



# ***PR 2002/26 - Income tax: Forest Rewards Sandalwood Project 2002***

 This cover sheet is provided for information only. It does not form part of *PR 2002/26 - Income tax: Forest Rewards Sandalwood Project 2002*

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



## Product Ruling

### Income tax: Forest Rewards Sandalwood Project 2002

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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.

#### ***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**

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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 the 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**

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

## What this Product Ruling is about

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1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates. In this Ruling this arrangement is sometimes referred to as the 'Forest Rewards Sandalwood Project 2002', or just simply as 'the Project'.

### Tax laws

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

### Goods and Services Tax

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

### 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 those who are more specifically identified in the Ruling part of this Product Ruling and who enter into the arrangement described below on or after the date this Ruling is made. They will have a purpose of staying in the arrangement until it is completed (i.e., being a party to the relevant agreements until their term expires), and deriving assessable income from this involvement as set out in the description of the arrangement. In this Ruling, each of these persons, are referred to as 'Growers'.

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

### **Qualifications**

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

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

## Date of effect

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11. This Ruling applies prospectively from 20 March 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 the private ruling if the income year to which the private ruling relates has ended, or has commenced but not yet ended. However, if the arrangement covered by the private ruling has not begun to be carried out, and the income year to which it relates has not yet commenced, this Ruling applies to the taxpayer to the extent of the inconsistency only (see Taxation Determination TD 93/34).

## Withdrawal

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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 specified arrangement during the term of the Ruling. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the persons' involvement in the arrangement.

## Arrangement

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

- Application for Product Ruling dated 3 December 2001, received 5 December 2001;
- Draft Prospectus to be issued by Forest Rewards Ltd ('Responsible Entity'), received 27 February 2002;
- Draft **Constitution** for the Forest Rewards Sandalwood Project 2002, received 15 February 2002;
- Draft **Management Agreement** between Forest Rewards Ltd (the 'Responsible Entity'), Forest

Rewards Management Pty Ltd (the 'Manager') and the Grower, undated, received 15 February 2002;

- Draft **Lease** between Forest Rewards Ltd (the 'Responsible Entity'), Forest Lands Pty Ltd (the 'Lessor') and the Grower, received 15 February 2002;
- Draft **Terms Agreement** between Forest Rewards Management Pty Ltd and the Grower, received 25 January 2002;
- Draft Compliance Plan for the Forest Rewards Sandalwood Project 2002, received 5 December 2001;
- Draft Rules for the Forest Rewards Sandalwood Project 2002, received 15 February 2002; and
- Additional correspondence from the Applicant dated 11 February 2002, 22 February 2002, 26 February 2002 and 5 March 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. The documents highlighted are those that Growers may enter into. For the purposes of describing the arrangement to which this Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower, or any associate of a Grower, will be a party to, which are a part of the arrangement to which this Ruling applies.

16. All Australian Securities and Investment Commission (ASIC) requirements are, or will be, complied with for the term of the agreements. The effect of these agreements is summarised as follows.

**Overview**

17. This arrangement is called the Forest Rewards Sandalwood Project 2002. The salient features are as follows:

Location	Approximately 130km north-east of Perth near Goomalling, Western Australia
Type of business each participant is carrying on	Commercial growing and cultivation of <i>Santalum spicatum</i> (Western Australian Sandalwood) for the purpose of producing sandalwood for timber and oil extraction
Number of hectares available under this offer for cultivation	830 (1,300 Woodlots)
Minimum allocation	1 Woodlot
Size of each Woodlot	0.6 hectare
Number of Sandalwood trees per hectare	500
Expected production	6,175kg of saleable wood per hectare
The term of the Project	Approximately 19 years
Initial cost	\$5,000
Initial cost per hectare	\$8,333
Ongoing and other costs	Planting fee of \$450 payable in Year 1 Lease and Management Fees payable in arrears from harvest proceeds Optional insurance costs

18. The Project will be registered as a Managed Investment Scheme under the Corporations Act. The Responsible Entity for the Project is Forest Rewards Ltd. The Project will be conducted on land known as 'Coonaring' being several parcels of land in the Avon Location contained in Certificate of Title Volume 1834 Folios 693 - 700, Volume 1355 Folios 950 - 951 and Volume 1580 Folio 284.

19. Growers participating in the arrangement will enter into a Lease. Under this agreement, Growers lease an area of land called a 'Woodlot' for a term of approximately 19 years. Each Woodlot will be sown with Sandalwood seeds that will eventually be thinned to about 500 seedlings per hectare.

20. This is the second stage of a Project that commenced on the same parcel of land under a previous offer from the Responsible Entity. This offer pertains to 1,300 Woodlots of 0.6 hectares each. There is no minimum subscription for the Project. The Responsible Entity is able to accept oversubscriptions to the extent that the Lessor has suitable land available. Any additional land for the Project will only be purchased if deemed suitable by the Independent Forester for the establishment of a Sandalwood plantation.

21. Under this offer, Growers may enter the Project in either the 2001/2002 income year ('Year 2002 Woodlots') or the 2002/2003 income year ('Year 2003 Woodlots'). Applications for Year 2002 Woodlots will only be accepted where the Responsible Entity can schedule completion of the Initial Services by 30 June 2002.

22. This Prospectus also proposes to offer 'Year 2002 Pre-paid Woodlots' and 'Year 2003 Pre-paid Woodlots'. These Woodlots will only be offered should legislation regarding a 12 month prepayment rule for plantation forestry, announced by the Federal Government on 2 October 2001, be passed. This Product Ruling does not apply to Year 2002 Pre-paid Woodlots or Year 2003 Pre-paid Woodlots.

23. The Growers will also enter into a contract with the Manager for the management of their Woodlot. The Manager will be responsible for establishing and cultivating the trees. Growers may elect to harvest and sell their own timber or the Manager will do so on their behalf. Harvests are expected to take place when the Trees are aged 10, 14 and 18 years.

24. Growers may pay Subscription Money to the Manager in full or by instalments under a Terms Payment Option offered by the Manager. Growers will execute a Power of Attorney enabling the Manager to act on their behalf as required when they make an application for a Woodlot. This will include the execution of the Lease and Management Agreement, and, where the Grower elects to pay fees by instalment, a Terms Agreement.

### **Constitution**

25. The Constitution establishes the Project and operates as a deed binding on all of the Growers and the Responsible Entity. The Constitution sets out the terms and conditions under which Forest Rewards Ltd agrees to act as Responsible Entity and thereby manage the Project. Under the Constitution, Growers appoint Forest Rewards Ltd as sole and exclusive agent in relation to the Project. The Lease and the Management Agreement will be executed on behalf of a Grower following them signing the Application Form in the Prospectus. Growers are bound by the Constitution by virtue of their participation in the Project.

26. Under the terms of the Constitution, all moneys received from applications shall be paid to the Responsible Entity. The Responsible Entity shall deposit those moneys into a Subscription Fund in the name of the Responsible Entity. The Subscription Money will be released by the Responsible Entity when it is reasonably satisfied that certain specified criteria in the Constitution have been met (clause 3 of the Constitution).

## **Compliance plan**

27. As required by the Corporations Act a Compliance Plan has been prepared by Forest Rewards Ltd. Its purpose is to ensure that the Responsible Entity manages the Project in accordance with its obligations and responsibilities contained in the Constitution and that the interests of Growers are protected.

## **Interest in Land**

28. Growers participating in the arrangement will enter into a Lease between the Grower, Forest Rewards Ltd in its capacity as Responsible Entity, and Forest Lands Pty Ltd as the Lessor. Growers are granted an interest in land, in the form of a lease, to use their Woodlot for the purpose of conducting their afforestation business upon terms and conditions as set out in the Lease. The lease will commence on the date Woodlots are allotted to Growers and will continue until the completion of the final harvest in approximately 19 years.

29. Each Grower must pay rent to the Lessor during the Term of the Project in an amount specified in Item 5 of the Schedule to the Lease.

## **Management Agreement**

30. The Management Agreement is between the Grower, Forest Rewards Ltd as the Responsible Entity, and Forest Rewards Management Pty Ltd as the Manager. Each Grower agrees to engage the Manager of the Project to perform services under the agreement. Annexure A (Initial Services) and Annexure B (Ongoing Services) of the Agreement specify the services to be performed by the Manager.

31. The Manager will supervise and manage all silvicultural activities on behalf of the Grower and must:

- ensure that the Woodlots are ready for planting in accordance with the Management Plan;
- plant the Host Trees and sow Sandalwood seeds;

- tend to the Trees according to the principles of good forestry; and
- keep access roads and fences in good repair and the Plantation free from disease, pests and vermin.

**Fees**

32. The fees payable under the Lease and the Management Agreement on a per Woodlot basis are as follows:

- Establishment Fee of \$5,000 payable to the Manager on Application for the period from the date of execution to 30 June in the financial year in which execution of the Agreement takes place (defined as the Initial Period);
- Planting Fee of \$450 payable to the Manager on or before 1 October of the first financial year after the Initial Period;
- At each relevant harvest, the Grower is required to pay a Maintenance Fee to the Manager of an amount equal to 8.8% of the Grower's Share of the sales proceeds of the harvest after deducting any applicable harvest costs;
- At each relevant harvest, the Grower is required to pay Rent to the Lessor of an amount equal to 4.4% of the Grower's Share of the sales proceeds of the harvest after deducting any applicable harvest costs.

***Other Fees***

33. The Grower is also required to pay a Performance Fee to the Manager equal to 16.5% of any amount by which the net sales proceeds of all harvests exceeds the amount forecast per Woodlot as set out in the Prospectus (Item 5 of the Schedule).

34. The Manager will use its best endeavours, if so requested, to arrange appropriate crop insurance for the Woodlots on behalf of the Grower. The Grower is responsible for the cost of such insurance (clause 2.3).

***Payment of Fees***

35. Upon signing an Application Form, the Grower acknowledges that the full amount of the Subscription Money is immediately due and payable. However, under the Prospectus, the Manager is offering Terms Payment Options in respect of the Establishment Fee payable for the Initial Period and the Planting Fee payable in Year 1 of the

Project (refer to paragraph 32 above). The Grower must choose one of the payment options described below. An application fee of \$50 per woodlot applies in respect of the 1, 2 and 5 year options.

#### *Cash Option*

- \$5,000 per woodlot payable on application;
- Planting fee of \$450 per woodlot payable on 1 October 2002 for Year 2002 woodlots and on 1 October 2003 for Year 2003 woodlots.

#### *1 Year Term*

- deposit of \$250 per woodlot payable on application;
- 12 equal monthly instalments of \$399.58 per woodlot;
- \$455 per woodlot payable on 1 October 2002 for Year 2002 Woodlots or 1 October 2003 for Year 2003 Woodlots.

#### *2 Year Term*

- deposit of \$250 per woodlot payable on application;
- 24 equal monthly instalments of \$219.21 per woodlot (including fixed interest calculated at 9% per annum);
- \$455 per woodlot payable on 1 October 2002 for Year 2002 Woodlots or 1 October 2003 for Year 2003 Woodlots.

#### *5 Year Term*

- deposit of \$500 per woodlot payable on application;
- 60 equal monthly instalments of \$94.42 per woodlot (including fixed interest calculated at 9% per annum);
- \$455 per woodlot payable on 1 October 2002 for Year 2002 Woodlots or 1 October 2003 for Year 2003 Woodlots.

36. The Manager will monitor the level of applications received under each of the Terms Payment Options and is not obliged to accept applications for terms. A limit will be imposed on the number of applications that can be accepted under each instalment option.

**Terms Agreement**

37. If a Grower chooses to pay under one of the instalment options, they must complete a Terms Application and Direct Debit Request. A Terms Agreement will be executed by the Manager.

38. If a Grower does not pay the required instalments under the Terms Agreement, then provided that Forest Rewards Management Pty Ltd has given the Grower 14 days written notice to remedy the situation and payment has still not been made, the balance owing under the Terms Agreement will become immediately due and payable. In addition Forest Rewards Management Ltd may take legal proceedings to recover the amount, resume all rights and interest which the Grower has in their Woodlot(s), or do anything which an owner of the Woodlot(s) is entitled to do (clause 5.2 of the Terms Agreement).

**Planting**

39. Under the Management Agreement the Grower agrees to purchase seedlings from the Manager to enable cultivation of Trees. During the first financial year after the Initial Period the Manager will be responsible for planting the Host Trees and sowing Sandalwood seeds on the Woodlot. A sufficient number of trees will be planted which would reasonably be expected to meet the projected timber production. The Manager will conduct a survival count within 12 months of planting the Host Trees and sowing the Sandalwood seeds respectively and replant or resow as necessary. The Manager will then maintain the trees in accordance with good silvicultural practice. The services to be provided by the Manager over the term of the Project are outlined in Annexures A and B of the Management Agreement.

**Harvesting and Marketing**

40. The Grower is entitled to the Trees and Host Trees to be planted on the Woodlot and has a right to the timber from those trees. Harvesting will take place as and when deemed appropriate by the Manager in producing the best overall result for the Grower. The Manager expects to conduct thinning harvests of 150 trees per Woodlot in year 11 and 60 trees per Woodlot in year 15. The remaining trees (approximately 90 per Woodlot) will be harvested in the final year of the Project.

41. Growers may elect, on or before 30 June 2004, to harvest and sell their own timber by giving written notice to the Manager (clause 8.1) or the Manager will harvest and sell the timber on their

behalf for the highest practicable price (clause 7). This Product Ruling does not apply to Growers who make such an election.

42. The proceeds from sale of all other Growers timber will be paid direct to the Responsible Entity who must deposit them into a Proceeds Fund. Separate Proceeds Funds will be created for Growers of Year 2002 Woodlots and Year 2003 Woodlots. The Responsible Entity shall pay the Grower's Share of the costs of harvest and sale as advised by the Manager, any outstanding fees or other amounts owing by the Grower to the Manager or Lessor. The balance will be distributed to the Growers on a proportionate basis. The term 'Proceeds Fund' is defined in the Constitution and the term 'Grower's Share' is defined in the Management Agreement.

## **Finance**

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

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

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

## **Ruling**

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### **Application of this Ruling**

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

- on or before 30 June 2002, where the Grower has executed a Lease and a Management Agreement on or before that date (Year 2002 Woodlots); and/or
- on or after 1 July 2002 and before the expiry date of the Prospectus, but in any case, before 30 June 2003 and where the Grower has executed a Lease and a Management Agreement on or between those dates (Year 2003 Woodlots).

46. 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. This Ruling does not apply to Growers who make an election to harvest and market timber produced from their Woodlot(s).

47. For Growers of Year 2002 Woodlots, references in the following paragraphs to the Initial Period, Year 1 and Year 2 are references to the income years ending 30 June 2002, 30 June 2003 and 30 June 2004 respectively. For Growers of Year 2003 Woodlots, references to the Initial Period, Year 1 and Year 2 are references to the income years ended 30 June 2003, 30 June 2004 and 30 June 2005 respectively.

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

#### **Division 328**

48. For a Grower who is accepted into this Project, the recognition of income and the timing of tax deductions will depend upon whether, in an income year(s), the Grower is an 'STS taxpayer' or is not 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**

49. This Product Ruling assumes that a Grower who is an 'STS taxpayer' is so for the income year in which their participation in the Project commences. A Grower may become an 'STS taxpayer' at a

later point in time. Also, a Grower who is an ‘STS taxpayer’ may choose to stop being an ‘STS taxpayer’, or may cease to be eligible to be an ‘STS taxpayer’ during the term of the Project. These are contingencies, relating to the circumstances of individual Growers that cannot be accommodated in this Ruling. Such Growers can ask for a private ruling on how the taxation legislation applies to them.

## **Tax outcomes for Growers who are not ‘STS taxpayers’**

### **Assessable Income**

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

50. 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.

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

### **Deductions for Establishment Fee, Planting Fee and Interest**

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

52. A Grower who is not an ‘STS taxpayer’ may claim tax deductions under section 8-1 of the ITAA 1997, for the revenue expenses in the following Table. Deductions will be available in accordance with the year in which the Grower commences participation in the Project.

<b>Fee Type</b>	<b>ITAA 1997 Section</b>	<b>Initial Period</b>	<b>Year 1</b>	<b>Year 2</b>
<b>Establishment Fee</b>	8-1	\$5,000 See note (i) below		
<b>Planting Fee</b>	8-1		\$450 See notes (i) & (ii) below	
<b>Interest (Term payment options)</b>	8-1	As incurred See note (iii) below	As incurred See note (iii) below	As incurred See note (iii) below

**Notes:**

- (i) If the Grower is registered or required to 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 115;
- (ii) The fees shown in the Management Agreement are deductible in full in the year that they are incurred. However, if a Grower **chooses** to prepay fees for the doing of a thing (e.g., the provision of management services or the leasing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA 1936 may apply to apportion those fees. In such cases, the tax deduction for the prepaid fee **must** be determined using the formula shown in paragraph 91 unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000;
- (iii) Interest payable under either the 2 Year Terms Payment Option or 5 Year Terms Payment Option will be deductible when incurred.

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

53. 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.

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

**Deductions for Establishment Fee, Planting Fee and Interest****Section 8-1 and section 328-105**

55. A Grower who is an ‘STS taxpayer’ may claim tax deductions for the revenue expenses in the following Table. Deductions will be available in accordance with the year in which the Grower commences participation in the Project.

<b>Fee Type</b>	<b>ITAA 1997 Section</b>	<b>Initial Period</b>	<b>Year 1</b>	<b>Year 2</b>
<b>Establishment Fee</b>	8-1 & 328-105	See notes (iv), (v) & (vi) below		
<b>Planting Fee</b>	8-1 & 328-105		See notes (iv), (v), (vi) & (vii) below	
<b>Interest (Term payment options)</b>	8-1 & 328-105	When paid See notes (vi) & (viii) below	When paid See notes (vi) & (viii) below	When paid See notes (vi) & (viii) below

**Notes:**

- (iv) If the Grower is registered or required to 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 115;

- (v) If a Grower who is an 'STS taxpayer' chooses to pay the \$5,000 Establishment Fee using the cash option, then that amount will be fully paid in the year in which it is incurred, and hence will be fully deductible. Similarly, the \$450 Planting Fee will be deductible in Year 1 as it will be fully paid in the year in which it is incurred;
- (vi) If, for any reason, such as under the Terms Payment Options, an amount shown in the Table above is not fully paid in the year in which it is incurred by a Grower who is an 'STS taxpayer', then the amount is only deductible to the extent to which it has been paid, or has been paid for the Grower. Any amount or part of an amount shown in the Table above which is not paid in the year in which it is incurred will be deductible in the year in which it is actually paid;
- (vii) Where a Grower who is an 'STS taxpayer', pays the fees in the relevant years shown in the Management Agreement, those fees are deductible in full in the year that they are paid. However, if a Grower **chooses** to prepay fees for the doing of a thing (e.g., the provision of management services or the leasing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA 1936 may apply to apportion those fees (see paragraphs 85 to 99). In such cases, the tax deduction for the prepaid fee **must** be determined using the formula shown in paragraph 91 unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000;
- (viii) Interest payable under either the 2 Year Terms Payment Option or 5 Year Terms Payment Option will be deductible when paid.

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

### **Interest**

56. The deductibility or otherwise of interest incurred by Growers who finance their participation in the Project through a loan facility with a bank or financier, other than the Terms Payment Options offered by Forest Rewards Management Pty Ltd, is outside the scope of this Ruling. However all Growers who borrow funds in order to

participate in the Project, should read the discussion of the prepayment rules in paragraphs 85 to 99 (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 Growers choice.

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

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

57. For a Grower who is an individual, enters the Project during the years ended 30 June 2002 or 30 June 2003, and does not elect to harvest and market their own timber, 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 Growers of Year 2002 Woodlots for the income years ending 30 June 2002 to 30 June 2012 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. Similarly, for Growers of Year 2003 Woodlots, the Commissioner will decide for the income years ending 30 June 2003 to 30 June 2013 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.

58. 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; 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).

59. Where the 'exception' in subsection 35-10(4) applies, or 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 the deductions attributable to their business activity in excess of any assessable income from that activity, i.e., any 'loss' from that activity, to a later year. Instead, this 'loss' can be offset against other assessable income for the year in which it arises.

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

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

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

- expenditure by the Grower does not fall within the scope of sections 82KZME - 82KZMF (but see paragraphs 85 to 99);
- section 82KL does not apply to deny the deductions otherwise allowable; and
- the relevant provisions in Part IVA will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

## **Explanations**

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

62. For the amounts set out in the Tables above to constitute allowable deductions the Grower's activities as a participant in the Forest Rewards Sandalwood Project 2002, must amount to the carrying on of a business of primary production.

63. Where there is a business, or a future business, the gross proceeds from the sale of timber from the scheme will constitute assessable income in their own right. The generation of 'business income' from such a business, or future business, provides the backdrop against which to judge whether the outgoings in question have the requisite connection with the operations that more directly gain or produce this income.

64. For schemes such as that of the Forest Rewards Sandalwood Project 2002, 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.

65. Generally, an investor will be carrying on a business of afforestation, and hence primary production, if:

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

66. In this Project each Grower enters into a Lease and a Management Agreement.

67. Under the Lease each individual Grower will have rights over a specific and identifiable area of at least 0.6 hectares of land. The agreement provides the Grower with an ongoing interest in the specific trees on the leased area for the term of the Project. Under the Lease the Grower must use the land in question for the purpose of carrying out afforestation activities, and for no other purpose. The agreement allows the Manager to come onto the land to carry out its obligations.

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

69. The Manager may also be engaged to harvest and sell, on the Grower behalf, the timber grown on the Grower's leased area.

70. 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.

71. 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 timber 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.

72. The pooling of timber grown on the Grower's leased area with the timber of other Growers is consistent with general afforestation

practices. Each Grower's proportionate share of the sale proceeds of the pooled timber will reflect the proportion of the trees contributed from their leased area.

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

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

75. The afforestation activities, and hence the fees associated with their procurement, are consistent with an intention to commence regular activities that have an 'air of permanence' about them. For the purposes of this Ruling, the Grower's afforestation activities in the Forest Rewards Sandalwood Project 2002 will constitute the carrying on of a business.

## **The Simplified Tax System**

### ***Division 328***

76. 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.

77. 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 lease and management fees**

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

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

- the outgoings in question must have a sufficient connection with the operations or activities that directly gain or produce the taxpayer's assessable income;

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

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

*Possible application of prepayment provisions*

80. Under the Management Agreement neither the Establishment Fee nor the Planting Fee is for things to be done beyond 30 June in the year in which the relevant amounts are incurred. In these circumstances, the prepayment provisions in sections 82KZME and 82KZMF have no application to these fees.

81. However, where a Grower **chooses** to prepay these fees for a period beyond the income year in which the expenditure is incurred, the prepayment provisions (see paragraphs 85 to 99) will apply to determine the amount and timing of the deductions regardless of whether the Grower is an 'STS taxpayer' or not. These provisions apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes 'STS taxpayers' from the operation of section 82KZMF. This is subject to the 'excluded expenditure' exception. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000.

*Timing of deductions*

82. In the absence of any application of the prepayment provisions, the timing of deductions for the Establishment Fee and the Planting Fee will depend upon whether a Grower is an 'STS taxpayer' or is not an 'STS taxpayer'.

83. If the Grower is not an 'STS taxpayer', the Establishment Fee and the Planting Fee are deductible in the year in which they are incurred.

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

**Prepayment provisions*****Sections 82KZL to 82KZMF***

85. 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 (eg. 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.

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

***Sections 82KZME and 82KZMF***

87. 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)).

88. 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 :
  - a) there is more than one participant in the agreement in the same capacity as the taxpayer; or
  - b) the person who promotes, arranges or manages the agreement (or an associate of that person) promotes similar agreements for other taxpayers.

89. 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 through the Terms Payment options offered by Forest Rewards Management 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.

90. 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.

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

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

92. 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*

93. In this Project, an Establishment Fee of \$5,000 per Woodlot will be incurred on execution of the Management Agreement. The Establishment Fee is charged for providing management services to a Grower by 30 June of the year of execution of the Agreement. Under the Agreement, although it is deferred, further expenditure is required each year during the term of the Project for the provision of management services and land until 30 June in those years.

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

95. There is also no evidence that might suggest the management services covered by the fee could not be provided within the relevant expenditure year. Thus, for the purposes of this Ruling, it can be accepted that no part of the Establishment Fee is for the Manager doing ‘things’ that are not to be wholly done within the expenditure year.

96. On this basis, provided a Grower incurs expenditure as required under the Project agreements, as set out in paragraph 32 then the basic precondition in subsection 82KZME(2) is not satisfied and, in these circumstances, section 82KZMF will have no application.

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

97. Although not required under either the Management Agreement or the Lease, a Grower participating in the Project may **choose** to prepay the Planting Fee or interest for a period beyond the ‘expenditure year’. Similarly, Growers who use financiers may either choose, or be required to prepay interest. Where this occurs, contrary to the conclusion reached in paragraph 96 above, section 82KZMF

will apply to apportion the expenditure and allow a deduction over the period in which the prepaid benefits are provided.

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

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

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

100. 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.

101. 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.

102. 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.

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

104. 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 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).

105. A Grower who participates in the Project will be carrying on a business activity that is subject to these provisions. Information provided with the application for this Product Ruling indicates that a Grower who acquires the minimum allocation in the Project of one Woodlot during the years ended 30 June 2002 or 30 June 2003 is unlikely to ever pass one of the tests. Growers who acquire more than one Woodlot in the Project may however, find that their activity meets one of the tests in a harvest year.

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

107. 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.

108. Information provided with this Product Ruling indicates that a Grower who acquires the minimum allocation of one Woodlot in the Project and does not elect to harvest and market their own timber, 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 2013 (Year 2002 Woodlots) or the year ended 30 June 2014 (Year 2003 Woodlots). The Commissioner will decide for such a

Grower of Year 2002 Woodlots that it would be reasonable to exercise the second arm of the discretion until the year ended 30 June 2012, and for Year 2003 Woodlots, until the year ended 30 June 2013. Subsection 35-55(2) prevents the Commissioner exercising the discretion beyond these years.

109. This Product Ruling is issued on a prospective basis (i.e., before an individual Grower's business activity starts to be carried on). However, the Project may fail to be carried on during the income years specified above (see paragraph 57) in the manner described in the Arrangement (see paragraphs 14 to 44). 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) the Commissioner's discretion will not have been exercised because one of the key conditions in paragraph 35-55(1)(b) will not have been satisfied.

110. 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 Forester, and additional evidence provided with the application by the Manager; and
- independent, objective and generally available information relating to the Sandalwood industry which substantially supports cash flow projections and other claims, including prices and costs, in the Product Ruling application submitted by the Manager.

## **Section 82KL**

111. The operation of section 82KL depends, among other things, on the identification of a certain quantum of 'additional benefit(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**

112. 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).

113. The Forest Rewards Sandalwood Project 2002 will be a 'scheme' commencing with the issue of the Prospectus. A Grower will obtain a 'tax benefit' from entering into the scheme, in the form

of tax deductions for the amounts detailed at paragraphs 52 and 55 that would not have been obtained but for the scheme. However, it is not possible to conclude that the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

114. Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the eventual harvesting of the trees. There are no facts that would suggest that Growers have the opportunity of obtaining a tax advantage other than the tax advantages identified in this Ruling. There are no non-recourse financing or round robin characteristics, and no indication that the parties are not dealing with each other at arm's length, or, if any parties are not at arm's length, that any adverse tax consequences result. Further, having regard to the factors to be considered under paragraph 177D(b) it cannot be concluded, on the information available, that participants will enter into the scheme for the dominant purpose of obtaining a tax benefit.

## Examples

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

115. 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:

$$\frac{1}{11} \times \$4,400 = \$400.$$

Hence her outgoing for the management fee is effectively \$4,400 less \$400, or \$4,000.

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

$$\frac{1}{11} \times \$2,200 = \$200.$$

Hence her outgoing for the power upgrade is effectively \$2,200 *less* \$200, or \$2,000.

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 \$4,000 (not \$4,400).

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 \$2,000 only, not one tenth of \$2,200).

## **Detailed contents list**

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

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**Commissioner of Taxation**

20 March 2002

<i>Previous draft:</i>	- ITAA 1936 82KZME
Not previously issued in draft form	- ITAA 1936 82KZME(2)
	- ITAA 1936 82KZME(3)
<i>Related Rulings/Determinations:</i>	- ITAA 1936 82KZME(4)
PR 1999/95; TR 92/1; TR 92/20;	- ITAA 1936 82KZME(7)
TR 97/11; TR 97/16; TD 93/34;	- ITAA 1936 82KZMF
TR 98/22; TR 2000/8; IT 360	- ITAA 1936 82KZMF(1)
	- ITAA 1936 Part IVA
<i>Subject references:</i>	- ITAA 1936 177A
- carrying on a business	- ITAA 1936 177C
- commencement of business	- ITAA 1936 177D
- fee expenses	- ITAA 1936 177D(b)
- interest expenses	- ITAA 1997 6-5
- management fees	- ITAA 1997 8-1
- producing assessable income	- ITAA 1997 17-5
- product rulings	- ITAA 1997 Div 27
- public rulings	- ITAA 1997 Div 35
- taxation administration	- ITAA 1997 35-10
- tax avoidance	- ITAA 1997 35-10(2)
- tax benefits under tax avoidance schemes	- ITAA 1997 35-10(3)
	- ITAA 1997 35-10(4)
- tax shelters	- ITAA 1997 35-30
- tax shelters project	- ITAA 1997 35-35
	- ITAA 1997 35-40
	- ITAA 1997 35-45
<i>Legislative references:</i>	- ITAA 1997 35-55
- TAA 1953 Part IVAAA	- ITAA 1997 35-55(1)
- ITAA 1936 Div 3 of Part III	- ITAA 1997 35-55(2)
- ITAA 1936 82KL	- ITAA 1997 35-55(1)(a)
- ITAA 1936 82KZL	- ITAA 1997 35-55(1)(b)
- ITAA 1936 82KZL(1)	

- ITAA 1997 328-105
  - ITAA 1997 328-105(1)(a)
  - ITAA 1997 328-105(1)(b)
  - ITAA 1997 Subdiv 328-F
  - ITAA 1997 Subdiv 328-G
- 

*Case references:*

- FCT v. Lau 84 ATC 4929

ATO references:

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