot on or after 16 June 2001 is accepted into the Project on or

before 30 June 2001, the Grower is entitled to the deductions shown in Table B.

<b>Fee Type</b>	<b>ITAA 1997 Section</b>	<b>Year 1 30/6/2001</b>	<b>Year 2 30/6/2002</b>	<b>Year 3 30/6/2003</b>
<b>Plantation Fee</b>	8-1	A portion of the Year 1 \$5,500 plantation fee, see note (v) below	A portion of the Year 1 \$5,500 plantation fee, see note (v) below plus \$770, see notes (i), (ii) & (iv) above	\$660 See notes (i), (ii) & (iv) above
<b>Planting Fee</b>	8-1		\$550	
<b>Interest</b>	8-1	See notes (iii) & (iv) above	See notes (iii) & (iv) above	See notes (iii) & (iv) above

**Note:**

- (v) The initial plantation fee of \$5,500 is deductible in full in the year incurred provided the services are performed in that year. However, where a Grower prepays fees for the doing of things (e.g., the provision of plantation services) that will not be wholly done in the same income year as the year in which the fees are incurred, as will occur where a Grower is accepted into the Project between 1 June 2001 and 30 June 2001, the prepayment rules of the ITAA apply to apportion those fees. In such cases, the tax deduction for the prepaid fee **MUST** be determined using the formula shown in paragraph 52 as the expenditure is not 'excluded expenditure'. The Project Manager will inform Growers of the number of days in the 'eligible service period' in the first and second expenditure years. For Growers who participates between 1 June 2001 and 30 June 2001 the 'eligible service period' will end on 31 July 2001.

**Table C**

56. Subject to the minimum subscription requirements set out in paragraph 49 above, where a Grower who subscribes for at least one Woodlot is accepted into the Project on or after 1 July 2001 and on or before 23 April 2002, the Grower will be entitled to the deductions shown in Table C. As the Grower subscribes after 1 July 2001, the Grower will pay the initial plantation fee on application.

<b>Fee Type</b>	<b>ITAA 1997 Section</b>	<b>Year 1 30/6/2002</b>	<b>Year 2 30/6/2003</b>
<b>Plantation Fee</b>	8-1	\$5,500 plus \$770 See notes (i), (ii) & (iv) above	\$660 See notes (i), (ii) & (iv) above
<b>Planting Fee</b>	8-1	\$550	
<b>Interest</b>	8-1	See notes (iii) & (iv) above	See notes (iii) & (iv) above

#### **Deductions where a Grower is registered or required to be registered for GST**

57. Where a Grower who is registered, or required to be registered, for GST invests in the Project and is entitled to an input tax credit, then the amount of the deductions is reduced by the amount of the input tax credit (Division 27 ITAA 1997). See Example 1 at paragraph 104.

#### **Sections 82KZM, 82KZMB - 82KZMD, 82KZME - 82KZMF, 82KL and Part IVA**

58. For a Grower who invests in the Project and incurs expenditure in accordance with the Management Agreement, the following provisions of the ITAA 1936 have applications as indicated:

- expenditure by Growers does not fall within the scope of section 82KZM (but see paras 89-93 below);
- expenditure by Growers does not fall within the scope of sections 82KZMB - 82KZMD (but see paras 89-93 below);
- 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.

**Section 35-55 - losses from non-commercial business activities**

59. For a Grower who is an individual and who participates in the Project by 23 April 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 a Grower who has one or more Woodlots that for the income years ending 30 June 2001 to 30 June 2005 inclusive, for Growers accepted into the Project by 15 June 2001, and for the income years ending 30 June 2002 to 2006 for Growers who accepted into the Project between 1 July 2001 and 23 April 2002 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.

60. 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).

61. 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 his/her 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.

62. Growers are reminded of the important statement made on Page 1 of this Product Ruling. Therefore, Growers should not see the Commissioner's decision to exercise the discretion in paragraph 35-55(1)(b) as an indication that the Tax Office sanctions or guarantees the Project or the product to be a commercially viable investment. An assessment of the Project or the product from this perspective has not been made.

**Trading Stock**

63. Growing trees do not generally constitute trading stock of the Grower for the purposes of either the ITAA 1997 or the ITAA 1936.

Timber comes into existence as goods at the time the trees are severed from the land and until that time the Grower has no marketable timber. A Grower who has timber on hand at the end of an income year needs to have regard to section 70-35 ITAA 1997 (section 28 of the ITAA 1936) in calculating taxable income.

### **Carbon Credits**

64. Any income from the dealing in or sale of carbon credits or any other benefit from carbon taxes which may accrue to Growers would constitute assessable income under section 6-5.

## **Explanations**

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### **Section 8-1**

65. Consideration of whether the plantation and planting fees are deductible under paragraph 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?**

66. An afforestation scheme can constitute the carrying on of a business. Where there is a business, or a future business, the gross sale proceeds from the timber's sale from the scheme will constitute assessable income of a Grower in his/her own right. The generation of 'business income' from such a business, or future business, provides the backdrop against which to judge whether the outgoings in question have the requisite connection with the operations that more

directly gain or produce this income. These operations will be the planting, tending, maintaining and harvesting of the trees.

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

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

68. For this Project Growers have, under the Management Agreement, rights in the form of a licence over an identifiable area of land consistent with the intention to carry on a business of growing trees. Under the same agreement Growers appoint the Responsible Entity to provide services such as planting, cultivating, tending, culling, fertilising, replanting, spraying, maintaining and otherwise caring for the trees as and when required according to good silvicultural practice. Growers are considered to control their investment.

69. The Management Agreement gives Growers an identifiable interest in specific trees and a licence over the subject land. Growers have the right to personally market and sell the timber attributed to their Woodlot or they may appoint the Responsible Entity to arrange the marketing and sale of the timber for them. Growers will have a continuing interest in the trees.

70. Growers have the right to use the land in question for afforestation purposes and to have the Responsible Entity come onto the land to carry out its obligations under the Constitution and the 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 afforestation activities described in the Management Agreement are carried out on the Growers' behalf.

71. The general indicators of a business, as used by the Courts, are described in Taxation Ruling TR 97/11. 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.

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

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

74. The plantation and planting fees associated with the afforestation activities will relate to the gaining of income from this business and, hence, have a sufficient connection to the operations by which this income (from the sale of timber) is to be gained from the business. They will, therefore, be deductible under paragraph 8-1(1)(a). Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. No capital component is identifiable. The tests of deductibility under section 8-1 are met. The exclusions do not apply. Section 8-1 is, however, subject to Division 27 of the ITAA 1997.

### **Division 35 - 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
- 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 can not 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 Project, 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 is 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 a minimum investment in the Project of one Woodlot is unlikely to pass one of the objective tests until the year ended 30 June 2015. Growers who acquire more than one Woodlot may, however, pass one of the tests in an earlier 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) for

the years ended 30 June 2001 to 30 June 2005 inclusive for Growers accepted into the Project by 15 June 2001, and for the income years ending 30 June 2002 to 2006 for Growers who accepted into the Project between 1 July 2001 and 23 April 2002.

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 in the manner described in the Arrangement, 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 Forester (which included expert scientific evidence) provided with the application by the Responsible Entity;
- independent, objective and generally available information relating to the plantation timber industry which substantially supports cash flow projections and other claims, including prices and costs, in the Product Ruling application submitted by the Responsible Entity.

**Prepayment 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. Under the Management Agreement the Plantation Fee of \$5,500 per Woodlot will be incurred on execution of that Agreement. If incurred by 15 June 2001 this fee is charged for the provision of services to a Grower by 30 June 2001 and is deductible in the year incurred. Where the plantation fee of \$5,500 is incurred between 16 June 2001 and 30 June 2001, the services covered by the fee will not be wholly provided in the same financial year as the expenditure is incurred. Where this occurs, the prepayments provisions of the ITAA will operate to apportion the expenditure (using the formula in paragraph 91) and allow an income tax deduction to be spread over the period during which the prepaid benefits are provided. The fee is expressly stated to be for a number of specified services. No explicit conclusion can be drawn from the arrangement's description that the fee has been inflated to result in reduced fees being payable for subsequent years.

88. The on-going annual plantation fee of \$770 in relation to the Year ended 30 June 2003 and \$660 in relation to the Year ended 30 June 2004 is incurred on 30 June in the year preceding the performance of the services. If the Grower has **only one Woodlot**, then the on-going annual plantation fee would be 'excluded expenditure' and deductible in the year the fee is incurred. Refer to paragraph 93 below. Where a Grower acquires **more than one Woodlot** the prepaid plantation fees do not qualify as 'excluded expenditure' and are subject to the prepayment rules. The respective deduction will be apportioned over the period of the 'eligible service period'. As the 'eligible service period' commences on 1 July 2002 and 1 July 2003 respectively, the deduction is not available in the year the fee is incurred but in the year the services are performed.

### **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 Management Agreement, a Grower participating in the Project may choose to prepay fees for a number of years. Where this occurs, the prepayment 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 Plantation and/or Planting Fees 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 Grower 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 below) 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 plantation and/or planting 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 plantation and/or planting fee is \$1,000 or more, then the amount and timing of the deduction allowable must be determined using the formula shown above.

### **Small business taxpayers**

94. 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.

95. ‘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).

96. 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**

97. 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.

98. While the terms of any finance agreement entered into between relevant Grower and such financiers are subject to commercial negotiation, those agreements may require interest to be prepaid. Under the prepayment rules contained in sections 82KZME, 'agreement' (defined in subsection 82KZME(4)) is a broad concept and will encompass activities such as a loan to finance participation in the Project although that loan is not described in the Arrangement or otherwise dealt with in the Product Ruling.

99. 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). Where a prepayment is for a more than 13 months, any tax deduction must be determined under section 82KZM (for a 'small business taxpayer') or section 82KZMD (for a taxpayer who is not a 'small business taxpayer'). The relevant formula is the same or effectively the same as that shown in paragraph 91 above.

### **Section 82KL - recouped expenditure**

100. 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 tax avoidance provisions**

101. 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).

102. The Timber Australia Project will be a 'scheme'. A Grower will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions 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.

103. 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 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 is 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'**

104. 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 Responsible Entity 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

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

	<b>Paragraph</b>
<b>What this Product Ruling is about</b>	<b>1</b>
Tax law(s)	2
Goods and Services Tax	3
Business Tax Reform	4
Note to promoters and advisers	6
Class of persons	7
Qualifications	10
<b>Date of effect</b>	<b>13</b>
<b>Withdrawal</b>	<b>15</b>
<b>Arrangement</b>	<b>16</b>
Overview	18
Constitution	24
Compliance plan	25
Custodian Agreement	26
Management Agreement	29
Operational Management Agreement	33
Fees	35
Planting fee	40
On-Going Management	42
Carbon Credits	45
Finance	46
<b>Ruling</b>	<b>48</b>
Assessable Income	48
Minimum subscription	49
Section 8-1	50
Prepaid fees	52
Deductions where a Grower is <u>not</u> registered nor required to be registered for GST	53
Table A	54
Table B	55

Table C	56
Deductions where a Grower is registered or required to be registered for GST	57
Sections 82KZM, 82KZMB - 82KZMD, 82KZME - 82KZMF, 82KL and Part IVA	58
Section 35-55 – losses from non-commercial business activities	59
Trading Stock	63
Carbon Credits	64
<b>Explanations</b>	<b>65</b>
Section 8-1	65
Is the Grower carrying on a business?	66
Division 35 – losses from non-commercial business activities	75
Prepayment 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
Small business taxpayers	94
Interest deductibility	97
Section 82KL - recouped expenditure	100
Part IVA - general tax avoidance provisions	101
<b>Examples</b>	<b>104</b>
Example 1 – entitlement to 'input tax credit'	104
<b>Detailed contents list</b>	<b>105</b>

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**Commissioner of Taxation**

21 March 2001

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*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 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
- ITAA 1936 82KZMD(2)
- ITAA 1936 82KZME
- 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 8-1(1)(a)
- ITAA 1997 17-5
- ITAA 1997 Div 27
- ITAA 1997 27-5
- ITAA 1997 Div 35
- ITAA 1997 35-10
- 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)
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