PR 2002/11 - Income tax: 2002 Timbercorp Olives Project

Product Ruling
Income tax: 2002 Timbercorp Olives Project

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Preamble

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

No guarantee of commercial success

The Australian Taxation Office (ATO) **does not** sanction or guarantee this product as an investment. Further, we give no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential investors must form their own view about the commercial and financial viability of the product. This will involve a consideration of important issues such as whether projected returns are realistic, the 'track record' of the management, the level of fees in comparison to similar products, how the investment fits an existing portfolio, etc. We recommend a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential investors by confirming that the tax benefits set out below in the **Ruling** part of this document are available, **provided that** the arrangement is carried out in accordance with the information we have been given, and have described below in the **Arrangement** part of this document.

If the arrangement is not carried out as described below, investors lose the protection of this Product Ruling. Potential investors may wish to seek assurances from the promoter that the arrangement will be carried out as described in this Product Ruling.

Potential investors should be aware that the ATO will be undertaking review activities to confirm the arrangement has been implemented as described below and to ensure that the participants in the arrangement include in their income tax returns income derived in those future years.

Terms of Use of this Product Ruling

This Product Ruling has been given on the basis that the person(s) who applied for the Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Ruling.

What this Product Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' identified below apply to the defined class of persons who take part in the arrangement to which this Ruling refers. In this Ruling this arrangement is sometimes referred to as the 2002 Timbercorp Olive Project or simply as 'the Project'.

Tax laws

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

- Section 6-5 of the *Income Tax Assessment Act 1997* ('ITAA 1997');
- Section 8-1 (ITAA 1997);
- Section 17-5 (ITAA 1997);
- Division 27 (ITAA 1997);
- Division 35 (ITAA 1997);
- Division 328 (ITAA 1997);
- Section 82KL of the *Income Tax Assessment Act 1936* ('ITAA 1936');
- Section 82KZL (ITAA 1936);
- Section 82KZME (ITAA 1936);
- Section 82KZMF (ITAA 1936); and
- Part IVA (ITAA 1936).

Goods and Services Tax

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

Changes in the Law

4. The Government is currently evaluating further changes to the tax system in response to the Ralph *Review of Business Taxation* and continuing business tax reform is expected to be implemented over a number of years. Although this Ruling deals with the taxation

legislation enacted at the time it was issued, later amendments may impact on this Ruling. Any such changes will take precedence over the application of this Ruling and, to that extent, this Ruling will be superseded.

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

Note to promoters and advisers

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

Class of persons

7. The class of persons to whom this Ruling applies is the persons who are more specifically identified in the Ruling part of this Product Ruling and who enter into the arrangement specified below on or after the date this Ruling is made. They will have a purpose of staying in the arrangement until it is completed (i.e., being a party to the relevant Agreements until their term expires) and deriving assessable income from this involvement. In this Ruling 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. If the arrangement described in the Ruling is materially different from the arrangement that is actually carried out, the Ruling has no binding effect on the Commissioner. The Ruling will be withdrawn or modified.

Date of effect

11. This Ruling applies prospectively from 6 February 2002, the date this Ruling is made. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

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

Withdrawal

13. This Product Ruling is withdrawn and ceases to have effect after 30 June 2004. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons within the specified class who enter into the arrangement specified below. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the person's involvement in the arrangement.

Arrangement

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

- Application for Product Ruling dated 4 May 2001;
- Draft Prospectus prepared for Timbercorp Securities Limited A.C.N. 092 311 469 ('Timbercorp Securities'), enclosed with correspondence dated 14 September 2001;
- Later draft Prospectus prepared for Timbercorp Securities Limited, provided on 16 January 2002;
- Draft **Constitution** of the 2002 Timbercorp Olive Project between for Timbercorp Securities Limited and each Grower, dated 18 September 2001;

- Draft **Grovelot Management Agreement** between Timbercorp Securities and each Grower, dated 18 September 2001;
- Draft **Licence and Joint Venture Agreement** (the 'Licence and Joint Venture Agreement') between Olivecorp Land Pty Ltd ('Olivecorp Land'), Timbercorp Securities Limited and each Grower, dated 18 September 2001;
- Draft Management Agreement between Timbercorp Securities Limited and Olivecorp Management Limited dated 4 May 2001;
- Copy of Put Option Agreement between Olivecorp Management Limited and Costa d'Oro srl dated 23 March 2000;
- Draft Option Agreement dated 4 May 2001 between Olivecorp Land Pty Ltd and Grove Holdings Limited, an unlisted public company;
- Draft Custody Agreement between Permanent Trustee Company Limited and Timbercorp Securities Limited dated 4 May 2001;
- Draft Compliance Plan for the Project, dated 4 May 2001;
- Draft Lease Agreement between Olivecorp Land Pty Ltd and Timbercorp Securities Limited, dated 4 May 2001;
- Draft Sublease Agreement between Timbercorp Securities Limited and Olivecorp Land Pty Ltd, dated 4 May 2001;
- Draft **finance package** from Timbercorp Finance Pty Ltd, dated 16 October 2001
- Correspondence from Applicant dated 13 June 2001, 15 August 2001, 14 September 2001, 16 October 2001, 22 October 2001, 24 October 2001, 26 October 2001, 29 October 2001, 1 November 2001, 19 November 2001, 6 December 2001, 16 January 2002 and 23 January 2002.

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

15. The documents highlighted are those Growers enter into or become a party to. 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 part of the arrangements to which this Ruling applies. All Australian Securities and Investments Commission (ASIC) requirements are, or will be, complied with for the term of the agreements. The effect of these agreements is summarised as follows.

Overview

16. This arrangement is called the 2002 Timbercorp Olives Project.

Location	Boort (northwest of Bendigo), Victoria
Type of business each participant is carrying on	Cultivating olive trees on their designated 0.25 hectare olive Grovelot and harvesting the olives for production and sale of olive oil.
Number of hectares under cultivation	Up to 500 with an option to accept oversubscriptions.
Number of olive trees per hectare	An average of 330 trees
Size of each Grovelots	0.25 hectares
Number of olive trees per Grovelot	83 on average
Minimum number of Grovelots per Grower	2 (Timbercorp Securities reserves the right to accept applications for one Grovelot)
The term of the project in years	Approximately 23 years commencing on acceptance of a Grower's application and ending on 30 June 2025
Subscription amount per Grovelot	$6,270 in year ended 30 June 2002
Minimum subscription for Project	none
Management fees	$1,210 in each of the years ended 30 June 2003 and 30 June 2004.
Licence Fees	$605 each year indexed to CPI from year 4 of the Project.
Joint Venture	Each Grower will enter into a joint venture with Olivecorp Land. The Grower will be entitled to 90% of the joint venture assets and will be entitled to 90% of the olives and of the proceeds of sale. The Grower

	will also be responsible for 90% of the management fees..
Option to take up shares in Landholding Company	Grovelot Holdings Limited has an option, exercisable between 1 April 2025 and 30 April 2025, to acquire a legal interest in the land on which the olive grove will be established that will not exceed 24.9% of the land. Each Grower will be issued with options to take up shares in the capital of Grovelot Holdings Limited equal to the number of Grovelots in the Project that the Grower subscribes for. The Growers' options to subscribe for shares are exercisable between 1 March 2025 and 31 March 2025.

17. Growers entering into the Project will enter into a Licence and Joint Venture Agreement with Olivecorp Land Pty Ltd ('Olivecorp Land'). Olivecorp Land will agree to establish an olive grove and all associated infrastructure on its land. Under this agreement each Grower will be given a right to use and occupy a minimum of two parcels of land for a period of 23 years for the purpose of cultivating the grove for the production of olives for processing into olive oil for sale. The Responsible Entity may, however, accept an application for only one parcel of land. Each parcel of land is an allotment of 0.25 hectares of land ('Grovelot'). Under the agreement, each Grower will also enter into a joint venture arrangement with Olivecorp Land (on a 90%:10% basis) in respect of the cultivation and management of their Grovelots. As a result, each Grower will be responsible for 90% of all management costs associated with the cultivation and management of their Grovelots and will be entitled to 90% of all produce.

18. Growers (comprising each applicant in a separate joint venture with Olivecorp Land) will enter into a Grovelot Management Agreement with the Responsible Entity, to perform services in relation to the cultivation and management of their olive Grovelots. Under this agreement, the Responsible Entity will also harvest the olives, procure the processing of olives into olive oil and sell the oil on behalf of the joint venture Growers (at market prices) who will be entitled to the proceeds in their respective proportions. Olivecorp Management Limited ('Olivecorp Management'), to whom the Responsible Entity will delegate its managerial responsibilities, has entered into a put option agreement with Costa d'Oro srl, a major Italian olive oil distributor, under which it is entitled to require Costa d'Oro to

purchase up to 4,500 metric tonnes of olive oil per annum during the first 19 years of the Project.

19. The cost of participation for a Grower, per Grovelot, are set out below (these costs do not include the costs payable by Olivecorp Land as 10% joint venturer):

- The initial subscription costs outlined in the Licence and Joint Venture Agreement and the Grovelot Management Agreement, totalling $6,270 per Grovelot payable on application;
- Licence fees of $605 per Grovelot payable on 31 October 2002 (but not before 1 July 2002) and on 31 October 2003 (but not before 1 July 2003) and thereafter on 31 October (but not before 1 July) of each subsequent year, indexed to CPI, and increased on account of GST payable;
- Management fees of $1,210 per Grovelot payable on 31 October 2002 (but not before 1 July 2002) and on 31 October 2003 (but not before 1 July 2003).
- Ongoing costs outlined in the Licence and Joint Venture Agreement and the Grovelot Management Agreement payable in years 4 through to year 23; and
- Any applicable financing costs.

Licence and Joint Venture Agreement

20. Under the Licence and Joint Venture Agreement, Olivecorp Land agrees, at its own cost, to establish not less than 2000 Grovelots, construct necessary infrastructure and carry out capital works. The work to be done includes preparation of the land, installation of irrigation equipment, drainage work, eradication of pests and competitive weeds and planting olive trees with stakes and trellising in accordance with good horticultural practice. This will be done by 31 May 2002, or a later date agreed between Olivecorp Land and the Grower, on Grovelots which are separate identifiable areas of land comprising allotments of 0.25 hectares.

21. Each applicant Grower obtains a non-exclusive licence to use and occupy Grovelots (in joint venture with Olivecorp Land). Under the terms of the agreement a Grower may only use the land for the purpose of cultivating and harvesting olives and producing olive oil.

22. Olivecorp Land must purchase and maintain Water Rights, not less than 5.5 megalitres of water per plantable hectare, during the Project as required to irrigate the Grovelots and ensure that its Water Rights are fully exploited.

23. The agreement provides that Olivecorp Land and each Grower will enter into the Grovelot Management Agreement as joint venturers. It provides that the Grower will be entitled to 90% of the joint venture assets and will be entitled to 90% of the olives and of the proceeds of sale. The Grower will also be responsible for 90% of the fees.

24. The Grower must pay the Licence Fee under the Agreement of $605 per annum per Joint Venture Grovelot. This amount will be indexed by the CPI from the year ended 30 June 2004. The Grower must only use the Joint Venture Grovelot(s) for the purpose of Joint Venture operations and must comply with good horticultural and environmental practices and relevant laws and regulations. The Grower must permit access to the Grovelot(s) for the purposes of the Project under the Licence and Joint Venture Agreement and the Grovelot Management Agreement. At the expiration of the term of the Agreement, each Grower must return the Grovelot(s) to Olivecorp Land in good condition but is not required to remove the olive trees or restore the Grovelot(s) to their original condition.

Grovelot Management Agreement

25. Under the Grovelot Management Agreement, each Grower (in joint venture with Olivecorp Land) engages the Responsible Entity to manage and cultivate the grove on behalf of the Grower in accordance with the management plan, harvest the olives, procure the processing of the olives into olive oil and market the oil for sale for the duration of the term. The olives from the Grower' s Grovelot(s) will be pooled with olives from other Grower's Grovelots and Growers will be entitled to their pro rata proportion of the olives and the olive oil produced.

26. The Responsible Entity is required to perform, in a proper and efficient manner, services to the extent necessary in accordance with good horticultural and environmental practices including pruning the trees, vermin control, irrigation, soil testing, fertilising the soil, destruction of diseased olive trees and olives, maintain Grovelots, protection from insects and competing growth, inspecting and repairing stakes, fences and irrigation equipment, tying and staking all olive trees, attach olive trees to trellising in accordance with good horticultural practice, replanting olive trees in need of replacement, overseeing establishment of Grovelots and construction of capital works by Olivecorp Land, ensuring supply of water, harvesting mature olives and procuring their processing and sale.

27. The Responsible Entity will endeavour to arrange insurance on the Growers' behalf. Where this is available, Growers are required to insure their Grovelots against damage or destruction by fire and other

insurable risks. The Responsible Entity will arrange payment of insurance premiums to the appropriate insurers.

28. Under the Management Agreement between the Responsible Entity and Olivecorp Management Limited, the Responsible Entity will delegate its obligations under the Grovelot Management Agreement to Olivecorp Management Limited.

Fees

29. Under the terms of the Licence and Joint Venture Agreement and the Grovelot Management Agreement, a Grower will make the following payments per Grovelot:

- the initial subscription costs outlined in the Licence and Joint Venture Agreement and the Grovelot Management Agreement, totalling $6,270 per Grovelot payable on application;
- licence fees of $605 per Grovelot payable on 31 October 2002 and 2003 and on 31 October in subsequent years indexed each year to CPI;
- management fees of $1,210 per Grovelot payable on 31 October 2002 and 31 October 2003;
- ongoing costs outlined in the Licence and Joint Venture Agreement and the Grovelot Management Agreement payable in years 4 through to year 23 as summarised below at paragraph 32; and
- any applicable financing costs.

30. The Manager will only provide services following the execution of the Licence and Joint Venture Agreement and the Grovelot Management Agreement.

31. The subscription moneys payable on application (in advance) are payable in respect of services to be wholly provided by 30 June 2002. The fees payable on 31 October 2002 and 31 October 2003 (partly in arrears and partly in advance) are payable in respect of services to be wholly provided by 30 June 2003 and 30 June 2004 respectively.

32. After the third year, i.e., from the financial year ending 30 June 2004, Growers will be required to pay annual licence fees of $605 per annum indexed to CPI and management fees that will be estimated, in the first instance, by the Responsible Entity and adjusted once the actual costs of managing the Grower's Grovelots are determined. Each Grower will also pay to the Responsible Entity its proportion of the following additional annual fees set out at Clause 10.2 of the Grovelot Management Agreement:

(a) a management fee based on a percentage of annual gross proceeds from the sale of bulk olive oil less the costs and expenses of processing the olives into olive oil; and

(b) a bonus, based on a percentage of so much of the annual proceeds (after deducting the fee referred to in paragraph (a) above) payable to a Grower in a financial year as exceeds the proceeds estimated in the prospectus, less any allowance for inflation arriving at such estimate, but indexed from the date of the Grovelot Management Agreement. This fee will be calculated on a 2 year rolling basis to allow for variations in yields from year to year.

Option to acquire an interest in the land

33. Under an Option Agreement between the Land Owner and Grovelot Holdings Limited, the latter company is granted an option to acquire a legal interest in the land on which the olive grove will be established that will not exceed 24.9%. That option is exercisable between 1 April 2025 and 30 April 2025.

34. Upon application for Grovelots, each Grower (or its associate, as defined), will be issued with options to take up shares in the capital of Grovelot Holdings Limited equal to the number of Grovelots in the Project that the Grower subscribes for. The options to subscribe for shares are exercisable between 1 March 2025 and 30 March 2025. A Grower or its associate may exercise the option by serving an exercise notice of the option on Grovelot Holdings Limited and paying the subscription price of $1,300 per share. The exercise of options will only be effective if at least 30% of all options issued are exercised.

35. Grovelot Holdings Limited will exercise its option over the land under the Option Agreement, so long as it is in the best interest of Growers to do so, at a price which is the lesser of:

(a) the amount calculated by multiplying $2,440,000 (based on a 500 hectare grove) by the proportionate interest to be acquired in the land; and

(b) an independent valuation of the land multiplied by the proportionate interest to be acquired in the land.

Finance

36. Growers can fund their involvement in the Projects themselves, borrow from Timbercorp Finance Pty Ltd (a lender

associated with the Responsible Entity) or borrow from an independent lender.

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

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' are or will be granted to the borrowers for the purpose of section 82KL or the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;
- the loan or rate of interest is non-arm's length;
- repayments of the principal and payments of interest are linked to the derivation of income from the Project;
- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender or any associate of the lender;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- entities associated with the Project other than Timbercorp Finance Pty Ltd, are involved or become involved in the provision of finance to Growers for the Project.

Ruling

Application of this Ruling

38. This Ruling applies only to Growers who are accepted to participate in the Project on or before 30 June 2002 and who have executed a Grovelot Management Agreement and a Licence and Joint Venture Agreement before that date. The Grower's participation in the Project must constitute the carrying on of a business of primary production.

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

39. For a Grower participating in the Project, the recognition of income and the timing of tax deductions is different depending on whether the Grower is an 'STS taxpayer'. To be an 'STS taxpayer' a Grower:

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

Qualification

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

Tax outcomes for Growers who are not 'STS taxpayers'

Assessable Income - Section 6-5

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

42. The Grower recognises ordinary income from carrying on the business of cultivating olive trees and harvesting the olives for the production and sale of olive oil at the time that income is derived.

Trading stock - Section 70-35

43. During the term of the Project a Grower who is not an 'STS taxpayer' may hold olives or olive oil that will constitute trading stock on hand. Where, in an income year, the value of trading stock on hand at the *end* of an income year exceeds the value of trading stock on hand at the *start* of an income year a Grower must include the amount of that excess in assessable income.

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

45. During each year of the Project the Manager will provide the Grower with sufficient information to enable the Grower to determine the value of trading stock on hand at the end of the relevant income year.

Deductions for Management fees, Licence fees, and Interest - Section 8-1

46. A Grower who is not an 'STS taxpayer' may claim tax deductions for the following revenue expenses:

Fee Type	ITAA 1997 Section	Year 1 30/6/2002	Year 2 30/6/2003	Year 3 30/6/2004
Management fee	8-1	$5,665 – see Notes (i) & (ii) below	$1,210 – see Notes (i) & (ii) below	$1,210 – see Notes (i) & (ii) below
Licence fee	8-1	$605 – see Notes (i) & (ii) below	$605 – see Notes (i) & (ii) below	$605 – see Notes (i) & (ii) below
Interest on borrowed funds	8-1	As incurred – see Note (iii) below	As incurred – see Note (iii) below	As incurred – see note (iii) below
Insurance	8-1	As incurred	As incurred	As incurred

Notes:

(i) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g., input tax credits): Division 27. See example at paragraph 121;

(ii) The Management fees and the Licence fees shown in the Grovelot Management Agreement and the Licence and Joint Venture Agreement are deductible in full in the year that they are incurred. However, if a Grower chooses to prepay fees for the doing of a thing (e.g., the provision of management services or the leasing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA 1936 may apply to apportion those fees. In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 95 unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules and is deductible in full in the year in

which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than $1,000;

(iii) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Timbercorp Finance Pty Ltd, the internal financier, is outside the scope of this Ruling. However all Growers, including those who finance their participation in the Project other than with Timbercorp Finance Pty Ltd, should read the discussion of the prepayment rules in paragraphs 89 to 103 (below) as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the prepayment is required under the relevant loan agreement or is at the Grower's choice.

Tax outcomes for Growers who are 'STS taxpayers'

Assessable Income - Section 6-5

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

48. The Grower recognises ordinary income from carrying on the business of cultivating olive trees and harvesting the olives for the production and sale of olive oil at the time the income is received (paragraph 328-105(1)(a)).

Trading stock - Section 328-285

49. During the term of the Project a Grower who is an 'STS taxpayer' may hold olives or olive oil that will constitute trading stock on hand. Where, the difference between the value of all of a Grower's trading stock at the start of an income year and a reasonable estimate of it at the end of an income year, is less than $5,000, the Grower does not have to account for that difference under the ordinary trading stock rules in Division 70 (subsection 328-285(1)).

50. Alternatively, a Grower who is an 'STS taxpayer' may instead choose to account for trading stock in an income year under the provisions of Division 70 (subsection 328-285(2)).

51. During each year of the Project the Manager will provide the Grower with sufficient information to enable the Grower to determine the value of trading stock on hand at the end of the relevant income year.

Deductions for Management fees, Licence fees, and Interest - Section 8-1 and section 328-105

52. A Grower who is an 'STS taxpayer' may claim tax deductions for the following revenue expenses:

Fee Type	ITAA 1997 Sections	Year 1 30/6/2002	Year 2 30/6/2003	Year 3 30/6/2004
Management fee	8-1 & 328-105	$5,665 – see Notes (iv), (v) & (vi) below	$1,210 – see Notes (iv), (v) & (vi) below	$1,210 – see Notes (iv), (v) & (vi) below
Licence fee	8-1 & 328-105	$605 – see Notes (iv), (v) & (vi) below	$605 – see Notes (iv), (v) & (vi) below	$605 – see Notes (iv), (v) & (vi) below
Interest on borrowed funds	8-1 & 328-105	As incurred and paid – see Note (vii) below	As incurred and paid – see Note (vii) below	As incurred and paid – see Note (vii) below
Insurance	8-1 & 328-105	As incurred and paid	As incurred and paid	As incurred and paid

Notes:

(iv) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g., input tax credits): Division 27. See example at paragraph 121;

(v) If, for any reason, an amount shown in the Table above is not fully paid in the year in which it is incurred by a Grower who is an 'STS taxpayer' then the amount is only deductible to the extent to which it has been paid, or has been paid for the Grower. Any amount or part of an amount shown in the Table above, which is not paid in the year in which it is incurred, will be deductible in the year in which it is actually paid;

(vi) Where a Grower who is an 'STS taxpayer', pays the Management fees and the Licence fees in the relevant income years shown in the Grovelot Management Agreement and the Licence and Joint Venture Agreement, those fees are deductible in full in the year

that they are paid. However, if a Grower **chooses** to prepay fees for the doing of a thing (e.g., the provision of management services or the leasing of land) that will not be wholly done in the same income year as the fees are incurred, the prepayment 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 95, unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules, and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than $1,000;

(vii) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Timbercorp Finance Pty Ltd, the internal financier is outside the scope of this Ruling. However, all Growers, including those who finance their participation in the Project other than with Timbercorp Finance Pty Ltd, should read the discussion of the prepayment rules in paragraph 89 to 103 (below) as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the prepayment is required under the relevant loan agreement or is at the Grower's choice.

Tax outcomes that apply to all Growers

Section 35-55 – Deferral of losses from non-commercial business activities

Section 35-55 – Commissioner's discretion

53. For a Grower who is an individual and who enters the Project during the year ended 30 June 2002 the rule in section 35-10 may apply to the business activity comprised by their involvement in this Project. Under paragraph 35-55(1)(b) the Commissioner will decide for the income years ending 30 June 2002 to 30 June 2005 that the rule in section 35-10 does not apply to this activity provided that the Project is carried out in the manner described in this Ruling.

54. 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 107 in the Explanations part of this ruling, below).

55. Where either the Grower's business activity satisfies one of the objective tests, the discretion in subsection 35-55(1) is exercised, or the Exception in subsection 35-10(4) applies, section 35-10 will not apply. This means that a Grower will not be required to defer any excess of deductions attributable to their business activity in excess of any assessable income from that activity, i.e., any 'loss' from that activity, to a later year. Instead, this 'loss' can be offset against other assessable income for the year in which it arises.

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

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

57. For a Grower who participates in the Project and incurs expenditure as required by the Grovelot Management Agreement and the Licence and Joint Venture Agreement the following provisions of the ITAA 1936 have application as indicated:

- expenditure by a Grower does not fall within the scope of sections 82KZME - 82KZMF (but see paragraphs 89 to 103);
- 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

Is the Grower carrying on a business?

58. For the amounts set out in the Tables above to constitute allowable deductions the Grower's activities of cultivating olive trees

and harvesting the olives for the production and sale of olive oil as a participant in the 2002 Timbercorp Olives Project must amount to the carrying on of a business of primary production.

59. Where there is a business, or a future business, the Gross Harvest Proceeds from the sale of the olives and olive oil will constitute gross assessable income in their own right. The generation of 'business income' from such a business, or future business, provides the backdrop against which to judge whether the outgoings in question have the requisite connection with the operations that more directly gain or produce this income.

60. For schemes such as that of the 2002 Timbercorp Olives Project, Taxation Ruling TR 2000/8 sets out in paragraph 89 the circumstances in which the Grower's activities can constitute the carrying on of a business. As Taxation Ruling TR 2000/8 sets out, these circumstances have been established in court decisions such as *FCT v. Lau* 84 ATC 4929.

61. Generally, a Grower will be carrying on a business of cultivating olive trees and harvesting the olives for the production and sale of olive oil, and hence primary production, if:

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

62. In this Project, each Grower enters into a Licence and Joint Venture Agreement and a Grovelot Management Agreement.

63. Under the Licence and Joint Venture Agreement, each individual Grower will have rights over a specific and identifiable area of 0.25 hectares or more of land. The Licence and Joint Venture Agreement provides the Grower with an ongoing interest in the specific trees on the licenced area for the term of the Project. Under the Licence, the Grower must use the land in question for the purpose of carrying out activities of cultivating olive trees and harvesting the olives for the production and sale of olive oil and for no other purpose.

The Licence allows the Project Manager to come onto the land to carry out its obligations under the Grovelot Management Agreement.

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

65. The Project Manager is also engaged to harvest the olives grown on the on Grower's Grovelot for the production and sale of olive oil on the Grower's behalf.

66. The general indicators of a business, as used by the Courts, are described in Taxation Ruling TR 97/11. Positive findings can be made from the Project's description for all the indicators.

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

68. The pooling of olives and olive oil produce from trees grown on the Grower's Grovelot with the olives and olive oil produce of other Growers is consistent with general horticultural practices. Each Grower's proportionate share of the sale proceeds of the pooled olives and olive oil products will reflect the proportion of the trees contributed from their Grovelot.

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

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

71. The activities of cultivating olive trees and harvesting the olives for the production and sale of olive oil, and hence the fees

associated with their procurement, are consistent with an intention to commence regular activities that have an 'air of permanence' about them. For the purposes of this Ruling, the Grower's activities of cultivating olive trees and harvesting the olives for the production and sale of olive oil in the 2002 Timbercorp Olives Project will constitute the carrying on of a business.

The Simplified Tax System - Division 328

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

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

Deductibility of management fees and licence fees - section 8-1

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

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

75. The management fees and licence fees associated with the activities of cultivating olive trees and harvesting the olives for the production and sale of olive oil will relate to the gaining of income from the Grower's business of cultivating olive trees and harvesting the olives for the production and sale of olive oil (see above), and hence have a sufficient connection to the operations by which income

(from the harvesting and sale of olives and olive oil produce) is to be gained from this business. They will thus be deductible under the first limb of section 8-1. Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. The fee appears to be reasonable. There is no capital component of the management fee. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

Possible application of prepayment provisions

76. Under the Grovelot Management Agreement and the Licence and Joint Venture Agreement neither the management fees nor the licence fees are for things to be done beyond 30 June in the year in which the relevant amounts are incurred. In these circumstances, the prepayment provisions in sections 82KZME and 82KZMF have no application to these fees.

77. However, where a Grower **chooses** to prepay these fees for a period beyond the income year in which the expenditure is incurred, the prepayment provisions (see paragraphs 89 to 103) will apply to determine the amount and timing of the deductions regardless of whether the Grower is an 'STS taxpayer' or not. These provisions apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes 'STS taxpayers' from the operation of section 82KZMF. This is subject to the 'excluded expenditure' exception. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than $1,000.

Timing of deductions

78. In the absence of any application of the prepayment provisions, the timing of deductions for the management fees or the licence fees will depend upon whether a Grower is an 'STS taxpayer' or is not an 'STS taxpayer'.

79. If the Grower is not an 'STS taxpayer', the management fees and the licence fees are deductible in the year in which they are incurred.

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

Interest deductibility - Section 8-1

(i) Growers who use Timbercorp Finance Pty Ltd as the finance provider

81. Some Growers may finance their participation in the Project through a loan facility with Timbercorp Finance Pty Ltd. Whether the resulting interest costs are deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of licence and management fees.

82. The interest incurred for the year ended 30 June 2002 and in subsequent years of income will be in respect of a loan to finance the Grower's business operations - the cultivation and growing of olive trees and the licence of the land on which the trees will have been planted - that will continue to be directly connected with the gaining of 'business income' from the Project. Such interest will, therefore, have a sufficient connection with the gaining of assessable income to be deductible under section 8-1.

83. As with the management fees and the licence fees, in the absence of any application of the prepayment provisions (see paragraphs 89 to 103), the timing of deductions for interest will again depend upon whether a Grower is an 'STS taxpayer' or is not an 'STS taxpayer'.

84. If the Grower is not an 'STS taxpayer', interest is deductible in the year in which it is incurred.

85. If the Grower is an 'STS taxpayer' interest is not deductible until it has been both incurred and paid, or is paid for the Grower. If interest that is properly incurred in an income year remains unpaid at the end of that income year, the unpaid amount is deductible in the income year in which it is actually paid, or is paid for the Grower.

(ii) Growers who DO NOT use Timbercorp Finance Pty Ltd as the finance provider

86. The deductibility of interest incurred by Growers who finance their participation in the Project through a loan facility with a bank or financier other than Timbercorp Finance Pty Ltd 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.

87. 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. Alternatively, a Grower may choose to prepay such interest. Unless such prepaid interest is 'excluded expenditure' any tax

deduction that is allowable will be subject to the prepayment provisions of the ITAA 1936 (see paragraphs 89 to 103).

Prepayment provisions - sections 82KZL to 82KZMF

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

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

Sections 82KZME and 82KZMF

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

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

- the taxpayer's allowable deductions under the agreement for the 'expenditure year' exceed any assessable income attributable to the agreement for that year; and
- the taxpayer does not have effective day to day control over the operation of the agreement. That is, the significant aspects of the arrangement are managed by someone other than the taxpayer; and

- either:
  a) there is more than one participant in the agreement in the same capacity as the taxpayer; or
  b) the person who promotes, arranges or manages the agreement (or an associate of that person) promotes similar agreements for other taxpayers.

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

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

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

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

95. In the formula 'eligible service period' (defined in subsection 82KZL(1)) means, the period during which the thing under the agreement is to be done. The eligible service period begins on the day on which the thing under the agreement commences to be done or on the day on which the expenditure is incurred, whichever is the later, and ends on the last day on which the thing under the agreement ceases to be done, up to a maximum of 10 years.

Application of the prepayment provisions to this Project

96. In this Project, an initial Management Fee of $5,665 and an initial Licence Fee of $605 per Grovelot will be incurred on execution

of the Grovelot Management Agreement and the Licence and Joint Venture Agreement. The Management Fee and the Licence Fee are charged for providing management services or leasing land to a Grower by 30 June of the year of execution of the Agreements. Under the Agreements, further annual expenditure is required each year during the term of the Project for the provision of management services and land until 30 June in those years.

97. In particular, the management 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 initial management fee has been inflated to result in reduced fees being payable for management fees in subsequent years.

98. There is also no evidence that might suggest the management services covered by the fee could not be provided within the relevant expenditure year. Thus, for the purposes of this Ruling, it can be accepted that no part of the initial management fee and the fees for subsequent years, is for the Manager doing 'things' that are not to be wholly done within the expenditure year. Under the Licence and Joint Venture Agreement, licence fees are payable annually on 31 October for the licence to use and occupy the land from 1 July to 30 June during the expenditure year. Similarly, under the loan agreements to be executed between Growers and Timbercorp Finance Pty Ltd interest is payable monthly in arrears.

99. On this basis, provided a Grower incurs expenditure as required under the Project agreements, as set out in paragraph 14, then the basic precondition in subsection 82KZME(2) is not satisfied and, in these circumstances, section 82KZMF will have no application.

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

100. Although not required under either the Grovelot Management Agreement, the Licence and Joint Venture Agreement, or the Loan Agreement with Timbercorp Finance Pty Ltd, a Grower participating in the Project may **choose** to prepay fees/interest for a period beyond the 'expenditure year'. Similarly, Growers who use financiers other than Timbercorp Finance Pty Ltd may either choose, or be required to prepay interest. Where this occurs, contrary to the conclusion reached in paragraph 100 above, section 82KZMF will apply to apportion the expenditure and allow a deduction over the period in which the prepaid benefits are provided.

101. For these Growers, the amount and timing of deductions for any relevant prepaid Management Fees, prepaid Licence Fees, or prepaid interest will depend upon when the respective amounts are

incurred and what the 'eligible service period' is in relation to these amounts.

102. However, as noted above, prepaid fees of less than $1,000 incurred in an expenditure year will be 'excluded expenditure' and will be not subject to apportionment under section 82KZMF.

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

103. Under the rule in subsection 35-10(2) a deduction for a loss incurred by an individual 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.

104. 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.

105. 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.

106. 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.

107. In broad terms, the objective tests require:

- at least $20,000 of assessable income in that year from the business activity (section 35-30);

- the business activity results in a taxation profit in 3 of the past 5 income years (including the current year) (section 35-35);
- 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
- 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).

108. 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 participation of two Grovelots in the Project is unlikely to pass one of the objective tests or produce a taxation profit until the income year ended 30 June 2008. Growers who acquire more than the minimum participation in the Project may however, find that their activity meets one of the tests in an earlier income year.

109. 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.

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

(i) the business activity has started to be carried on;

(ii) because of its nature, it has not satisfied one of the objective tests; and

(iii) 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.

111. For a Grower who is an individual and who enters the Project during the year ended 30 June 2002, information provided with this Product Ruling indicates that a Grower who acquires the minimum participation of two Grovelots in the Project is expected to be carrying on a business activity that will either pass one of the objective tests, or produce a taxation profit, for the year ended 30 June 2006. The Commissioner will decide for such a Grower that it would be reasonable to exercise the second arm of the discretion until the year

ended 30 June 2005. Subsection 35-55(2) prevents the Commissioner exercising the discretion beyond this year.

112. This Product Ruling is issued on a prospective basis (ie, before an individual Grower's business activity starts to be carried on). The Project, however, may fail to be carried on during the income years specified above (see paragraph 53), in the manner described in the Arrangement (see paragraphs 14 to 38). If so, this Ruling, and specifically the decision in relation to paragraph 35-55(1)(b), that it would be unreasonable that the loss deferral rule in subsection 35-10(2) not apply, may be affected, because the Ruling no longer applies (see paragraph 9). Growers may need to apply for private rulings on how paragraph 35-55(1)(b) will apply in such changed circumstances.

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

- the report of the independent Olive Grove Expert;
- the Put Option Agreement with Costa d'Oro srl, a major Italian olive oil distributor, under which Olivecorp Management Limited is entitled to require Costa d'Oro to purchase up to 4,500 metric tonnes of olive oil per annum during the first 19 years of the Project and
- independent, objective, and generally available information relating to the olive industry.

Section 82KL – recouped expenditure

114. 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'.

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

116. Section 82KL's operation depends, among other things, on the identification of 'additional benefit(s)'. 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 – general anti-avoidance provisions

117. 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).

118. The 2002 Timbercorp Olives Project will be a 'scheme'. A Grower will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 47 and 53, 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.

119. 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 olives and olive oil produce. There are no facts that would suggest that Growers have the opportunity of obtaining a tax advantage other than the tax advantages identified in this Ruling. There is no non-recourse financing or round robin characteristics, and no indication that the parties are not dealing at arm's length or, if any parties are not dealing at arm's length, that any adverse tax consequences result. Further, having regard to the factors to be considered under paragraph 177D(b) it cannot be concluded, on the information available, that participants will enter into the scheme for the dominant purpose of obtaining a tax benefit.

Example

Example – Entitlement to GST input tax credits

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

Management fee for period 1/1/2002 to 30/6/2002 $4 400*

Carrying out of upgrade of power for your vineyard as quoted $2 200*

Total due and payable by 1 January 2002 (includes GST of $600)	$6 600

*Taxable supply

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

1/11 x $4400 = $400.

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

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

1/11 x $2200 = $200.

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

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

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

Detailed contents list

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

Commissioner of Taxation
6 February 2002

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

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

Subject references:

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

Legislative references:

- TAA 1953 Part IVAAA
- ITAA 1936 82KH(1)
- ITAA 1936 82KH(1F)(b)
- ITAA 1936 82KL
- ITAA 1936 82KL(1)
- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZME
- ITAA 1936 82KZME(1)
- ITAA 1936 82KZME(2)
- ITAA 1936 82KZME(3)
- ITAA 1936 82KZME(4)
- ITAA 1936 82KZME(7)
- ITAA 1936 82KZMF
- ITAA 1936 82KZMF(1)
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 17-5
- ITAA 1997 Div 27
- ITAA 1997 Div 35
- ITAA 1997 35-10
- ITAA 1997 35-10(2)
- ITAA 1997 35-10(3)
- ITAA 1997 35-10(4)
- ITAA 1997 35-30
- ITAA 1997 35-35

- ITAA 1997 35-40
- ITAA 1997 35-45
- ITAA 1997 35-55
- ITAA 1997 35-55(1)
- ITAA 1997 35-55(1)(a)
- ITAA 1997 35-55(1)(b)
- ITAA 1997 35-55(2)
- ITAA 1997 70-35
- ITAA 1997 Div 328
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- ITAA 1997 328-105
- ITAA 1997 328-105(1)(a)
- ITAA 1997 328-105(1)(b)
- ITAA 1997 328-285
- ITAA 1997 328-285(1)
- ITAA 1997 328-285(2)

Case references:

- FCT v. Lau 84 ATC 4929

ATO references:
NO T2001/007044

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