

# ***PR 2002/14 - Income tax: Liverno Olive Project***

 This cover sheet is provided for information only. It does not form part of *PR 2002/14 - Income tax: Liverno Olive Project*

 This document has changed over time. This is a consolidated version of the ruling which was published on *20 February 2002*



# Product Ruling

## Income tax: Liverno Olive Project

Contents	Para
What this Product Ruling is about	1
Date of effect	11
Withdrawal	13
Arrangement	14
Ruling	77
Explanations	108
Examples	169
Detailed contents list	172

### 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. 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 participants 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 this product fits an existing portfolio, etc. We recommend a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential participants 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, participants lose the protection of this Product Ruling. Potential participants may wish to seek assurances from the promoter that the arrangement will be carried out as described in this Product Ruling.

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

### Terms of Use of this Product Ruling

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

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

## **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 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 Livorno Olive Project, or simply as 'the Project'.

### **Tax laws**

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

### **Goods and Services Tax**

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

### **Changes in the Law**

4. The Government is currently evaluating further changes to the tax system in response to the *Ralph Review of Business Taxation* and continuing business tax reform is expected to be implemented over a

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

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

### **Note to promoters and advisers**

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

### **Class of persons**

7. The class of persons to whom this Ruling applies is the persons who are more specifically identified in the Ruling part of this Product Ruling and who enter into the arrangement specified below on or after the date this Ruling is made. They will have a purpose of staying in the arrangement until it is completed (i.e., being a party to the relevant Agreements until their term expires) and deriving assessable income from this involvement. In this Ruling, each of these persons, referred to as 'Growers', will have accepted an offer made under section 708 of the *Corporations Act 2001*.

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

### **Qualifications**

9. The Commissioner rules on the precise arrangement identified in the Ruling. If the arrangement described in the Ruling is materially different from the arrangement that is actually carried out, the Ruling has no binding effect on the Commissioner. The Ruling will be withdrawn or modified.

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reproduction and rights should be addressed to the Manager,  
Legislative Services, AusInfo, GPO Box 1920, Canberra ACT 2601.

## Date of effect

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11. This Ruling applies prospectively from 20 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

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13. This Product Ruling is withdrawn and ceases to have effect after 30 June 2005. 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

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

- Application for a Product Ruling, dated 4 May 2001;
- Draft copy of the Information Memorandum issued for the Livorno Olive Project 1, undated, received on 17 December 2001;
- **Draft copy of Licence and Management Agreement ('the Management Agreement') between Livorno Olives Pty Ltd ('the Grove Manager'), Livorno**

**Properties Pty Ltd ('the Owner') and each Grower, undated, received on 5 December 2001;**

- **Draft copy of Loan Agreement between a Grower and the Grove Manager, undated, received on 25 January 2002;**
- **Draft copy of Loan Application form, undated, received on 25 January 2002;**
- **Draft copy of Trust Deed for the Liverno Properties Unit Trust No 2 ('the Unit Trust'), undated, received on 4 May 2001;**
- Draft copy of Contract of Sale of Real Estate between the Vendor and Liverno Properties Pty Ltd as trustee for Liverno Properties Unit Trust No 2, undated, received on 17 December 2001;
- Letter and attachments to ATO from the applicant's representative, dated 5 December 2001;
- E-mail and attachments to ATO from the applicant's representative dated 13 September 2001 (2), 1 November 2001, 2 November 2001, 17 December 2001, 25 January 2002 and 31 January 2002;

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

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

- is a 'sophisticated investor' for the purposes of subsections 708(8)-(9) of the Corporations Act 2001;
- has accepted an offer made by a licensed dealer where the offer meets the requirements of subsection 708(10) of the Corporations Act 2001; or
- is a 'professional investor' for the purposes of paragraphs (a), (b) or (h) of subsection 708(11) of the Corporations Act 2001.

16. Each of these categories is explained in paragraphs 108 to 112 in the Explanations area of this Product Ruling. The documents highlighted are those Growers enter into or become a party to. For the purposes of describing the arrangement to which this Ruling applies, there are no other agreements, whether formal or informal, and

whether or not legally enforceable, to which the Grower, or an associate of the Grower, will be a party. The effect of these agreements may be summarised as follows.

### Overview

17. The arrangement is called the Liverno Olive Project.

Location	The property is situated in the Goulburn Valley region of Victoria, close to Shepparton.
Type of business each participant is carrying on	Commercial growing and cultivation of olive groves for producing Olive Produce.
Number of hectares under cultivation	96.7 hectares.
Number of Licensed Areas offered	653
Size of each Licensed Area	0.14 hectares.
Number of olive trees per Licensed Area	50 trees.
The term of the Project	13 years.
Initial fees per Licensed Area	\$10,740
Ongoing annual fees per Licensed Area	In the second and subsequent Financial Years, the Licence Fee and Annual Management Fees are payable annually on or before 1 July of the Financial Year to which the payment relates. Refer to paragraphs 62 to 64 for details of the fees payable.
Other costs	Additional payments may be required if Annual Management Fees are considered insufficient for the proper performance of the Services. The Grower shall be responsible for meeting the Growers Portion of the Harvest Fees. All Marketing Costs associated with the sale of the Olive Produce will be deducted from the sale proceeds. Insurance – If the Grower chooses to insure.
Other Features	A Grower may elect to collect and

	market their own Olive Produce instead of using the Manager. A person making this election is an Electing Grower. For all other Growers (Non-Electing Growers), the Manager will market the Olive Produce from the Grower's as agent for the Grower.
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**The Project**

18. Under the Information Memorandum, Growers are invited to establish and operate an Olive Grove by entering into a Licence and Management Agreement and to own the land on which the Grove will be established through the purchase of a unit in the land owning Unit Trust.

19. The objective is the commercial growing and cultivation of olive groves for producing Olive Produce.

20. The land upon which the Project will be established is located at Crown allotments 28 and 20A, Parish of Kialla, Volume 8232, Folio 546 – which is situated in the Goulburn Valley region of Victoria. The total area of the land is 117.2 hectares, of which 96.7 hectares is suitable for planting. The land has been purchased by Liverno Properties Pty Ltd as trustee for the Liverno Properties Unit Trust No 2.

21. The offer is for a minimum of one unit in the land owning Unit Trust and one Licensed Area interest under the Licence and Management Agreement.

22. The Grower or a person nominated by it must purchase one unit in the Unit Trust for each Licensed Area over which a Licence has been granted.

23. Growers on application to the Project will pay \$10,740 for each Licensed Area, which is allocated as follows:

One unit in the Unit Trust	\$1,500.00
Primary Services Fee	\$7,784.70
Licence Fee	\$165.00
Irrigation System	\$530.20
Trees and Staking System	\$738.10
Landcare Costs	\$22.00
<b>Total</b>	<b>\$10,740.00</b>

24. There is no minimum subscription for this Project.

25. The Project seeks to raise \$7,013,220 by offering up to 653 Licensed Area interests.
26. An Applicant can be accepted into the Project in either the year ended 30 June 2002 or the year ended 30 June 2003.
27. Growers accepted into the Project will enter into a Licence and Management Agreement with the Owner for a Licence to use an identifiable area of land called a Licensed Area, and with the Grove Manager who is appointed to establish and manage the Grower's Project for the term of the Project.

## **Stapled Investment**

28. Under the term of the Licence and Management Agreement, the Grower or a person nominated by it and approved by the Owner will purchase at least one unit in Unit Trust for each Licensed Area over which a Licence has been granted (cl. 41).
29. A unit and an interest in the Licensed Area is a stapled investment and the Grower shall not sell, transfer, assign or otherwise depart with the unit(s) in the Unit Trust, or permit any person nominated by it to hold the interest in the unit(s) to sell, transfer, assign or otherwise depart with the unit(s) during the Term except to a person nominated by it and approved in writing by the Owner and the Grove Manager (cl. 42).

## **The Unit Trust - Livorno Properties Unit Trust No 2**

30. The Information Memorandum will invite the Grower to participate in the ownership of the Project land by acquiring one unit in the Livorno Properties Unit Trust No 2 for every Licensed Area obtained.
31. The Issue Price of each unit is \$1,500 (cl. 4.4(b) of the Unit Trust) and forms part of the initial subscription monies that each applicant is required to pay pursuant to the Information Memorandum.
32. Upon acceptance of a person as a Unitholder, they will be entered on the register of Unitholders (cl. 11.1 of the Unit Trust) and will be issued a certificate in respect of the units issued to them (cl. 7(a) of the Unit Trust).
33. The terms and conditions of the Unit Trust is binding on the Trustee and each Unitholder (cl. 10 of the Unit Trust).

## **Licence and Management Agreement**

34. Each Grower shall enter into a Licence and Management Agreement with the Grove Manager and the Owner.

*(a) The Licence*

35. Under the Licence and Management Agreement, the Owner will grant to the Grower a non-exclusive licence to use the Grower's Grove (cl 3.1). The Licence provides that the Grower will use the land for the purpose of commercial horticulture and the Growers Project (cl. 5.1(a)).

36. The Grower will at all times have full right, title and interest in the Olive Produce from the Grower's Grove (cl. 9.2).

37. The Licence Fee payable per Licensed Area in the first Financial Year of the Project is \$165 (s 4.1). In the second and subsequent Financial Years, Growers are liable to pay a Licence Fee annually in advance, as calculated according to clauses 4.1 & 4.2.

38. The term of the Licence will be period of 13 years from 30 June of the year of execution of the Licence and Management Agreement. Where the project is entered into on or prior to 30 June 2002, completion is at 30 June 2015 (cl. 1.26(a)). Where the project is entered into during the year ending 30 June 2003, completion is at 30 June 2016 (cl. 1.26(a)).

*(b) The Management Agreement*

39. Under the Licence and Management Agreement, the Grower appoints the Grove Manager to perform the services and the Grove Manager accepts the appointment upon the terms and conditions contained in the Agreement (cl. 11).

40. The Grove Manager's Term will be from the date that the Licence and Management Agreement is executed until the Completion Date, being the date on which the Grove Manager pays the final distribution of Grower net Income to Non-Electing Growers (cl. 12).

*First Financial Year*

41. In the first Financial Year of the Project the Grove Manager will carry out services to establish and maintain the Grower's Project. These services include Grove Services, the installation of an Irrigation System, the planting of Trees and the installation of a Staking System.

*Grove Services*

42. The Grove Services to be provided by the Grove Manager will include without limitation the following (cl. 18.1):

- (a) completing such drainage, soil and other surveys, utilising appropriate consultants and contractors, as are reasonably required for the purpose of the Olive Grove Project;
- (b) remove such internal fencing, remnant vegetation, weeds, pests and vermin as reasonably required;
- (c) determining and marking out the Olive Grove layout;
- (d) developing, or engaging appropriately qualified contractors to develop, a soil plan for the Olive Grove and the Grower's Grove;
- (e) prepare the Grower's Grove for the Grower's Project
- (f) establishing appropriate drainage on the Grower's Grove;
- (g) selecting, purchasing and transporting seedlings to the Grower's Grove for planting, such seedlings at all times to remain the property of the Grower and before being planted to be separately identifiable as having been acquired on behalf of the Grower;
- (h) installing the Staking System for the training of the Trees;
- (i) installing the Irrigation System to the Trees in the Grower's Grove;
- (j) carrying out necessary drainage work and other works to prevent soil erosion and land degradation on the Grower's Grove;
- (k) planting at least 50 Trees on each Licensed Area comprising the Grower's Grove;
- (l) establishing access laneways within the Grower's Grove and the land to ensure appropriate access to the Grower's Grove; and
- (m) establishing fire breaks in and about the Grower's Grove.

43. For a Grower accepted into the Project on or before 14 May of the first Financial Year, the Grove Manager will perform the Grove Services prior to 30 June immediately following the Commencement Date (cl. 18.1). For a Grower accepted into the Project between 15 May and 30 June of the first Financial Year, the Grove Manager may not complete the Grove Services prior to 30 June of the first Financial Year, in which case the Grove Manager must complete the Grove Services within six (6) months of the Commencement Date (cl. 18.3).

44. The Primary Service Fee payable for Grove Services per Licensed Area in the first Financial Year of the Project is \$7,784.70 (cl. 18.2).

#### *Irrigation System*

45. The Grove Manager will purchase and install an Irrigation System to water the trees on the Growers Grove (cl. 16.1).

46. The fee payable for the Irrigation System per Licensed Area in the first Financial Year of the Project is \$530.20 (cl. 16.2).

#### *Trees and Staking System*

47. The Grove Manager shall plant 50 olive trees for each Licensed Area and install a Staking System to support the Trees (cl. 17.1).

48. The fee payable for the Trees and Staking System per Licensed Area in the first Financial Year of the Project is \$738.10 (cl. 17.2).

49. An associated fee is also payable for Landcare Costs per Licensed Area in the first Financial Year of the Project of \$22.00 (cl.17.2).

#### *Second and subsequent Financial Years*

50. In the second and subsequent Financial Years of the Project, the Grove Manager will carry out services to maintain and manage the Grower's Project. These services include Management Services, the harvest and the sale of the Olive Produce of the Grower's Project.

#### *Management Services*

51. The Management Services to be provided by the Grove Manager will include without limitation the following (cl. 20.1):

- (a) maintaining the Staking System for the training of the Trees;
- (b) maintaining the Irrigation System to the Trees in the Grower's Grove;
- (c) cultivating, tending, training, pruning, fertilising, spraying and otherwise caring for the Trees as and when required;
- (d) supplying the Grower's Grove with up to 0.5 megalitres of water per annum provided that if the Grove Manager is unable to supply this amount of water due to a lack

of available water (due to reasons other than the Grove Manager's failure to take steps to obtain or purchase such water), the Grove Manager will not discriminate between Growers in the supply of water and will ensure that the total supply of water available to the Grove Manager is distributed equally between Growers in the Olive Grove Project according to the proportion of the Olive Grove licensed to each of the Growers;

- (e) irrigating the Grower's Grove with water supplied pursuant to sub-clause (d);
- (f) complying with the Grower's obligations under the Licence;
- (g) keeping in good repair access laneways within the Grower's Grove and the Olive Grove;
- (h) using all reasonable measures to keep the Grower's Grove free from vermin, noxious weeds, pests and diseases;
- (i) conducting regular tests to determine the health of the Trees and recommending or taking such remedial action as is reasonably necessary;
- (j) testing and maintaining the soil in the Grower's Grove and applying such fertilisers or soil additives as are reasonably required to care for the trees and promote optimum yield;
- (k) maintaining in good repair and condition adequate fire breaks in and about the Grower's Grove;
- (l) mowing or slashing any cover crop on the Grower's Grove and, where appropriate, utilising the remnants to enhance soil quality;
- (m) taking all reasonable steps to commence the harvest of the Olive Produce at the optimum time for conducting such harvest including conducting such tests of the Trees or Olive Produce as are reasonably required to determine such timing;
- (n) conducting the harvest in a manner consistent with accepted horticultural practices and intending to optimise the quality of the Olive Produce;
- (o) harvesting the Olive Produce on the Grower's Grove each year and delivering it up for sale in accordance with this Agreement;
- (p) preparing and maintaining financial statements and records;

- (q) providing the necessary labour, machinery, materials, chemicals, fertilisers and other goods and services as are reasonably required to perform the Management Services;
- (r) complying with all Work Place Health and Safety requirements of any Government or Government Agency in respect of the Grower's Grove;
- (s) harvesting, packaging, storing and transporting the Olive Produce in such manner as complies with accepted horticultural practice and which minimises the damage, destruction or deterioration of the Olive Produce after harvest; and
- (t) managing and administrating the Grower's Grove and Olive Grove Project in a manner consistent with accepted horticultural practices and in a manner calculated to optimise the return, from the sale of the Olive Produce, to the Grower.

52. In the second and subsequent Financial Years, Growers are liable to pay an Annual Management Fee for these Management Services annually in advance, as calculated according to clause 20.1.

53. Should events or circumstances result in the Grove Manager taking the view that the amounts of the Annual Management are insufficient for the proper performance of the Services, the Grove Manager shall be entitled to seek the Grower's consent to an amendment to this Agreement providing for an increase in the Annual Management Fee payable in respect of any Financial Year (cl. 20.3).

#### *Harvest of the Olive Produce*

54. The Grove Manager is obliged from the date of the first commercially harvestable olive crop to arrange for the olive produce to be harvested at such time as in the opinion of the Grove Manager, acting reasonably, will maximise the price receivable for the olive produce (cl. 21.1).

55. The Grower shall be responsible for meeting the Grower's Portion of the Harvest Fees (cl. 21.2).

#### *Sale of the Olive Produce*

56. A Grower may elect to collect their harvested olives and take sole responsibility for their processing and marketing instead of using the Grove Manager (cl. 22.1). A person making this election is an Electing Grower and all other Growers are Non-Electing Growers. However where Growers do not elect, the Grove Manager is

appointed for the purpose of marketing the Olive Produce from the Grower's Grove, including entering into negotiations and sale and marketing agreements on such terms as the Grove Manager considers appropriate (cl. 23.1).

57. All Marketing Costs associated with the sale of the Olive Produce will be deducted from the sale proceeds (cl. 24.1).

58. The Grove Manager will obtain and maintain insurance against public risk in respect of the Olive Grove throughout the Term (cl. 29.1). The Grower may take out such additional insurance cover as the Grower may require, at the Grower's own cost and expense (cl. 29.2).

## **Fees and costs**

59. On lodging the application each Grower is required to pay \$1,500 for each unit in Unit Trust.

60. For performance of services and rights granted under the terms of the Licence and Management Agreement, the fees payable by a Grower per Licensed Area will be as follows.

61. For first Financial Year of the Project the following fees are payable on lodging the application:

- \$7,784.70 Primary Services Fee;
- \$165.00 Licence Fee;
- \$530.20 Irrigation System;
- \$738.10 Trees and Staking System; and
- \$22.00 Landcare Costs.

62. For the second Financial Year of the Project the following fees are payable in advance on or before 1 July of the Financial Year:

- \$169.95 Licence Fee; and
- \$220.00 Annual Management Fee.

63. For the third Financial Year of the Project the following fees are payable in advance on or before 1 July of the Financial Year:

- \$175.05 Licence Fee; and
- \$825.00 Annual Management Fee.

64. For the fourth and subsequent Financial Years of the Project, Schedule 2 of the Licence and Management Agreement details the fees payable as follows:

- The Licence Fee is the amount specified in Item 1 of Schedule 2; and

- The Annual Management Fee is the amount specified in Item 2 of Schedule 2.

These fees are payable in advance on or before 1 July of the Financial Year to which the payment relates.

65. Additional payments may be required if Annual Management Fees are considered insufficient for the proper performance of the Services.

66. The Grower shall be responsible for meeting the Growers Portion of the Harvest Fees.

67. All Marketing Costs associated with the sale of the Olive Produce will be deducted from the sale proceeds.

68. The Grower may take out such additional insurance cover as the Grower may require, at the Grower's own cost and expense.

### **Finance**

69. Growers can fund their involvement in the Project by borrowing from Liverno Olives Pty Ltd ('the Lender').

70. The Lender will offer the finance arrangement to selected Growers.

71. Selected Growers will enter into the following finance arrangement with the Lender.

72. The Principal Sum loaned to each selected Grower will be \$5,040 for each Licensed Area in the Liverno Olive Project. The balance of \$5,700 per Licensed Area must be paid by the Grower on application.

73. The term of the loan will be for either 12 or 18 months only. The Principal Sum loaned will be interest free and will be repaid by equal monthly instalments over the term of the loan.

74. Security for the performance of the Grower's obligations is over their right, title and interest in the Project and the Unit Trust.

75. The loan is full recourse and Grower will not have the capacity to defer the making of loan repayments. If a Grower defaults, the Lender will use all legal means available to enforce the financial obligations of the Grower.

76. 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 Liverno Olives Pty Ltd are involved or become involved in the provision of finance to Growers for the Project.

## Ruling

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### Application of this Ruling

77. This Ruling applies only to Growers who are accepted to participate in the Project:

- in the year ended 30 June 2002 and who have executed a Licence and Management Agreement and purchased a unit in the Unit Trust in that period (2002 Growers); and/or
- in the year ended 30 June 2003 and who have executed a Licence and Management Agreement and purchased a unit in the Unit Trust in that period (2003 Growers).

78. The Grower's participation in the Project must constitute the carrying on of a business of primary production. A Grower is not eligible to claim any tax deductions until the Grower's application to enter the Project is accepted and the Project has commenced.

79. For 2002 Growers, a reference in the following paragraphs to the first Financial Year is a reference to the income year ended 30 June 2002.

80. For 2003 Growers, a reference in the following paragraphs to the first Financial Year is a reference to the income year ended 30 June 2003.

### **The Simplified Tax System ('STS')**

#### **Division 328**

81. 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**

82. 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.

#### **Prepaid fees**

83. For a Grower accepted into the project between 15 May and 30 June of the first Financial Year, the Grove Manager may not complete the Grove Services prior to 30 June of that Financial Year. Where this occurs the Grove Manager must complete the Grove Services within six (6) months of the Commencement Date. A Primary Service Fee is payable on application by a Grower for the Grove Services.

84. Where the Grove Services are not completed by 30 June of the first Financial Year the Primary Service Fee incurred by a Grower will be subject to the prepayment rules in sections 82KZME and 82KZMF. In this context, a prepayment refers to advance expenditure incurred by a Grower in return for the doing of a thing that will not be wholly done in the year in which the expenditure is incurred. Where a Grower prepays expenditure that would otherwise be a general deduction under section 8-1 of the ITAA 1997 in the expenditure year, the Grower must apportion the prepayment over the period the

prepayment covers unless it is 'excluded expenditure' (see Note (iii) below).

85. Subsection 82KZMF(1) provides the formula for determining how much of the prepaid expenditure a Grower can deduct for each income year. In that formula, which is shown below, the 'eligible service period' 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.

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

86. Where the Grove Services are not completed by 30 June of the first Financial Year the tax deductions allowable for the Primary Service Fee must be calculated by applying the above formula to the amount incurred in the first Financial Year by the Grower. The Grove Manager will provide the relevant Growers with sufficient information to enable those Growers to calculate their tax deductions for the Grove Services in the first Financial Year.

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

### **Assessable Income**

#### **Section 6-5**

87. 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.

88. The Grower recognises ordinary income from carrying on the business of horticulture at the time that income is derived.

### **Deductions for the Primary Services Fee, Annual Management Fees, and Licence Fees for non-STS taxpayers who are accepted into the Project on or before 14 May 2002**

#### **Section 8-1**

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

<b>Fee Type</b>	<b>ITAA 1997 Section</b>	<b>Year ended 30 June 2002</b>	<b>Year ended 30 June 2003</b>	<b>Year ended 30 June 2004</b>
<b>Primary Services Fee</b>	8-1	\$7,784.70 – See Notes (i), & (ii) (below)		
<b>Annual Management Fee</b>	8-1		\$220.00 – See Notes (i), (ii) & (iii) (below)	\$825.00 – See Notes (i), (ii) & (iii) (below)
<b>Licence Fee</b>	8-1	\$165.00 – See Notes (i), (ii) & (iii) (below)	\$169.95 – See Notes (i), (ii) & (iii) (below)	\$175.05 – See Notes (i), (ii) & (iii) (below)

**Notes:**

- (i) If a Grower is accepted into the Project between 1 July 2002 and 14 May 2003, the years ended 30 June 2003, 2004 and 2005 must be substituted for the years shown in the above table;
- (ii) 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 1 at paragraph 169;
- (iii) Where the Annual Management Fee and the Licence Fee shown in the Licence and Management Agreement are incurred on 1 July in the Financial Year to which the payment relates they will deductible in full in the year that they are incurred. However, where those fees are paid before the Financial Year to which the payment relates (ie before 1 July) the Annual Management Fee and the Licence Fee may be subject to the prepayment rules of the ITAA 1936. For a Grower who acquires the minimum allocation of one Licensed Area, the amount of each of the prepaid fees is less than \$1,000. For the purposes of this Project, an amount of less than \$1,000 is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules and, for a Grower who is not an 'STS taxpayer', is deductible in full in the year in which it is incurred (see Example 3 at paragraph 171). However, where a Grower acquires more than the

minimum allocation in the Project and incurs the Annual Management Fee and the Licence Fee prior to 1 July the amount of either or both of those prepaid fees may be \$1,000 or more. Such Growers **MUST** determine the deduction for prepaid fees of \$1,000 or more using the formula shown above in paragraph 85.

**Deductions for the Primary Services Fee, Annual Management Fees, and Licence Fees for non - STS taxpayers who are accepted into the Project between 15 May 2002 and 30 June 2002**

**Section 8-1**

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

<b>Fee Type</b>	<b>ITAA 1997 Section</b>	<b>Year ended 30 June 2002</b>	<b>Year ended 30 June 2003</b>	<b>Year ended 30 June 2004</b>
<b>Primary Services Fee</b>	8-1	Amount may require calculation – See Notes (iv), (v) & (vi) (below)	If Primary Services Fee apportioned in Year 1, balance allowed in this year.	
<b>Annual Management Fee</b>	8-1		\$220.00 – See Notes (iv), (v), & (vii) (below)	\$825.00 – See Notes (iv), (v), & (vii) (below)
<b>Licence Fee</b>	8-1	\$165.00 – See Notes (iv), (v), & (vii) (below)	\$169.95 – See Notes (iv), (v), & (vii) (below)	\$175.05 – See Notes (iv), (v), & (vii) (below)

**Notes:**

- (iv) If a Grower is accepted into the Project between 15 May 2003 and 30 June 2003, the years ended 30 June 2003, 2004 and 2005 must be substituted for the years shown in the above table;
- (v) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g. input tax credits): Division 27. See example 1 at paragraph 169;

- (vi) Where the Grove Services are not completed by 30 June 2002 (or 2003 as the case may be) the Primary Services Fee shown in paragraph 61 above is **NOT** deductible in full in the year incurred. The deduction for the fee must be determined using the formula in subsection 82KZMF(1) (see paragraph 85). The Grove Manager will inform Growers of the number of days in the 'eligible service period' in the first expenditure year. This figure is necessary to calculate the deduction allowable for the fees incurred. (See Example 2 at paragraph 170);
- (vii) Where the Annual Management Fee and the Licence Fee shown in the Licence and Management Agreement are incurred on 1 July in the Financial Year to which the payment relates they will deductible in full in the year that they are incurred. However, where those fees are paid before the Financial Year to which the payment relates (ie before 1 July) the Annual Management Fee and the Licence Fee may be subject to the prepayment rules of the ITAA 1936. For a Grower who acquires the minimum allocation of one Licensed Area, the amount of each of the prepaid fees is less than \$1,000. For the purposes of this Project, an amount of less than \$1,000 is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules and, for a Grower who is not an 'STS taxpayer', is deductible in full in the year in which it is incurred (see Example 3 at paragraph 171). However, where a Grower acquires more than the minimum allocation in the Project and incurs the Annual Management Fee and the Licence Fee prior to 1 July the amount of either or both of those prepaid fees may be \$1,000 or more. Such Growers **MUST** determine the deduction for prepaid fees of \$1,000 or more using the formula shown above in paragraph 85.

**Deductions for capital expenditure for non-STs taxpayers who are accepted into the Project in the year ended 30 June 2002 (applies to both Growers accepted before 15 May 2002 and to Growers accepted between 15 May 2002 and 30 June 2002)**

**Division 40**

91. A Grower who is not an 'STS taxpayer' will also be entitled to tax deductions relating to the Staking System, an Irrigation System (water facilities), Landcare Costs (a 'landcare operation') and the

**PR 2002/14**

establishment of the olive trees. All deductions shown in the following Table are determined under Division 40.

<b>Fee type</b>	<b>ITAA 1997 Section</b>	<b>Year ended 30 June 2002</b>	<b>Year ended 30 June 2003</b>	<b>Year ended 30 June 2004</b>
<b>Stakes</b>	40-25	Must be calculated - See Notes (viii), (ix) & (x) below	Must be calculated - See Notes (viii), (ix) & (x) below	Must be calculated - See Notes (viii), (ix) & (x) below
<b>Irrigation System</b>	40-515	\$176.73 - see Notes (viii), (ix) & (xi) below	\$176.73 - see Notes (viii), (ix) & (xi) below	\$176.73 - see Notes (viii), (ix) & (xi) below
<b>Landcare Operations</b>	40-630	\$22.00 - see Notes (viii), (ix) & (xii) below		
<b>Establishm't of horticultural plants (Olives)</b>	40-515	Nil - see Notes (viii), (ix) & (xiii) below	Nil - see Notes (viii), (ix) & (xiii) below	Nil - see Notes (viii), (ix) & (xiii) below

**Notes:**

- (viii) If a Grower is accepted into the Project in the year ended 30 June 2003, the years ended 30 June 2003, 2004 and 2005 must be substituted for the years shown in the above table;
- (ix) If the Grower is registered or required to be registered for GST, amounts of capital expenditure would need to be adjusted as relevant for GST (e.g., input tax credits): Division 27. See example 1 at paragraph 169;
- (x) A stake is a 'depreciating asset'. Each Grower holds an interest in each stake, which is a 'low-cost asset' and can be allocated to a 'low-value pool'. Once any 'low-cost asset' of a Grower is allocated to a 'low-value pool', all other 'low-cost assets' the Grower start to 'hold' in that year or a later year must be allocated to that pool. If the Grower has already allocated an asset to a 'low-value pool', the stake assets would also have to be allocated to that pool. Otherwise, the Grower must decide whether to create a 'low-value pool'. If the assets are allocated to a 'low-value pool',

the capital expenditure on the stakes will be deducted under the diminishing value methodology of the pool based on a rate of 18.75% in the year the stakes are first used and a rate of 37.5% in subsequent years (section 40-440). If the assets are not allocated to a 'low-value pool', they can be written off based on the 'effective life' of the stakes. As there has been no determination of the 'effective life' of a stake by the Commissioner, Growers must self-assess an 'effective life'. No deduction for the decline in value of stakes is available until they are installed. The Grove Manager will advise Growers of that date to enable them to calculate the deduction;

- (xi) Any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. A deduction is available under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one third of the capital expenditure incurred by each Grower on the installation of the 'water facility' in the year in which it is incurred and one third in each of the next 2 years of income (section 40-540);
- (xii) Any capital expenditure incurred for a 'landcare operation' (as defined in section 40-635) is fully deductible in the year it is incurred under Subdivision 40-G, section 40-630;
- (xiii) Olive trees are a 'horticultural plant' as defined in subsection 40-525(2). As Growers hold the land under a licence, one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. The deduction for the olive trees is determined using the formula in section 40-545 and is based on the capital expenditure incurred by the Grower that is attributable to their establishment. If the olive trees have an 'effective life' of greater than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 7%. The deduction is allowable when the olive trees enter their first commercial season (section 40-530, item 2). The Grove Manager will inform Growers of when the olive trees enter their first commercial season.

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

92. 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.

93. The Grower recognises ordinary income from carrying on the business of horticulture at the time the income is received (paragraph 328-105(1)(a)).

**Deductions for the Primary Services Fee, Annual Management Fees, and Licence Fees for STS taxpayers who are accepted into the Project on or before 14 May 2002****Section 8-1 and section 328-105**

94. A Grower who is an ‘STS taxpayer’ may claim tax deductions for the following revenue expenses:

<b>Fee Type</b>	<b>ITAA 1997 Section</b>	<b>Year ended 30 June 2002</b>	<b>Year ended 30 June 2003</b>	<b>Year ended 30 June 2004</b>
<b>Primary Services Fee</b>	8-1	\$7,784.70 – See Notes (xiv), (xv) & (xvi) (below)		
<b>Annual Management Fee</b>	8-1		\$220.00 – See Notes (xiv), (xv) (xvi) & (xvii) (below))	\$825.00 – See Notes (xiv), (xv) (xvi) & (xvii) (below)
<b>Licence Fee</b>	8-1	\$165.00 – See Notes (xiv), (xv) (xvi) & (xvii) (below)	\$169.95 – See Notes (xiv), (xv) (xvi) & (xvii) (below)	\$175.05 – See Notes (xiv), (xv) (xvi) & (xvii) (below)

**Notes:**

- (xiv) If a Grower is accepted into the Project between 1 July 2002 and 14 May 2003, the years ended

30 June 2003, 2004 and 2005 must be substituted for the years shown in the above table;

- (xv) 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). See Example 1 at paragraph 169;
- (xvi) 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;
- (xvii) Where the Annual Management Fee and the Licence Fee shown in the Licence and Management Agreement are incurred on 1 July in the Financial Year to which the payment relates they will deductible in full in the year that they are paid. However, where those fees are paid before the Financial Year to which the payment relates (ie before 1 July) the Annual Management Fee and the Licence Fee may be subject to the prepayment rules of the ITAA 1936. For a Grower who acquires the minimum allocation of one Licensed Area, the amount of each of the prepaid fees is less than \$1,000. For the purposes of this Project, an amount of less than \$1,000 is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules and, for a Grower who is an 'STS taxpayer', is deductible in full in the year in which it is paid (see Example 3 at paragraph 171). However, where a Grower acquires more than the minimum allocation in the Project and incurs the Annual Management Fee and the Licence Fee prior to 1 July the amount of either or both of those prepaid fees may be \$1,000 or more. Such Growers **MUST** determine the deduction for prepaid fees of \$1,000 or more using the formula shown above in paragraph 85.

**Deductions for the Primary Services Fee, Annual Management Fees, and Licence Fees for STS taxpayers who are accepted into the Project between 15 May 2002 and 30 June 2002**

**Section 8-1 and section 328-105**

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

**PR 2002/14**

Fee Type	ITAA 1997 Section	Year ended 30 June 2002	Year ended 30 June 2003	Year ended 30 June 2004
<b>Primary Services Fee</b>	8-1	Amount may require calculation— See Notes (xviii), (xix) & (xx) (below)	If Primary Services Fee apportioned in Year 1 balance allowable in this year	
<b>Annual Management Fee</b>	8-1		\$220.00 – See Notes (xviii), (xix), (xxi) & (xxii) (below)	\$825.00 – See Notes (xviii), (xix), (xxi) & (xxii) (below)
<b>Licence Fee</b>	8-1	\$165.00 – See Notes (xviii), (xix), (xxi) & (xxii) (below)	\$169.95 – See Notes (xviii), (xix), (xxi) & (xxii) (below)	\$175.05 – See Notes (xviii), (xix), (xxi) & (xxii) (below)

**Notes:**

- (xviii) If a Grower is accepted into the Project between 15 May 2003 and 30 June 2003, the years ended 30 June 2003, 2004 and 2005 must be substituted for the years shown in the above table;
- (xix) 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 1 at paragraph 169;
- (xx) Where the Grove Services are not completed by 30 June 2002 (or 2003 as the case may be) the Primary Services Fee shown in paragraph 61 (in the Arrangement) is **NOT** deductible in full in the year in which it is paid by, or on behalf of the STS taxpayer. The deduction for the fee must be determined using the formula in subsection 82KZMF(1) (see paragraph 85). The Grove Manager will inform Growers of the number of days in the 'eligible service period' in the first expenditure year. This figure is necessary to calculate the deduction allowable for the fees incurred. (See Example 2 at paragraph 170);

- (xxi) 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;
- (xxii) Where the Annual Management Fee and the Licence Fee shown in the Licence and Management Agreement are incurred on 1 July in the Financial Year to which the payment relates they will be deductible in full in the year that they are paid. However, where those fees are paid before the Financial Year to which the payment relates (ie before 1 July) the Annual Management Fee and the Licence Fee may be subject to the prepayment rules of the ITAA 1936. For a Grower who acquires the minimum allocation of one Licensed Area, the amount of each of the prepaid fees is less than \$1,000. For the purposes of this Project, an amount of less than \$1,000 is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules and, for a Grower who is an 'STS taxpayer', is deductible in full in the year in which it is paid (see Example 3 at paragraph 171). However, where a Grower acquires more than the minimum allocation in the Project and incurs the Annual Management Fee and the Licence Fee prior to 1 July the amount of either or both of those prepaid fees may be \$1,000 or more. Such Growers **MUST** determine the deduction for prepaid fees of \$1,000 or more using the formula shown above in paragraph 85.

**Deductions for capital expenditure for STS taxpayers who are accepted into the Project in the year ended 30 June 2002 (applies to both Growers accepted before 15 May 2002 and to Growers accepted between 15 May 2002 and 30 June 2002)**

**Subdivision 328-D and Subdivisions 40-F and 40-G**

96. A Grower who is an 'STS taxpayer' will also be entitled to tax deductions relating to the Staking System, an Irrigation System (water facilities), Landcare Costs (a 'landcare operation') and the establishment of the olive trees. Deductions relating to the 'cost' of the Staking System must be determined under Division 328. An 'STS taxpayer' may claim deductions in relation to water facilities under Subdivision 40-F and in relation to a 'landcare operation' under Subdivision 40-G. If the 'water facility' or 'landcare operation'

**PR 2002/14**

expenditure is on a 'depreciating asset' used to carry on the business, they may choose to claim deductions under Division 328. Deductions for the establishment of olive trees must be determined under Subdivision 40-F.

97. The deductions shown in the following Table assume, for representative purposes only, that a Grower has either chosen to or can only claim deductions for expenditure on water facilities or a 'landcare operation' under Subdivisions 40-F or 40-G and not under Division 328. If the expenditure has been incurred on 'depreciating assets' and is claimed under Division 328, the deduction is determined as discussed in Note (xxv) below.

98. Under Division 328, if the 'cost' of a 'depreciating asset' at the end of the income year is less than \$1000 (a 'low-cost asset'), it can be claimed as an immediate deduction when first used or 'installed ready for use'. This is so provided the Grower is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income.

99. For an STS taxpayer the deductions relating to capital expenditure are:

<b>Fee type</b>	<b>ITAA 1997 Section</b>	<b>Year ended 30 June 2002</b>	<b>Year ended 30 June 2003</b>	<b>Year ended 30 June 2004</b>
<b>Stakes</b>	328-180	\$110 - ( <b>only</b> deductible if installed on or before 30 June 2002) See Notes (xxiii), (xxiv) & (xxv) below	\$110 (if installed after 30 June 2002) See Notes (xxiii), (xxiv) & (xxv) below	
<b>Irrigation System</b>	40-515	\$176.73 - see Notes (xxiii), (xxiv) & (xxvi) below	\$176.73 - see Notes (xxiii), (xxiv) & (xxvi) below	\$176.73 - see Notes (xxiii), (xxiv) & (xxvi) below
<b>Landcare operations</b>	40-630	\$22.00 - see Notes (xxiii), (xxiv) & (xxvii) below		
<b>Establishm't of</b>	40-515	Nil - see Notes	Nil - see Notes	Nil - see Notes

<b>horticultural plants (Olives)</b>		(xxiii), (xxiv) & (xxviii) below	(xxiii), (xxiv) & (xxviii) below	(xxiii), (xxiv) & (xxviii) below
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**Notes:**

- (xxiii) If a Grower is accepted into the Project between 1 July 2002 and 14 May 2003, the years ended 30 June 2003, 2004 and 2005 must be substituted for the years shown in the above table;
- (xxiv) If the Grower is registered or required to be registered for GST, amounts of capital expenditure would need to be adjusted as relevant for GST (e.g., input tax credits): Division 27: see example 1 at paragraph 169;
- (xxv) A stake is a 'depreciating asset'. Each Grower holds an interest in each stake, which is a 'low-cost asset' as defined in subsection 40-425(2). It cannot be allocated to the 'general STS pool' (section 328-180). A deduction equal to the amount of the Grower's expenditure for the stakes is available in the income year in which they are used or 'installed ready for use'. This is so provided the Grower is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income. For Growers accepted between 15 June 2002 and 30 June 2002 (or 15 June 2003 and 30 June 2003 as the case may be) installation may not occur until the following Financial Year. The Grove Manager will advise when the installation of the stakes has occurred;
- (xxvi) Any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. If the expenditure is on a 'depreciating asset' (the underlying asset), the Grower may choose to claim a deduction under either Division 328 or Subdivision 40-F. For the purposes of Division 328, each Grower's interest in the underlying asset is itself deemed to be a 'depreciating asset'. If the 'cost' apportionable to that deemed 'depreciating asset' is less than \$1000, the deemed asset is treated as a 'low-cost asset' and that amount is deductible in full when the underlying asset is first used or 'held' ready for use. This is so provided the Grower is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and

the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income. If the deemed asset is not treated as a 'low-cost asset', the tax deduction allowable in the first Financial Year is determined by multiplying its 'cost' by half the relevant STS pool rate. At the end of the year, it is allocated to the relevant STS pool and in subsequent years the full pool rate will apply. If the expenditure is not on a 'depreciating asset', or if they choose to use Subdivision 40-F, Growers must claim deductions under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one third of the capital expenditure incurred by each Grower on the installation of the 'water facility' in the year in which it is incurred and one third in each of the next 2 years of income (section 40-540);

- (xxvii) Any capital expenditure incurred for a 'landcare operation' (as defined in section 40-635) is fully deductible in the year it is incurred under Subdivision 40-G, section 40-630. If the expenditure is on a 'depreciating asset' (the underlying asset), the Grower may choose to claim a deduction under either Division 328 or Subdivision 40-G (although expenditure on some items of plant can only be deducted under Division 328). For the purposes of Division 328, each Grower's interest in the underlying asset is itself deemed to be a 'depreciating asset'. If the 'cost' apportionable to that deemed 'depreciating asset' is less than \$1000, the deemed asset is treated as a 'low-cost asset' and that amount is deductible in full when the underlying asset is first used or 'held' ready for use. This is so provided the Grower is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income. If the deemed asset is not treated as a 'low-cost asset', the tax deduction allowable is determined by multiplying its 'cost' by half the relevant STS pool rate. At the end of the year, it is allocated to the relevant STS pool and in subsequent years, the full pool rate will apply. If the expenditure is not on a 'depreciating asset', the expenditure is fully deductible under Subdivision 40-G;

- (xxviii) Olive trees are a 'horticultural plant' as defined in subsection 40-525(2). As Growers hold the land under a licence, one of the conditions in subsection 40-525(2)

is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. The deduction for the olive trees is determined using the formula in section 40-545 and is based on the capital expenditure incurred by the Grower that is attributable to their establishment. If the olive trees have an 'effective life' of greater than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 7%. The deduction is allowable when the olive trees enter their first commercial season (section 40-530, item 2). The Grove Manager will inform Growers of when the olive trees enter their first commercial season.

## **Tax outcomes that apply to all Growers**

### **Interest deductibility**

100. The deductibility or otherwise 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 rule on the deductibility of expenditure where all details and related documentation have been provided to, and examined by the Tax Office. However all Growers who borrow funds in order to participate in the Liverno Olive Project, should read the discussion of the prepayment rules in paragraphs 130 to 138 (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.

### **Units**

101. Units in the landowning Unit Trust are 'CGT assets' (section 108-5) and the amount of \$1,500 per unit paid by a Grower to acquire the unit is an outgoing of capital and is not allowable as a deduction. The amount paid for each unit will represent the first element of the cost base of the share (subsection 110-25(2)).

## **Division 35 – Deferral of losses from non-commercial business activities**

### **Section 35-55 – Commissioner's discretion**

102. For a Non-Electing 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 2006 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.

103. For a Non-Electing Grower who is an individual and who enters the Project during the year ended 30 June 2003 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 2003 to 30 June 2007 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.

104. This exercise of the discretion in subsection 35-55(1) will not be required where, for any year in question:

- the 'exception' in subsection 35-10(4) applies (see paragraph 153 in the Explanations part of this ruling, below); or
- a Grower's business activity satisfies one of the tests in sections 35-30, 35-35, 35-40 or 35-45; or
- the Grower's business activity produces assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsection 35-10(2)); or
- the Commissioner is precluded from exercising the discretion under paragraph 35-55(1)(b) because of subsection 35-55(2).

105. Where, the exception in subsection 35-10(4) applies, the Grower's business activity satisfies one of the tests, or the discretion in subsection 35-55(1) is exercised, 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.

106. 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.

**Section 82KL, and Part IVA**

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

- 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.

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**Explanations**

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**Section 708 of the Corporations Act 2001**

108. For this Ruling to apply, an offer for an interest in the project must have been made to, and accepted by the Grower under one of three categories in subsections 708(8)-(11) of the Corporations Act 2001. These provisions set out situations where a prospectus or similar disclosure document is not required.

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

- the minimum amount payable for the interests in the project on acceptance of the offer by the person to whom the offer is made is at least \$500,000; or
- the amount payable for the interests in the project on acceptance by the person to whom the offer is made and the amounts previously paid by the person for interests in the project of the same class that are held by the person add up to at least \$500,000; or
- it appears from a certificate given by a qualified accountant no more than 6 months before the offer is made that the person to whom the offer is made:
  - (i) has net assets of at least \$2.5 million; or
  - (ii) has a gross income for each of the last 2 financial years of at least \$250,000 a year.

110. A Grower may also participate in the project where the offer is made by a licensed dealer under subsection 708(10). Under this provision the dealer must be satisfied that the person to whom the

offer is made has previous experience in investing which allows them to assess the merits of the offer, the value of the interests in the project, the risks involved in accepting the offer, their own information needs and the adequacy of the information provided.

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

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

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

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

113. For the amounts set out in the Tables above to constitute allowable deductions the Grower's horticultural activities as a participant in the Liverno Olive Project must amount to the carrying on of a business of primary production. These horticultural activities will fall within the definitions of 'horticulture' and 'commercial horticulture' in section 40-535 of the ITAA 1997.

114. For schemes such as that of the Liverno Olive 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.

115. Generally, a Grower will be carrying on a business of horticulture, and hence primary production, if:

- the Grower has an identifiable interest (by lease or by licence) in the land on which the Grower's olive trees are established;
- the Grower has a right to harvest and sell the olives each year from those olive trees;
- the horticulture activities are carried out on the Grower's behalf;

- the horticulture activities of the Grower are typical of those associated with a horticulture business; and
- the weight and influence of general indicators point to the carrying on of a business.

116. In this Project, each Grower enters into a Licence and Management Agreement.

117. Under the Licence and Management Agreement each individual Grower will have rights over a specific and identifiable area of land. The Licence and Management Agreement provides the Grower with an ongoing interest in the specific olive trees on the Licensed Area for the term of the Project. Under the licence the Grower must use the land in question for the purpose of carrying out horticultural activities and for no other purpose. The Licence and Management Agreement allows the Grove Manager come onto the land to carry out its obligations under the Management Agreement.

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

119. In establishing the olive grove, the Grower engages the Grove Manager to purchase and install the Staking System and water facilities (e.g., irrigation), to carry out 'landcare operations' and to acquire and plant olive trees on the Grower's olive grove. During the term of the Project, these assets will be used wholly to carry out the Grower's horticultural activities. The Grove Manager may also engaged to harvest and sell, on the Grower's behalf, the Olive Produce grown on the Grower's olive grove.

120. 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.

121. 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 its Olive 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.

122. The pooling of Olive Produce grown on the Grower's olive grove with the Olive Produce of other Growers is consistent with general horticulture practices. Each Grower's proportionate share of the sale proceeds of the pooled Olive Produce will reflect the proportion of the Olive Produce contributed from their olive grove.

123. The Grove Manager's services and the installation of assets on the Grower's behalf are also consistent with general horticulture practices. The assets are of the type ordinarily used in carrying on a business of horticulture. While the size of a Licensed Area is relatively small, it is of a size and scale to allow it to be commercially viable. (see Taxation Ruling IT 360).

124. The Grower's degree of control over the Grove Manager as evidenced by the Licence and Management Agreement, and supplemented by the Corporations Act 2001, is sufficient. During the term of the Project, the Grove Manager will provide the Grower with regular progress reports on the Grower's olive grove and the activities carried out on the Grower's behalf. Growers are able to terminate arrangements with the Grove Manager in certain instances, such as cases of default or neglect.

125. The horticulture activities, and hence the fees associated with their procurement, are consistent with an intention to commence regular activities that have an 'air of permanence' about them. For the purposes of this Ruling, the Growers' horticulture activities in the Liverno Olive Project will constitute the carrying on of a business.

## **The Simplified Tax System**

### **Division 328**

126. 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.

127. 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 the Primary Services Fee, Annual Management Fee and Licence Fee**

### **Section 8-1**

128. Consideration of whether the Primary Services Fee, Annual Management Fee and Licence Fee 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.

129. The Primary Services Fee, Annual Management Fee and Licence Fee associated with the horticultural activities will relate to the gaining of income from the Grower's business of horticulture (see above), and hence have a sufficient connection to the operations by which income (from the regular sale of Olive Produce) is to be gained from this business. They will thus be deductible under the first limb of section 8-1. Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. The fee appears to be reasonable. There is no capital component of the Primary Services Fee and Annual Management Fee. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

### **Prepayment provisions**

#### **Sections 82KZL to 82KZMF**

130. 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.

131. 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 them from the operation of section 82KZMF.

*Sections 82KZME and 82KZMF*

132. 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)).

133. 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;
- 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:
  - i) there is more than one participant in the agreement in the same capacity as the taxpayer; or
  - ii) the person who promotes, arranges or manages the agreement (or an associate of that person) promotes similar agreements for other taxpayers.

134. 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 Liverno Olives 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.

135. 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.

136. Where the requirements of section 82KZME are met, section 82KZMF applies to apportion relevant prepaid expenditure.

137. Section 82KZMF uses the formula below, to apportion prepaid expenditure and allow a deduction over the period that the benefits are provided.

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

138. 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*

*(i) Primary Services Fee, for Growers accepted on or before 14 May 2002 or on or before 14 May 2003*

139. Under the Licence and Management Agreement, where a Grower is accepted into the Project on or before 14 May of the first Financial Year, the Primary Services Fee, is not for things to be done beyond 30 June in the year in which the relevant amount is incurred. In these circumstances, the prepayment provisions in sections 82KZME and 82KZMF have no application to the Primary Services Fee.

*(ii) Primary Services Fee for Growers accepted into the Project between 15 May 2002 and 30 June 2002 or alternatively, 15 May 2003 and 30 June 2003*

140. For a Grower accepted into the Project between 15 May and 30 June of the first Financial Year, the Primary Service Fee incurred meets the requirements of subsections 82KZME(1) and (2) and is incurred under an 'agreement' as described in subsection 82KZME(3). Therefore, where the Grove Services are not fully provided by 30 June in the Financial Year in which the Primary Services Fee is incurred the amount and timing of tax deductions for that fee is determined under section 82KZMF, unless one of the exceptions to section 82KZME applies.

141. The prepaid Primary Service Fee incurred by such Growers does not fall within any of the 5 exceptions to section 82KZME.

Therefore, where the Grove Services are not fully provided by 30 June in the Financial Year in which the Primary Services Fee is incurred, the deduction for each year is determined using the formula in subsection 82KZMF(1) (see above paragraph 137). Section 82KZMF will apportion the deduction for prepaid Primary Service Fee over the period that the services for which the prepayment is made, are provided.

142. Alternatively, for a Grower accepted into the Project between 15 May and 30 June of the first Financial Year, the Primary Services Fee will be fully deductible in the Financial Year in which it is incurred where the Grove Services are fully provided by 30 June in the Financial Year to which the payment relates.

143. The Grove Manager will provide such Growers with the relevant information to allow them to determine the tax deductions allowable for the Primary Services Fee.

*(iii) Annual Management Fee and Licence Fee for all Growers accepted into the Project*

144. All Growers accepted into the Project are required to pay the Annual Management Fee and the Licence Fee on or before 1 July in the Financial Year to which those fees relate. Where these fees are incurred on 1 July of the year to which they relate, they are deductible in that year. However, where a Grower pays those fees before the 1 July of the Financial Year to which they relate, the fee may be subject to the prepayment provisions, unless the amount is 'excluded expenditure'. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000.

145. For Grower who acquires the minimum allocation of one Licensed Area, the Annual Management Fee and the Licence Fee will be 'excluded expenditure' and therefore deductible when incurred.

146. Where an amount for the Annual Management Fee and the Licence Fee is incurred before 1 July and is not 'excluded expenditure', that amount is not deductible in the year in which it is incurred. For a Grower who acquires more than the minimum allocation of one Licensed Area, either or both the Annual Management Fee and the Licence Fee may not be 'excluded expenditure'. In these circumstances the prepayment provisions (see paragraphs 130 to 138) will apply to determine the amount and timing of the deductions regardless of whether the Grower is an 'STS taxpayer' or not. See Example 3 at paragraph 171.

**Expenditure of a capital nature****Division 40 and Division 328**

147. Any part of the expenditure of a Grower that is attributable to acquiring an asset or advantage of an enduring kind is generally capital or capital in nature and will not be an allowable deduction under section 8-1. In this Project, the amounts summarised in the Table below are considered to be capital in nature. This expenditure falls for consideration under Division 40 or Division 328 of the ITAA 1997.

148. The application and extent to which a Grower claims deductions under Division 40 and Division 328 depends on whether or not the Grower is an 'STS taxpayer'.

149. The tax treatment of capital expenditure has been dealt with in a representative way in paragraphs 91 and 99 (above) in the Tables and the accompanying Notes.

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

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

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

151. 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.

152. Losses that cannot be taken into account in a particular year of income, because of subsection 35-10(2), can be applied to the extent of future profits from the business activity, or are deferred until one of the tests is passed, the discretion is exercised, or the exception applies.

153. For the purposes of applying Division 35, subsection 35-10(3) allows taxpayers to group business activities 'of a similar kind'. Under subsection 35-10(4), there is an 'exception' to the general rule in subsection 35-10(2) where the loss is from a primary production

business activity and the individual taxpayer has other assessable income for the income year from sources not related to that activity, of less than \$40,000 (excluding any net capital gain). As both subsections relate to the individual circumstances of Growers who participate in the Project they are beyond the scope of this Product Ruling and are not considered further.

154. In broad terms, the tests require:

- (a) at least \$20,000 of assessable income in that year from the business activity (section 35-30);
- (b) the business activity results in a taxation profit in 3 of the past 5 income years (including the current year)(section 35-35);
- (c) at least \$500,000 of real property, or an interest in real property, (excluding any private dwelling) is used on a continuing basis in carrying on the business activity in that year (section 35-40); or
- (d) at least \$100,000 of certain other assets (excluding cars, motor cycles and similar vehicles) are used on a continuing basis in carrying on the business activity in that year (section 35-45).

155. A Grower who participates in the Project will be carrying on a business activity that is subject to these provisions.

156. Information provided with the application for this Product Ruling indicates that a Non-electing Grower accepted into the Project in the year ended 30 June 2002 who acquires the minimum allocation of one Licensed Area in the Project is unlikely to have their activity pass one of the tests until the income year ended 30 June 2009.

157. A Non-electing Grower accepted into the Project in the year ended 30 June 2003 who acquires the minimum investment of one Licensed Area in the Project is unlikely to pass one of the objective tests until the income year ended 30 June 2010.

158. Non-electing Growers who acquire more than one interest in the Project may however, find that their activity meets one of the tests in an earlier income year.

159. 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 Non-electing Grower's participation in the Project.

160. 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 yet met one of the tests set out in Division 35; and
- (iii) there is an expectation that the business activity of an individual taxpayer will either pass one of the tests or produce a taxation profit within a period that is commercially viable for the industry concerned.

161. Information provided with the application for this Product Ruling indicates that a Non-electing Grower accepted into the Project in the year ended 30 June 2002 who acquires the minimum allocation of one Licensed Area in the Project is expected to be carrying on a business activity that will either pass one of the tests, or produce a taxation profit, for the year ended 30 June 2007. 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 2006.

162. A Non-electing Grower accepted into the Project in the year ended 30 June 2003 who acquires the minimum investment of one Licensed Area in the Project is unlikely to pass one of the objective tests until the income year ended 30 June 2008. 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 2007. Subsection 35-55(2) prevents the Commissioner exercising the discretion beyond this year.

163. 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 102 and 103), in the manner described in the Arrangement (see paragraphs 14 to 76). 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.

164. 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 Agricultural Expert and additional expert or scientific evidence provided with the Product Ruling; and

- independent, objective, and generally available information relating to the olive industry which substantially supports cash flow projections and other claims, including prices and costs, in the Product Ruling application.

## **Section 82KL - Recouped expenditure**

165. 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**

166. 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).

167. The Liverno Olive 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 87 to 99 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.

168. 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. 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.

## **Examples**

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### **Example 1 - Entitlement to GST input tax credits**

169. Susan, who is a sole trader and registered for GST, contracts with a manager to manage her viticulture business. Her manager is registered for GST and charges her a management fee payable every

six months in advance. On 1 December 2001 Susan receives a valid tax invoice from her manager requesting payment of a management fee in advance, and also requesting payment for an improvement in the connection of electricity for her vineyard that she contracted him to carry out. The tax invoice includes the following details:

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

\*Taxable supply

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

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

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

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

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

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

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

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

## **Example 2 – Apportionment of Fees**

170. Murray decides to participate in the ABC Pineforest Prospectus which is offering 500 interests of 0.5ha in an afforestation project of 25 years. The management fees are \$5,000 in the first year and \$1,200 for years 2 and 3. From year 4 onwards the management fee will be the previous year's fee increased by the CPI. The first year's fees are payable on execution of the agreements for services to be provided in the following 12 months and thereafter, the fees are payable in advance each year on the anniversary of that date. The project is subject to a minimum subscription of 300 interests. Murray provides the Project Manager with a 'Power of Attorney' allowing the

**PR 2002/14**

Manager to execute his Management Agreement and the other relevant agreements on his behalf. On 5 June 2002 the Project Manager informs Murray that the minimum subscription has been reached and the Project will go ahead. Murray's agreements are duly executed and management services start to be provided on that date.

Murray is an 'STS taxpayer' who is not registered, nor required to be registered for GST. He calculates his tax deduction for management fees for the **2002 income year** as follows:

Management fee x Number of days of eligible service period in the year of income  
 Total number of days of eligible service period

$$\$5,000 \times \frac{26}{365}$$

= **\$356** (this is Murray's total tax deduction in 2002 for the Year 1 prepaid management fees of \$5,000. It represents the 26 days for which management services were provided in the 2002 income year).

In the **2003 income year** Murray will be able to claim a tax deduction for management fees calculated as the sum of two separate amounts:

$$\$5,000 \times \frac{339}{365}$$

= **\$4,644** (this represents the balance of the Year 1 prepaid fees for services provided to Murray in the 2003 income year).

$$\$1,200 \times \frac{26}{365}$$

= **\$85** (this represents the portion of the Year 2 prepaid management fees for the 26 days during which services were provided to Murray in the 2003 income year).

**\$4,644 + \$85 = \$4,729** (The sum of these two amounts is Murray's total tax deduction for management fees in 2003).

Murray continues to calculate his tax deduction for prepaid management fees using this method for the term of the Project.

**Example 3 – Apportionment of fees where there is a contractual 'eligible service period' and the fees include expenditure that is 'excluded expenditure'**

171. On 1 June 2002 Kevin applies for an interest into the Western Bluegum Project, a prospectus based afforestation project of 12 years. Kevin is accepted into the project and executes a lease and management agreement with the Responsible Entity for the provision of management services and the lease of his Woodlot. The terms of the lease and management agreement require Kevin to prepay the

management fees and the lease fee on or before the 30 June each year for the lease of his Woodlot and the provision of management services between the 1 July and 30 June in the following income year. Kevin pays the first year management fee of \$3,600 and first year lease fee of \$500 on 15 June 2002.

Kevin, who is not an 'STS taxpayer' is not registered, nor required to be registered for GST.

He calculates his tax deduction for management fees and the lease fee for the **2001 income year** as follows:

*Management fee*

Even though he paid the \$3,600 in the 2002 income year, because there are no 'days of eligible service period' in that year, Kevin is unable to claim any part of his management fees as a tax deduction in his tax return for the year ended 30 June 2002.

*Lease fee*

Because the \$500 lease fee is less than \$1,000 it is 'excluded expenditure' and can be claimed in full as a tax deduction in Kevin's tax return for the year ended 30 June 2002.

In the **2003 income year** Kevin can claim a tax deduction for his first year's management fees calculated as follows:

$$\$3,600 \times \frac{365}{365}$$

= **\$3,600** (this represents the whole of the first year's management fee prepaid in the 2002 income year but not deductible until the 2003 income year).

For the term of the Project Kevin continues to calculate his tax deduction for prepaid fees using this method.

## **Detailed contents list**

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

	<b>Paragraph</b>
<b>What this Ruling is about</b>	<b>1</b>
Tax law(s)	2
Goods and Services Tax	3
Changes in the Law	4
Note to promoters and advisers	6
Class of persons	7

Qualifications	9
<b>Date of effect</b>	<b>11</b>
<b>Withdrawal</b>	<b>13</b>
<b>Arrangement</b>	<b>14</b>
Overview	17
The Project	18
Stapled Investment	28
The Unit Trust – Liverno Properties Unit Trust No 2	30
Licence and Management Agreement	34
<i>(a) The Licence</i>	35
<i>(b) The Management Agreement</i>	39
<i>First Financial Year</i>	41
<i>Grove Services</i>	42
<i>Irrigation System</i>	45
<i>Trees and Staking System</i>	47
<i>Second and subsequent Financial Years</i>	50
<i>Management Services</i>	51
<i>Harvest of the Olive Produce</i>	54
<i>Sale of the Olive Produce</i>	56
Fees and costs	59
Finance	69
<b>Ruling</b>	<b>77</b>
Application of this Ruling	77
The Simplified Tax System ('STS')	81
Division 328	81
Qualification	82
Prepaid fees	83
Tax outcomes for Growers who are not 'STS taxpayers'	87
Assessable Income	87
Section 6-5	87
Deductions for the Primary Services Fee, Annual Management Fees, and Licence Fees for non-STS taxpayers who are accepted into the Project on or before 14 May 2002	89
Section 8-1	89

Deductions for the Primary Services Fee, Annual Management Fees, and Licence Fees for non-STS taxpayers who are accepted into the Project between 15 May 2002 and 30 June 2002	90
Section 8-1	90
Deductions for capital expenditure for non-STS taxpayers who are accepted into the Project in the year ended 30 June 2002 (applies to both Growers accepted before 15 May 2002 and to Growers accepted between 15 May 2002 and 30 June 2002)	91
Division 40	91
Tax outcomes for Growers who are 'STS taxpayers'	92
Assessable Income	92
Section 6-5	92
Deductions for the Primary Services Fee, Annual Management Fees, and Licence Fees for STS taxpayers who are accepted into the Project on or before 14 May 2002	94
Section 8-1 and section 328-105	94
Deductions for the Primary Services Fee, Annual Management Fees, and Licence Fees for STS taxpayers who are accepted into the Project between 15 May 2002 and 30 June 2002	95
Section 8-1 and section 328-105	95
Deductions for capital expenditure for STS taxpayers who are accepted into the Project in the year ended 30 June 2002 (applies to both Growers accepted before 15 May 2002 and to Growers accepted between 15 May 2002 and 30 June 2002)	96
Subdivision 328-D and Subdivisions 40-F and 40-G	96
Tax outcomes that apply to all Growers	100
Interest deductibility	100
Units	101
Division 35 - Deferral of losses from non-commercial business activities	102
Section 35-55 - Commissioner's discretion	102
Section 82KL, and Part IVA	107
<b>Explanations</b>	<b>108</b>
Section 708 of the Corporations Act 2001	108
Is the Grower carrying on a business?	113
The Simplified Tax System	126
Division 328	126

Deductibility of the Primary Services Fee, Annual Management Fee and Licence Fee	128
Section 8-1	128
Prepayment provisions	130
Sections 82KZL and 82KZMF	130
<i>Sections 82KZME and 82KZMF</i>	132
<i>Application of the prepayment provisions to this Project</i>	139
(i) <i>Primary Services Fee for Growers accepted on or before 14 May 2002 or on or before 14 May 2003</i>	139
(ii) <i>Primary Services Fee for Growers accepted into the Project between 15 May 2002 and 30 June 2002 or alternatively, 15 May 2003 and 30 June 2003</i>	140
(iii) <i>Annual Management Fee and Licence Fee for all Growers accepted into the Project</i>	144
Expenditure of a capital nature	147
Division 40 and Division 328	147
Deferral of losses from non-commercial business activities	150
Division 35	150
Section 82KL – Recouped expenditure	165
Part IVA – General tax avoidance provisions	166
<b>Examples</b>	<b>169</b>
Example 1 - Entitlement to GST input tax credits	169
Example 2 - Apportionment of Fees	170
Example 3 - Apportionment of fees where there is a contractual ‘eligible service period’ and the fees include expenditure that is ‘excluded expenditure’	171
<b>Detailed contents list</b>	<b>172</b>

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*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

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