



# ***PR 2002/36 - Income tax: Grand Vin Estate Project***

 This cover sheet is provided for information only. It does not form part of *PR 2002/36 - Income tax: Grand Vin Estate Project*

 This document has changed over time. This is a consolidated version of the ruling which was published on *10 April 2002*



# Product Ruling

## Income tax: Grand Vin Estate Project

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### *Preamble*

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

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

The Australian Taxation Office (ATO) **does not** sanction or guarantee this product. 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.

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.

### **Terms of Use of this Product Ruling**

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

## What this Product Ruling is about

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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 Grand Vin Estate Project, or simply as 'the Project'

### Tax law(s)

2. Tax 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 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 those persons who enter into the arrangement described below on or after the date this Ruling is made. They will have a purpose of staying in the arrangement until it is completed (i.e., being a party to the relevant agreement until their term expires), and deriving assessable income from this involvement as set out in the description of the arrangement. In this Ruling, each of these persons, referred to as 'Growers', will be wholesale clients for the purpose of the *Corporations Act 2001*.

8. The class of persons to whom this Ruling applies does not include persons:

- who are nominees appointed by the Grower to exercise the right to purchase the Combined Lot under the Put and Call Options granted under the Investment Agreement; and
- 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 part 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 10 April 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 Product Ruling dated 10 December 2001;

- **Investment Agreement between Brooklee Investments Pty Ltd ('the Owner'), Westbrook Enterprises Pty Ltd ('Vineyard Manager') the Investor and the Guarantor, dated 26 March 2002;**
- **Vineyard Lease between Brooklee Investments Pty Ltd ('the Owner') and the Lessee, dated 26 March 2002;**
- **Vineyard Management Agreement between Westbrook Enterprises Pty Ltd ('Vineyard Manager') the Lessee, dated 26 March 2002;**
- **Wine Marketing Agreement between the Lessee and Westbrook Enterprises Pty Ltd ('Marketing Manager'), dated 26 March 2001;**
- Contract Winemaking Agreement between the Winemaker and Westbrook Enterprises Pty Ltd ('the Client'), received 18 March 2002; and
- Additional correspondence dated 25 February 2002, 26 February 2002, 11 March 2002, 12 March 2002, 15 March 2002, 18 March 2002, 20 March 2002, 21 March 2002, 22 March 2002, 26 March 2002 and 27 March 2002.

15. The following Agreements will be entered into by the Grower as part of the exercise of the Put & Call Option contained in the Investment Agreement:

- Strata Titles' Act Form 25 – Management Statement;
- Strata Act Form 28 – Disclosure Statement;
- Strata Act Form 29 – Buying and Selling a Strata Titled Lot;
- Strata Management Agreement between The owners of the Strata Plan ('Strata Company') and an entity to be confirmed ('Manager'), dated 26 March 2002;
- Vineyard Director Services Agreement between Owners of the Strata Plan ('Strata Company') and an entity to be confirmed ('Vineyard Director'), dated 26 March 2002 ; and
- Viticulturalist Services Agreement between the Owners of the Strata Plan ('Strata Company') and an entity to be confirmed ('Viticulturist'), dated 26 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.**

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

17. All Australian Securities and Investments Commission (ASIC) requirements are, or will be, complied with for the term of the agreements. The effect of the agreements may be summarised as follows.

18. In accordance with the above documents, a Grower who participates in the arrangement must be a wholesale client. **This Ruling does not apply unless** the participant is a wholesale client as defined in section 761G of the Corporations Act 2001.

19. The category of wholesale client that is to be accepted as a participant in the arrangement is explained in paragraphs 80 to 82 in the Explanations area of this Product Ruling.

## Overview

20. The arrangement is called the Grand Vin Estate Project.

Location	South-West Region of Western Australia. Adjacent to the town of Cowaramup, Margaret River.
Type of business each participant is carrying on	A long term commercial viticulture business with possible purchase of Viticulture land along with Residential Lot as one single-survey Combined Lot.
Number of hectares offered for cultivation	40 hectares.
Possible total subscription	20 Vinelots
Size of each Leased Area	2 hectares
Minimum allocation	1 Vinelot
Number of Vines established per hectare	1,666 vines per hectare
Expected Production	12.5 tonnes per hectare
The term of the Project	15 years if land not purchased, otherwise indefinite.
Initial Cost	\$291,465 plus pro-rata Management Fees and Rent
Initial costs per hectare	\$145,733 plus pro-rata Management Fees and Rent

Ongoing costs	Annual Management Fees. Rent. Variable Outgoings. Rates & Taxes. Strata Levy Fees. Additional Fee. Harvesting Costs. Marketing Management Fee. Crushing and Processing Costs. Packaging, Storage and Transport Costs. Insurance.
Other costs	Cost of Purchasing Land through exercise of the Put or Call Option granted under the Investment Agreement

21. The Project is for the Lease and subsequent purchase of a Vineyard that has been established on land that is held by the Owner. The Project is for a period of 15 years if the Grower does not purchase the land on which the Project is located. If the Grower purchases the land the term of the Project is indefinite.

22. For the purposes of this Ruling a participant of this Project that is known as a Lessee or an Investor under the Agreements that form the arrangement shall be referred to as a 'Grower'.

23. A Vineyard Lease is entered into between Brooklee Investments Pty Ltd ('Brooklee') (as the Owner) and the Grower. This Agreement provides for the lease of a property located on Cowaramup Bay Road, Margaret River in Western Australia. The property is situated on all the land comprising Lot 301 on Deposited Plan 25980 and being the land contained in Certificate of Title Volume 2212 Folio 754.

24. The Management Agreement and Wine Marketing Agreement are entered into between Westbrook Enterprises Pty Ltd ('Westbrook') and the Grower. The Grower appoints Westbrook Enterprises Pty Ltd as the Vineyard Manager and the Marketing Manager of the Grower's commercial viticulture project that is to be conducted on the Grower's Vinelot. For the purposes of this Ruling the Vineyard Manager and the Marketing Manager are referred to as '**the Manager**'. The Manager will manage and maintain the vines on the Vinelot, be responsible for the harvesting, crushing and processing of the Grapes from the Vinelot and the packaging, storage, marketing and sale of the Wine produced from the Grapes. Growers may elect to collect and market their Wine (subclause 11.1 of the Wine Marketing Agreement). The Manager will sell the Wine on behalf of the Growers

who do not elect to collect and sell their Wine for the highest practicable price (subclause 10.2 of the Wine Marketing Agreement).

25. Under the Investment Agreement, Brooklee Investments Pty Ltd (as the Owner of the Land) proposes to offer a maximum of 20 Vinelots. There is no minimum subscription for the Project. The minimum individual holding is one Vinelot, being an allotment of 2 hectares of land, which has been planted with a minimum of 1,666 vines during the period prior to the execution of the Investment Agreement. Vinelots are allocated by the Owner and are identified by lot numbers. Brooklee will not accept any applications for the Lease of Vinelots or the purchase of Combined Lots after 31 May 2003.

26. Each Grower or the Grower's nominee must purchase the combined Vinelot and Residential Block when the conditions precedent to the Put Option and Call Option have been satisfied.

## **Investment Agreement**

27. An Investment Agreement will be entered into between Brooklee Investments Pty Ltd (as the Owner of the Land), Westbrook Enterprises Pty Ltd (as the Vineyard Manager) and the Grower. The relevant Investment Agreement establishes the Project. The Investment Agreement sets out the terms and conditions under which the Owner will accept Growers into the Project. Simultaneous with the execution of the Investment Agreement the Grower will execute the Lease Agreement and the Vineyard Management Agreement. In addition, the Grower irrevocably agrees to enter into the Wine Marketing Agreement and the Wine Making Agreement. The Grower's participation in the Project commences on the date the relevant agreements are executed and a Vinelot(s) is allocated to the Grower. Brooklee will not accept a Grower's Application for Vinelot(s) unless the applicant has paid the Investment Fee to Brooklee.

28. The Owner intends to register a Strata Plan in respect to the Land. The Owner proposes to subdivide the Land into 20 single survey strata lots, each consisting of a 2 hectare Vinelot and a 2000m<sup>2</sup> - 3000m<sup>2</sup> Residential Lot (known as a Combined Lot). Under the Investment Agreement, the Owner grants to the Grower a Call Option and the Grower grants to the Owner a Put Option. Among other things, when the necessary approval is granted for the issue of a single title over the Combined Lot and a single freehold title over the Combined Lot is issued or granted, the conditions precedent to the Put Option and the Call Option will be satisfied. When the Put Option or the Call Option is exercised the Grower or a nominee will purchase the Combined Lot. Under the provisions of the Investment Agreement, the Grower irrevocably authorises the Strata Company,

that will be created upon registration of the Strata Plan, to enter into the Strata Management Agreement.

### ***Vineyard Establishment***

29. Prior to the execution of the Investment Agreement and the Vineyard Management Agreement Brooklee has carried out the Grand Vin Estate Establishment Services, for which the Grower will be charged \$32,471. The work undertaken prior to the execution of the agreements included initial Vineyard Development, preparation of the Vineyard Management Plan, preparation and cultivation of Vinelots, management of the installation of the Infrastructure, Vineyard Planning and Vineyard land and vine care. Brooklee and the Manager will not undertake any additional work on a Vinelot prior to the Vinelot being allocated to a Grower.

30. The date of execution of the Investment Agreement will determine the period of provision of the 2002 Vineyard Establishment Services and the 2003 Vineyard Establishment Services to which a portion of the Investment Fee relates. The relevant application periods are summarised as follows:

<b>Date of execution</b>	<b>2002 Vineyard Establishment Services</b>	<b>2003 Vineyard Establishment Services</b>
On or before 31/5/2002	From date of execution of Lease and Management Agreement to 30/6/2002.	From 1/7/2002 to 30/6/2003.
On or before 1/6/2002 and on or before 30/6/2002	Within 30 days after the commencement date	From 1/7/2002 to 30/6/2003.
On or after 1/7/2002	Within 30 days after the commencement date	From date of execution of Lease and Management Agreement to 30/6/2003.

### **Vineyard Lease**

31. The Vineyard Lease sets out the roles and obligations of the parties to the Agreement. The Agreement is entered into between the Grower and Brooklee Investments Pty Ltd as the Owner. Under the terms of the Agreement the Grower may only use the Vinelot for the purposes of cultivating Vines and harvesting Grapes.

32. The Agreement commences on the date the Lease is executed. The Agreement is terminated pursuant to the provisions of the Agreement or 15 years from the Lease Commencement Date (Item 5 of Schedule 1). The purchase of the Combined Lot, following the exercise of the Call Option or the Put Option granted under the Investment Agreement, by the Grower or a Grower's nominee will have the following effect on the Lease:

- should a Grower's nominee purchase the Combined Lot, the Lease will continue as a Lease between the Grower and the Grower's nominee as the Owner; or
- should the Grower purchase the Combined Lot the Lease will terminate at settlement.

33. Growers participating in the Project are granted an interest in the Vineyard that has been established on the Land by the Owner of the Land. The interest in the Land is in the form of a lease to use the Grower's Vinelot for the purpose of conducting a long-term viticulture business. For the term of the agreement, the Grower will have full right, title and interest in the Grapes and all other products produced from the Vines on the Vinelot (subclause 2.3). Should a Grower purchase the Combined Lot, at the time settlement occurs, all of the Grower's rights and obligations under the Lease will terminate. The transfer of the freehold interest in the Land will have the effect of transferring all of Brooklee's rights, powers and privileges as the Owner of the Land to the Grower.

34. Each Grower must pay Rent, Variable Outgoings and Rates and Taxes attributable to the Grower's Vinelot(s) to the Owner for the term of the Lease.

35. Under the terms of the Lease, among other things, the Grower must not:

- do anything which would vitiate the insurance policies or increase the premiums of any insurance policies in respect of the Vinelot;
- use or permit any other person to use the area for any purpose other than that of viticulture, cultivation of Vines and Harvesting of Grapes;
- do or permit to be done on the Vinelot anything that will cause a nuisance, disturbance, obstruction or damage; and
- use any part of the Vinelot for residential, recreational, tourist or illegal purposes.

36. In return, the Grower has the right to conduct a commercial viticultural project on the Vinelot and peaceably possess and enjoy the Vinelot during the term of the Agreement.

37. Growers may assign their interest only in certain circumstances as set out in clause 15 of the Lease.

### **Vineyard Management Agreement**

38. The Vineyard Management Agreement sets out the roles and obligations of the parties to the agreement. The Agreement is entered into between Westbrook and the Grower. Under the Agreement the Grower appoints Westbrook to manage and maintain the vines on the Vinelot.

39. The Agreement commences on the date the Vineyard Management Agreement is executed. The Agreement is terminated pursuant to the provisions of the Agreement or 15 years from the Lease Commencement Date (Clauses 3 and 19). The agreement will not be terminated if the Grower or the Grower's nominee becomes the owner of the Combined Lot on which the Vinelot is situated (Clause 16).

40. The Management Agreement provides that each Grower appoints the Manager to perform services under the agreement. In consideration for the performance of the Managers duties under the agreement each Grower must pay Management Fees, Harvesting Costs, Additional Fees and insurance cover to the Manager. The services to be performed are specified in Item 7 of the Schedule. The Manager will supervise and manage all viticultural activities to be carried out on the Vinelot on behalf of the Grower including, but not limited to, the provision of the following services:

- prepare and cultivate the Vinelots in a proper and skilful manner pursuant to the Vineyard Management Plan ;
- embark on such operations as may be required primarily and principally to prevent or combat land degradation in relation to the Vinelots;
- supervision and management of the installation of the Infrastructure;
- supervise, manage and undertake the installation of the trellising, vine training on the cord-on wire, foliage wires to trellis and train Vine foliage to top foliage by hand;
- supervise and manage the survey of the Vinelots and counting of the numbers of vines on the Vinelots, the

numbers of rows of vines on the Vinelot and vine varieties upon the Vinelots;

- arrange for the production and installation of row ID tags to end strainers;
- replace unhealthy or dead vines from nursery stock;
- attend to weeding, mulching and fertilising of soil, the application of herbicides and spraying of the vines for both disease and pest control;
- tend to Rootlings and Vines according to principals of good viticulture;
- repair all damage to Trellis and Irrigation Vinelots which result from the Manager's performance of its obligations;
- maintain dams, water supply pumps and irrigation supplies; and
- harvest the produce grown on the Vinelot each year during the Lease Term as and when deemed appropriate by the Manager in keeping with sound viticultural practice.

## ***Harvesting***

41. The Manager will be responsible for the harvesting of the grape produce grown on the vineyard. The Manager will harvest the Grapes from the Vines in each year that there is a commercially harvestable grape crop. The Grapes harvested from the individual Vinelots may be pooled with Grapes from other Vinelots. The Manager will keep an accurate record of the yields derived from each respective Vinelot and the Grower's Proportionate Interest in the Grapes that have been pooled.

## **Wine Marketing Agreement**

42. The Wine Marketing Agreement sets out the roles and obligations of the parties to the agreement. The agreement will be entered into between Westbrook and the Grower. Under the agreement the Grower appoints Westbrook to arrange the crushing and processing of the Grapes harvested from the Vinelots and arrange for the Wine to be packaged and stored. Unless the Grower elects to take possession of their Wine, the manager will market the Wine and arrange for the sale of the Wine.

43. If a Grower is an electing Grower, the Grower will advise the Manager by notice in writing, on or before 30 June in each year, that

the Grower wishes to collect and sell the Wine produced from the following harvest. The Manager will notify the Grower of the time and place at which the Wine will be available for collection and how the Wine is packaged. The Manager shall provide the Electing Grower with a statement of any outstanding sums payable by the Grower. The amounts due must be paid prior to collection of the wine and the Manager will issue a certificate confirming the payment (subclause 11.3).

44. Growers who do not elect to collect and sell the Wine will share in the gross proceeds from the sale of the Wine in accordance with the Grower's Proportional Interest following the payment of any outstanding Marketing Fees, Rent, Packaging, Storage and Transport Costs, Additional Fees and Harvesting Costs (subclause 10.3).

### **Fees**

45. Under the terms of the Investment Agreement, the Lease Agreement, the Vineyard Management Agreement and the Wine Marketing Agreement, a Grower will make payments per Vinelot as described below.

46. An Investment Fee is payable on entering into the Investment Agreement. The Investment Fee is made up of:

- **1<sup>st</sup> years Management Fee** includes a pro-rata portion of \$8,800 per hectare contained in the Grower's Vinelot, (Item 3.1 of Schedule 1 to the Vineyard Management Agreement). Where the Management Fee is payable on a pro-rata basis it will be apportioned on a days basis from the Date of Commencement to the following 30 June;
- The **Initial Rent** includes a pro-rata portion of \$8,800 per hectare contained in the Grower's Vinelot, (Item 6 of Schedule 1 to the Vineyard Lease). Where rent is payable on a pro-rata basis it will be apportioned on a days basis from the Date of Commencement to the following 30 June;
- **Grand Vin Estate Establishment Fee** of \$32,471.50. The Grand Vin Estate Establishment Fee is consideration for the work performed by Brooklee prior to the execution of the Investment Agreement. The work that has been performed included initial Vineyard development, preparation of the Vineyard Management Plan, preparation and cultivation of the Vinelots, management of installation of Infrastructure, Vineyard planting and Vineyard land and vine care;

- **2002 Vineyard Establishment Fee** of \$86,722, payable to the Manager, or the Owner on trust for the Manager. The 2002 Vineyard Establishment Fee is consideration for the Manager agreeing to carry out the Vineyard Establishment Services to be completed in the periods outlined in paragraph 30. The 2002 Vineyard Establishment Services require 30 days for completion following the date of execution of the Investment Agreement;
- **2003 Vineyard Establishment Fee** of \$93,059, payable to the Manager. The 2003 Vineyard Establishment Fee is consideration for the Manager agreeing to carry out the Vineyard Establishment Services to be completed in the periods outlined in paragraph 30;
- **Vine Costs Fee** of \$10,010. The Vines Costs Fee is a reimbursement to Brooklee for the capital expenditure incurred for the planting of the rootlings and the establishment of the vines on the Vinelot;
- **Irrigation Purchase Price** of \$19,214. The Irrigation Purchase Price is payable to Brooklee in consideration for Brooklee agreeing to sell the Irrigation relating to the Vinelot to the Grower;
- **Infrastructure Purchase Price** of \$49,989, payable to Brooklee in consideration for the installation and subsequent sale of the Infrastructure to the Grower. This amount includes \$14,519 for trellising to be installed on or before 30 June 2002, \$5,220 for trellising to be installed during the income year beginning 1 July 2002 and ending on 30 June 2003, \$4,400 for Gravel and Headlands work to the Vineyard, \$15,400 for Water supply, pumps and filters, \$1,650 for Boundary fencing, \$2,750 for Drainage and Fill, \$5,500 for Vineyard Maintenance Equipment and \$550 for Miscellaneous Small Tools and Sprayers.

47. Each Grower who Leases their Vinelot must make annual payments under the terms of the Vineyard Lease. The fees payable by each Grower who Leases their Vinelot are made up of the following:

- **Annual Rent**, payable to the Owner of the Land, being an amount of \$8,800 per annum for each hectare contained in the Grower's Vinelot. The Rent is payable annually in advance on 1 July of each Lease Year until the expiration of the Lease Term. The Rent will be reviewed on 1 July of each Lease Year following the

first Lease Year and each anniversary of that date until the expiration of the Lease Term. On the review date the Rent will be increased by the greater of 3% or by the aggregate percentage change in the Consumer Price Index for the previous four quarters most recently published by the Australian Bureau of Statistics (CPI);

- **Variable Outgoings**, payable to the Owner of the Land. The Variable Outgoings are payable in respect all costs, charges, expenses, fees and other outgoings charged or chargeable in respect of the Grower's Vinelot. Variable Outgoings will include all charges levied on the Owner of the Combined Lot in respect to the Grower's Vinelot under the Vineyard Management Agreement, Wine Marketing Agreement, Strata Management Agreement, Vineyard Director Services Agreement and Viticulturalist Services Agreement. Where the Land Owner has paid all or a part of any fees, costs or charges outstanding in respect to a Grower's Vinelot under the Vineyard Management Agreement, the Wine Marketing Agreement or any other agreements to which the Grower is a party to, the Variable Outgoings will include those outstanding amounts. The Grower will be notified of the estimated amount of Variable Outgoings Contribution for the next Lease Year in writing prior to the Lease Commencement Date and prior to 30 June in each Lease Year. The Variable Outgoing Contribution is payable in equal monthly instalments in advance the first of which is to be paid on or before the Commencement Date and then on the first day of each month after that. As soon as practicable after 30<sup>th</sup> June, and at least within 3 months, in each year the Grower will be provided with an operating expenses statement showing the actual amount of Variable Outgoings. If the actual amount of Variable Outgoings is greater than the amount estimated and paid the difference must be paid within 14 days of receipt of the statement. If the actual amount of Variable Outgoings is less than the amount estimated and paid the difference will be credited to the Grower and the Grower may deduct the difference from the next payment or payments due on account of the Variable Outgoings Contribution;
- **Rates and Taxes** attributable to the Grower's Vinelot(s) if a separate assessment issues for the Grower's Rates and Taxes. If a separate Rates and Taxes Assessment does not issue the Grower may elect

to include the Rates and Taxes in the Variable Outgoings and the Grower must discharge its liabilities with respect to those Rates and Taxes by paying the Grower's Variable Outgoing Contribution. If the Grower does not elect to have the Rates and Taxes included in the Variable Outgoings the Grower must pay to the Owner of the Land the portion of the assessed Rates and Taxes that relate to the Grower's Vinelot on demand.

48. Each Grower who purchases a Combined Lot must make annual payments in respect to the Ownership of the Combined Lot. The fees payable by each Grower who purchases a Combined Lot are made up of the following:

- **Annual Strata Levy Fees**, payable to the Strata Company. The Strata Levy Fees are payable for administrative expenses to enable the Strata Company to control and manage the common property contained on the Land and to discharge its obligations. In addition, the Strata Company will levy fees to be placed in a Reserve Fund which the Strata Company will administer for the purpose of accumulating funds to meet contingent expenses and other major expenses of the Strata Company likely to arise in the future. The Strata Company will determine the amount of Strata Levy Fees and levy contributions on the Grower's who own Combined Lots in respect to the unit entitlements of their respective lots. The Strata Company will provide the Grower with an annual Allocation Statement in respect of the Strata Levy Fees paid by the Grower. The Allocation Statement will contain an allocation as to the amount of the Strata Levy Fees paid by the Grower that relate to the Vinelot and the amount of the Strata Levy Fees paid by the Grower that relate to the Residential Lot;
- **Rates and Taxes** attributable to the Grower's Combined Lot if a separate assessment issues for the Grower's Rates and Taxes. If a separate Rates and Taxes Assessment does not issue the Rates and Taxes attributable to the Grower's Vinelot will be included in the Strata Levy Fees and the Grower must discharge its liabilities with respect to those Rates and Taxes by paying the Strata Levy Fees.

49. The following fees are payable by each Grower whether they Lease their Vinelot or Own their Vinelot:

- **Management Fee**, to the Manager, being an amount of \$8,800 per annum for each hectare contained in the Grower's Vinelot. The annual Management Fee is payable quarterly in advance commencing on 1 July of each Financial Year following the first Financial Year until the expiration of the vineyard management term. The Management Fee will be reviewed each 30 months during the term of the agreement, with the first review being carried out 30 months after the Date of Commencement. On the review date the Management Fee will be increased by the greater of 3% or by the aggregate percentage change in the Consumer Price Index for the previous four quarters most recently published by the Australian Bureau of Statistics (CPI);
- **Additional Fee**, to the Manager, in consideration for the performance of any Additional Services. The Additional fee shall be an amount equal to the cost price to the Manager performing the Additional Services plus 15%;
- **Harvesting Costs**, to the Manager, in consideration of Harvesting the Land Produce from the Vines;
- **Cost of Insurance** of the Vines, the Improvements and public risk insurance arranged by the Manager and any additional insurance cover that the Grower may require;
- **Marketing Management Fee**, to the Manager, being an amount yet to be determined. The Marketing Management Fee will be payable quarterly in advance. On the Fee Review date the Marketing Management Fee will be increased by the greater of 3% or by the aggregate percentage change in the Consumer Price Index for the previous four quarters most recently published by the Australian Bureau of Statistics (CPI);
- **Crushing and Processing Costs**;
- **Packaging, Storage and Transport Costs**, being the costs of packaging, storage and transporting the wine prior to sale and brokers fees and insurance costs and the marketing and promotional costs.

### **Finance**

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

51. This Ruling does not apply if a 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 are involved or become involved in the provision of finance to Growers for the Project.

## Ruling

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### Application of this Ruling

52. This Ruling applies only to Growers who are accepted to participate in the Project on or before 31 May 2003 and who have executed an Investment Agreement on or before that date. The Grower's participation in the Project must constitute the carrying on of a business of primary production.

53. 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.

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

### **Division 328**

54. 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**

55. 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**

56. In certain circumstances the 2002 Vineyard Establishment Fee and the 2003 Vineyard Establishment Fee incurred by Growers who are accepted into this Project may 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 Notes (iv) and (xix) below).

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

58. In this Project, the tax deductions must be calculated by applying the above formula to the amount incurred in the year of commencement by the Grower for the following expenditure:

- 2002 Vineyard Establishment Fees where the Grower commences to participate in the Project during the period on or after 1 June 2002 and on or before 30 June 2002; and
- 2003 Vineyard Establishment Fees for Growers who commence to participate in the Project on or before 30 June 2002.

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

### **Assessable Income**

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

59. 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.

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

### **Trading stock**

#### **Section 70-35**

61. A Grower who is not an ‘STS taxpayer’ may, in some years, hold grape produce or Wine that will constitute trading stock on hand. Where, in an income year, the value of trading stock on hand at the *end* of an income year exceeds the value of trading stock on hand at the *start* of an income year a Grower must include the amount of that excess in assessable income.

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

**General Deductions****Section 8-1**

63. A Grower who is not an 'STS taxpayer' may claim tax deductions for the following revenue expenses for each 2 hectare Vinelot:

***Grower who participates in the Project on or before 31 May 2002******Investment Fee***

<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>Grand Vin Estate Establishment Fees</b>	8-1	Nil – See Note (ii) (below)	Nil – See Note (ii) (below)	Nil – See Note (ii) (below)
<b>2002 Vineyard Establishment Fees</b>	8-1	\$86,722 – See Notes (i) & (iii) (below)		
<b>2003 Vineyard Establishment Fees</b>	8-1	Amounts must be calculated – See Notes (i) & (iv) (below)	Amounts must be calculated – See Notes (i) & (iv) (below)	

***Grower Leases the Vinelot***

<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>Rent</b>	8-1	As incurred – See Notes (i), (iii) & (v) (below)	\$17,600 – See Notes (i), (iii) & (v) (below)	\$17,600 (indexed) – See Notes (i), (iii) & (v) (below)
<b>Variable Outgoings</b>	8-1	As incurred – See Notes (i) (iii) & (vi) (below)	As incurred – See Notes (i) (iii) & (vi) (below)	As incurred – See Notes (i) (iii) & (vi) (below)

**PR 2002/36***Grower Owns the Vinelot*

<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>Strata Levy Fees</b>	8-1	As incurred – See Notes (i), (iii),(v) & (vii) (below)	As incurred – See Notes (i), (iii),(v) & (vii) (below)	As incurred – See Notes (i), (iii),(v) & (vii) (below)

*Grower Leases or Owns the Vinelot*

<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>Management Fees</b>	8-1	As incurred – See Notes (i) & (iii) (below)	\$17,600 – See Notes (i) & (iii) (below)	\$17,600 – See Notes (i) & (iii) (below)
<b>Additional Fees</b>	8-1	As incurred – See Notes (i) & (iii) (below)	As incurred – See Notes (i) & (iii) (below)	As incurred – See Notes (i) & (iii) (below)
<b>Separate Rates &amp; Taxes Assessment</b>	8-1	As incurred – See Notes (i) & (iii) (below)	As incurred – See Notes (i) & (iii) (below)	As incurred – See Notes (i) & (iii) (below)
<b>Insurance</b>	8-1	As incurred – See Notes (i) & (iii) (below)	As incurred – See Notes (i) & (iii) (below)	As incurred – See Notes (i) & (iii) (below)

***Grower who participates in the Project on or after 1 June 2002 and on or before 30 June 2002******Investment Fee***

<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>Grand Vin Estate Establishment Fees</b>	8-1	Nil – See Note (ii) (below)	Nil – See Note (ii) (below)	Nil – See Note (ii) (below)
<b>2002 Vineyard Establishment Fees</b>	8-1	Amounts must be calculated – See Notes (i) & (iv) (below)	Amounts must be calculated – See Notes (i) & (iv) (below)	
<b>2003 Vineyard Establishment Fees</b>	8-1	Amounts must be calculated – See Notes (i) & (iv) (below)	Amounts must be calculated – See Notes (i) & (iv) (below)	

***Grower Leases the Vinelot***

<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>Rent</b>	8-1	As incurred – See Notes (i), (iii) & (v) (below)	\$17,600 – See Notes (i), (iii) & (v) (below)	\$17,600 (indexed) – See Notes (i), (iii) & (v) (below)
<b>Variable Outgoings</b>	8-1	As incurred – See Notes (i) (iii) & (vi) (below)	As incurred – See Notes (i) (iii) & (vi) (below)	As incurred – See Notes (i) (iii) & (vi) (below)

**PR 2002/36***Grower Owns the Vinelot*

<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>Strata Levy Fees</b>	8-1	As incurred – See Notes (i), (iii),(v) & (vii) (below)	As incurred – See Notes (i), (iii),(v) & (vii) (below)	As incurred – See Notes (i), (iii),(v) & (vii) (below)

*Grower Leases or Owns the Vinelot*

<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>Management Fees</b>	8-1	As incurred – See Notes (i) & (iii) (below)	\$17,600 – See Notes (i) & (iii) (below)	\$17,600 – See Notes (i) & (iii) (below)
<b>Additional Fees</b>	8-1	As incurred – See Notes (i) & (iii) (below)	As incurred – See Notes (i) & (iii) (below)	As incurred – See Notes (i) & (iii) (below)
<b>Separate Rates &amp; Taxes Assessment</b>	8-1	As incurred – See Notes (i) & (iii) (below)	As incurred – See Notes (i) & (iii) (below)	As incurred – See Notes (i) & (iii) (below)
<b>Insurance</b>	8-1	As incurred – See Notes (i) & (iii) (below)	As incurred – See Notes (i) & (iii) (below)	As incurred – See Notes (i) & (iii) (below)

***Growers who participate in the Project on or after 1 July 2002******Investment Fee***

<b>Fee Type</b>	<b>ITAA 1997 Section</b>	<b>Year ended 30 June 2003</b>	<b>Year ended 30 June 2004</b>	<b>Year ended 30 June 2005</b>
<b>Grand Vin Estate Establishment Fees</b>	8-1	Nil – See Note (ii) (below)	Nil – See Note (ii) (below)	Nil – See Note (ii) (below)
<b>2002 Vineyard Establishment Fees</b>	8-1	\$86,722 – See Notes (i) & (iii) (below)		
<b>2003 Vineyard Establishment Fees</b>	8-1	\$93,059– See Notes (i) & (iii) (below)		

***Grower Leases the Vinelot***

<b>Fee Type</b>	<b>ITAA 1997 Section</b>	<b>Year ended 30 June 2003</b>	<b>Year ended 30 June 2004</b>	<b>Year ended 30 June 2005</b>
<b>Rent</b>	8-1	As incurred – See Notes (i), (iii) & (v) (below)	\$17,600 – See Notes (i), (iii) & (v) (below)	\$17,600 (indexed) – See Notes (i), (iii) & (v) (below)
<b>Variable Outgoings</b>	8-1	As incurred – See Notes (i) (iii) & (vi) (below)	As incurred – See Notes (i) (iii) & (vi) (below)	As incurred – See Notes (i) (iii) & (vi) (below)

***Grower Owns the Vinelot***

<b>Fee Type</b>	<b>ITAA 1997 Section</b>	<b>Year ended 30 June 2003</b>	<b>Year ended 30 June 2004</b>	<b>Year ended 30 June 2005</b>
<b>Strata Levy Fees</b>	8-1	As incurred – See Notes (i), (iii),(v) & (vii) (below)	As incurred – See Notes (i), (iii),(v) & (vii) (below)	As incurred – See Notes (i), (iii),(v) & (vii) (below)

*Grower Leases or Owns the Vinelot*

<b>Fee Type</b>	<b>ITAA 1997 Section</b>	<b>Year ended 30 June 2003</b>	<b>Year ended 30 June 2004</b>	<b>Year ended 30 June 2005</b>
<b>Management Fees</b>	8-1	As incurred – See Notes (i) & (iii) (below)	\$17,600 – See Notes (i) & (iii) (below)	\$17,600 – See Notes (i) & (iii) (below)
<b>Additional Fees</b>	8-1	As incurred – See Notes (i) & (iii) (below)	As incurred – See Notes (i) & (iii) (below)	As incurred – See Notes (i) & (iii) (below)
<b>Separate Rates &amp; Taxes Assessment</b>	8-1	As incurred – See Notes (i) & (iii) (below)	As incurred – See Notes (i) & (iii) (below)	As incurred – See Notes (i) & (iii) (below)
<b>Insurance</b>	8-1	As incurred – See Notes (i) & (iii) (below)	As incurred – See Notes (i) & (iii) (below)	As incurred – See Notes (i) & (iii) (below)

**Notes:**

- (i) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g., input tax credits): Division 27. See Example 1 at paragraph 142;
- (ii) The Grand Vin Estate Establishment Fee contains an amount of \$32,471.50. The outgoing of \$32,471.50 is expenditure of a capital nature and is not deductible under section 8-1;
- (iii) For a Grower who commences to participate in the Project on or before 31 May 2002 the 2002 Vineyard Establishment Fees, Rent, Variable Outgoings, Strata Levy Fees, Management Fees, Additional Fees, Separate Rates & Taxes Assessment and Insurance that are losses or outgoings in respect to the Grower's Vinelot are deductible in full in the year that they are incurred. For a Grower who commences to participate in the Project on or after 1 June 2002 and on or before 30 June 2002 the Rent, Variable Outgoings, Strata Levy Fees, Management Fees, Additional Fees, Separate Rates & Taxes Assessment and Insurance that

are losses or outgoings in respect to the Grower's Vinelot are deductible in full in the year that they are incurred. For a Grower who commences to participate in the Project on or after 1 July 2002 the 2002 Vineyard Establishment Fees, 2003 Vineyard Establishment Fees, Rent, Variable Outgoings, Strata Levy Fees, Management Fees, Additional Fees, Separate Rates & Taxes Assessment and Insurance that are losses or outgoings in respect to the Grower's Vinelot are deductible in full in the year that they are incurred. However, if a Grower **chooses** to prepay fees, in respect to the Grower's Vinelot, 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 57 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;

- (iv) For a Grower who participates in the Project on or before 31 May 2002 the 2003 Vineyard Establishment Fees shown in the Tables and paragraphs 30 and 46 above are **NOT** deductible in full in the year incurred. For a Grower who participates in the Project on or after 1 June 2002 and on or before 30 June 2002 the 2002 Vineyard Establishment Fees and the 2003 Vineyard Establishment Fees shown in the Tables and paragraphs 30 and 46 above are **NOT** deductible in full in the year incurred. The deduction for each year's fees must be determined using the formula in subsection 82KZMF(1) (see paragraph 57). The 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 143);
- (v) If the Put Option or the Call Option Granted under the Investment Agreement is exercised and the Grower purchases the Combined Lot both Rent and a Strata Levy Fee may be incurred in the year the Combined Lot is purchased. The Rent will be calculated as pro-rata portion of \$8,800 per hectare contained in the

Grower's Vinelot. The Rent for that Lease Year will be apportioned on a days basis from the Date of Commencement, where the Vinelot is purchased in the Year that the Grower commences to participate in the Project, or 1 July of the relevant Lease Year to the date of termination of the Lease. The Rent will no longer be payable following the purchase of the Vinelot;

- (vi) Where a Grower who Leases a Vinelot incurs Variable Outgoings that fee may contain outstanding fees, costs or charges in respect to a Grower's Vinelot under the Vineyard Management Agreement, the Wine Marketing Agreement or any other agreements to which the Grower is a party to. The Grower may claim a loss or outgoing only once. If the Variable outgoing for a relevant year includes losses or outgoings that have been deducted elsewhere, for example an outstanding Management Fee that was deducted in a previous year the amount of Variable Outgoings is to be reduced by the outstanding amount;
- (vii) The Strata Levy Fees that are incurred in respect to the Grower's Vinelot levied by the Strata Company for administrative expenses to enable the Strata Company to control and manage the common property contained on the Land and to discharge its obligations, are deductible in the year that they are incurred, to the extent that the Fees relate to the Grower's Vinelot and are not of a private or domestic nature. **This Ruling does not rule on the deductibility of the fees levied by the Strata Company to be placed in a Reserve Fund.**

## **Deductions for capital expenditure**

### **Division 40**

64. A Grower who is not an 'STS taxpayer' will also be entitled to tax deductions relating to trellising, fencing, water facilities (e.g., irrigation), a 'landcare operation', vineyard maintenance equipment, and small tools. All deductions shown in the following Table are determined under Division 40. Deductions will be available in accordance with the year in which the Grower commences participation in the Project.

Fee type	ITAA 1997 section	Year ended 30 June Year 1	Year ended 30 June Year 2	Year ended 30 June Year 3
Trellising	40-25	Must be calculated - See Notes (viii) and (ix) below	Must be calculated - See Notes (viii) and (ix) below	Must be calculated - See Notes (viii) and (ix) below
Gravel & Headlands	40-25	Nil – See Note (x)	Nil – See Note (x)	Nil – See Note (x)
Boundary Fencing	40-25	Must be calculated - See Notes (viii) & (ix) below	Must be calculated - See Notes (viii) & (ix) below	Must be calculated - See Notes (viii) & (ix) below
Vineyard Maintenance Equipment	40-25	Must be calculated - See Notes (viii) & (ix) below	Must be calculated - See Notes (viii) & (ix) below	Must be calculated - See Notes (viii) & (ix) below
Small Tools	40-25	Must be calculated - See Notes (viii) & (xi) below	Must be calculated - See Notes (viii) & (xi) below	Must be calculated - See Notes (viii) & (xi) below
Water facility (e.g., irrigation, dam, bore, etc)	40-515	\$11,538 - see Notes (viii) & (xii) below	\$11,538 - see Notes (viii) & (xii) below	\$11,538 - see Notes (viii) & (xii) below
Drainage & Fill	40-630	\$2,750 - see Notes (viii) & (xiii) below		

**Notes:**

- (viii) 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 142;
- (ix) Trellising, Boundary Fencing and Vineyard Maintenance Equipment are 'depreciating assets'. Each

Grower's interest in the trellising, Boundary Fencing and Vineyard Maintenance Equipment are 'depreciating assets'. The 'cost' of each asset is the amount paid by each Grower. The decline in value of each asset is calculated using the formula in either subsection 40-70(1) ('diminishing value method') or subsection 40-75(1) ('prime cost method'). Both formulas rely on the 'effective life' of the trellising;

- (x) Growers can either self-assess the 'effective life' (section 40-105) or use the Commissioner's determination of 'effective life' (section 40-100). The Commissioner has determined that trellising and Boundary Fencing each have an 'effective life' of 20 years. The Boundary Fencing will be installed and ready for use on the date the Grower commences to participate in the Project. The portion of the trellising for which the Grower will make a payment of \$14,419 will be installed and first used on the date the Grower commences to participate in the Project. The portion of the trellising for which the Grower will make a payment of \$5,220 will be installed and first used during the year ended 30 June 2003. The Manager will advise Growers when that occurs to enable Growers to calculate the deduction for the decline in value. Growers can either self-assess the 'effective life' of the Vineyard Maintenance Equipment (section 40-105) or use the Commissioner's determination of 'effective life' (section 40-100). The Manager will advise Growers when the Vineyard Maintenance Equipment is installed and first used to enable Growers to calculate the deduction for the decline in value;
- (xi) Gravel and Headlands Work is not a 'depreciating asset'. A Grower can **NOT** deduct an amount for the decline in value of the Gravel and Headlands Work;
- (xii) A small tool is a 'depreciating asset'. Each Grower holds an interest in each small tool that 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 small tools 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 small

tools will be deducted under the diminishing value methodology of the pool based on a rate of 18.75% in the year the small tools 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 small tools. Growers can either self-assess the 'effective life' (section 40-105) or use the Commissioner's determination of 'effective life' (section 40-100). The Commissioner has determined that tools have an 'effective life' of 5 years. The Manager will advise Growers of that date the small tools will be installed and first used to enable them to calculate the deduction;

- (xiii) 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);
- (xiv) 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.

## **Tax outcomes for Growers who are 'STS taxpayers'**

### **Assessable Income**

#### **Section 6-5 and section 328-105**

65. 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.

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

**Trading stock****Section 328-285**

67. A Grower who is an 'STS taxpayer' may, in some years, hold grape produce or Wine that will constitute trading stock on hand. Where, for such a Grower, for an income year, the difference between the value of all their trading stock at the start and a reasonable estimate of it at the end, is less than \$5,000, they do not have to account for that difference under the ordinary trading stock rules in Division 70 (subsection 328-285(1)).

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

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

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

***Grower who participates in the Project on or before 31 May 2002******Investment Fee***

<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>Grand Vin Estate Establishment Fees</b>	8-1 & 328-105	Nil – See Note (xv) (below)	Nil – See Note (xv) (below)	Nil – See Note (xv) (below)
<b>2002 Vineyard Establishment Fees</b>	8-1 & 328-105	\$86,722 – See Notes (xiv), (xvi) & (xvii) (below)		
<b>2003 Vineyard Establishment Fees</b>	8-1 & 328-105	Amounts must be calculated – See Notes (xiv) & (xviii) (below)	Amounts must be calculated – See Notes (xiv) & (xviii) (below)	

*Grower Leases the Vinelot*

<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>Rent</b>	8-1 & 328-105	When Paid – See Notes (xiv), (xvii) & (xix) (below)	\$17,600 – See Notes (xiv), (xvi), (xvii) & (xix) (below)	\$17,600 (indexed) – See Notes (xiv), (xvi), (xvii) & (xix) (below)
<b>Variable Outgoings</b>	8-1 & 328-105	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)

*Grower Owns the Vinelot*

<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>Strata Levy Fees</b>	8-1 & 328-105	When Paid – See Notes (xiv), (xvii), (xix) & (xx) (below)	When Paid – See Notes (xiv), (xvii), (xix) & (xx) (below)	When Paid – See Notes (xiv), (xvii), (xix) & (xx) (below)

**PR 2002/36***Grower Leases or Owns the Vinelot*

<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>Management Fees</b>	8-1 & 328-105	When Paid – See Notes (xiv) & (xvii) (below)	\$17,600 – See Notes (xiv), (xvi) & (xvii) (below)	\$17,600 – See Notes (xiv), (xvi) & (xvii) (below)
<b>Additional Fees</b>	8-1 & 328-105	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)
<b>Separate Rates &amp; Taxes Assessment</b>	8-1 & 328-105	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)
<b>Insurance</b>	8-1 & 328-105	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)

***Grower who participates in the Project on or after 1 June 2002 and on or before 30 June 2002****Investment Fee*

<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>Grand Vin Estate Establishment Fees</b>	8-1 & 328-105	Nil – See Note (xv) (below)	Nil – See Note (xv) (below)	Nil – See Note (xv) (below)
<b>2002 Vineyard Establishment Fees</b>	8-1 & 328-105	Amounts must be calculated – See Notes (xiv) & (xviii) (below)	Amounts must be calculated – See Notes (xiv) & (xviii) (below)	
<b>2003 Vineyard Establishment Fees</b>	8-1 & 328-105	Amounts must be calculated – See Notes (xiv) & (xviii) (below)	Amounts must be calculated – See Notes (xiv) & (xviii) (below)	

*Grower Leases the Vinelot*

<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>Rent</b>	8-1 & 328-105	When Paid – See Notes (xiv), (xvii) & (xix) (below)	\$17,600 – See Notes (xiv), (xvi), (xvii) & (xix) (below)	\$17,600 (indexed) – See Notes (xiv), (xvi), (xvii) & (xix) (below)
<b>Variable Outgoings</b>	8-1 & 328-105	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)

**PR 2002/36***Grower Owns the Vinelot*

<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>Strata Levy Fees</b>	8-1 & 328-105	When Paid – See Notes (xix), (xvii), (xix) & (xx) (below)	When Paid – See Notes (xix), (xvii), (xix) & (xx) (below)	When Paid – See Notes (xix), (xvii), (xix) & (xx) (below)

*Grower Leases or Owns the Vinelot*

<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>Management Fees</b>	8-1 & 328-105	When Paid – See Notes (xiv) & (xvii) (below)	\$17,600 – See Notes (xiv), (xvi) & (xvii) (below)	\$17,600 – See Notes (xiv), (xvi) & (xvii) (below)
<b>Additional Fees</b>	8-1 & 328-105	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)
<b>Separate Rates &amp; Taxes Assessment</b>	8-1 & 328-105	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)
<b>Insurance</b>	8-1 & 328-105	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)

***Growers who participate in the Project on or after 1 July 2002******Investment Fee***

<b>Fee Type</b>	<b>ITAA 1997 Section</b>	<b>Year ended 30 June 2003</b>	<b>Year ended 30 June 2004</b>	<b>Year ended 30 June 2005</b>
<b>Grand Vin Estate Establishment Fees</b>	8-1 & 328-105	Nil – See Note (xv) (below)	Nil – See Note (xv) (below)	Nil – See Note (xv) (below)
<b>2002 Vineyard Establishment Fees</b>	8-1 & 328-105	\$86,722 – See Notes (xiv), (xvi) & (xvii) (below)		
<b>2003 Vineyard Establishment Fees</b>	8-1 & 328-105	\$93,059– See Notes (xiv), (xvi) & (xvii) (below)		

***Grower Leases the Vinelot***

<b>Fee Type</b>	<b>ITAA 1997 Section</b>	<b>Year ended 30 June 2003</b>	<b>Year ended 30 June 2004</b>	<b>Year ended 30 June 2005</b>
<b>Rent</b>	8-1 & 328-105	When Paid – See Notes (iv), (xvii) & (xix) (below)	\$17,600 – See Notes (xiv), (xvi), (xvii) & (xix) (below)	\$17,600 (indexed) – See Notes (xiv), (xvi), (xvii) & (xix) (below)
<b>Variable Outgoings</b>	8-1 & 328-105	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)

**PR 2002/36***Grower Owns the Vinelot*

<b>Fee Type</b>	<b>ITAA 1997 Section</b>	<b>Year ended 30 June 2003</b>	<b>Year ended 30 June 2004</b>	<b>Year ended 30 June 2005</b>
<b>Strata Levy Fees</b>	8-1 & 328-105	When Paid – See Notes (xiv), (xvii), (xix) & (xx) (below)	When Paid – See Notes (xiv), (xvii), (xix) & (xx) (below)	When Paid – See Notes (xiv), (xvii), (xix) & (xx) (below)

*Grower Leases or Owns the Vinelot*

<b>Fee Type</b>	<b>ITAA 1997 Section</b>	<b>Year ended 30 June 2003</b>	<b>Year ended 30 June 2004</b>	<b>Year ended 30 June 2005</b>
<b>Management Fees</b>	8-1 & 328-105	When Paid – See Notes (xiv) & (xvii) (below)	\$17,600 – See Notes (xiv), (xvi) & (xvii) (below)	\$17,600 – See Notes (xiv), (xvi) & (xvii) (below)
<b>Additional Fees</b>	8-1 & 328-105	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)
<b>Separate Rates &amp; Taxes Assessment</b>	8-1 & 328-105	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)
<b>Insurance</b>	8-1 & 328-105	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)	When Paid – See Notes (xiv) & (xvii) (below)

**Notes:**

- (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 142;
- (xvi) The Grand Vin Estate Establishment Fee contains an amount of \$32,471.50. The outgoing of \$32,471.50 is

expenditure of a capital nature and is not deductible under section 8-1;

- (xvii) 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;
- (xviii) Where a Grower who is an 'STS taxpayer', pays the Rent, Variable Outgoings, Strata Levy Fees, Management Fees, Additional Fees, Separate Rates & Taxes Assessment and Insurance in respect to the Grower's Vinelot in the relevant income years shown in the Agreements, those fees are deductible in full in the year that they are paid. Where a Grower who is an 'STS taxpayer', who commences to participate in the Project on or before 31 May 2002, pays the 2002 Vineyard Establishment Fee in the relevant income year shown in the Investment Agreement, that fee is deductible in full in the year that it is paid. Where a Grower who is an 'STS taxpayer', who commences to participate in the Project on or after 1 July 2002, pays the 2002 and 2003 Vineyard Establishment Fees in the relevant income year shown in the Investment Agreement, that fee is deductible in full in the year that it is 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 may apply to apportion those fees (see paragraphs 120 to 122). In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 57, 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;
- (xix) Where a Grower commences to participate in the Project on or before 31 May 2002 the 2003 Vineyard Establishment Fees shown in the Tables and paragraphs 30 and 46 above are **NOT** deductible in full in the year in which they are paid by, or on behalf of the

STS taxpayer. Where a Grower commences to participate in the Project on or after 1 June 2002 and on or before 30 June 2002 the 2002 Vineyard Establishment Fees and the 2003 Vineyard Establishment Fees shown in the Tables and paragraphs 30 and 46 above are **NOT** deductible in full in the year in which they are paid by, or on behalf of the STS taxpayer. The deduction for each year's fees must be determined using the formula in subsection 82KZMF(1) (see paragraph 57). The 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 143);

- (xx) If the Put Option or the Call Option Granted under the Investment Agreement is exercised and the Grower purchases the Combined Lot both Rent and a Strata Levy Fee may be payable in the year the Combined Lot is purchased. The Rent will be calculated as pro-rata portion of \$8,800 per hectare contained in the Grower's Vinelot. The Rent for that Lease Year will be apportioned on a days basis from the Date of Commencement, where the Vinelot is purchased in the Year that the Grower commences to participate in the Project, or 1 July of the relevant Lease Year to the date of termination of the Lease. The Rent will no longer be payable following the purchase of the Vinelot;
- (xxi) The Strata Levy Fees that are incurred in respect to the Grower's Vinelot levied by the Strata Company for administrative expenses to enable the Strata Company to control and manage the common property contained on the Land and to discharge its obligations, are deductible in the year that they are incurred, to the extent that the Fees relate to the Grower's Vinelot and are not of a private or domestic nature. **This Ruling does not rule on the deductibility of the fees levied by the Strata Company to be placed in a Reserve Fund.**

## **Deductions for capital expenditure**

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

70. A Grower who is an 'STS taxpayer' will also be entitled to tax deductions relating to trellising, fencing, water facilities (e.g., irrigation), a 'landcare operation', vineyard maintenance equipment and small tools. Deductions relating to the 'cost' of trellising,

trellising, fencing, and vineyard maintenance equipment and small tools 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' expenditure is on a 'depreciating asset' used to carry on the business, they may choose to claim deductions under Division 328. Deductions for the grapevines must be determined under Subdivision 40-F. All deductions shown in the following Table are determined under Division 40.

71. 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 Notes (xxvi) and (xxvii) below.

72. 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. Deductions will be available in accordance with the year in which the Grower commences participation in the Project.

*Grower Leases or Owns the Vinelot*

<b>Fee type</b>	<b>ITAA 1997 section</b>	<b>Year ended 30 June Year 1</b>	<b>Year ended 30 June Year 2</b>	<b>Year ended 30 June Year 3</b>
Trellising	328-185 & 328-190	Must be calculated - See Notes (xxi) & (xxii) below	Must be calculated - See Notes (xxi) & (xxii) below	Must be calculated - See Notes (xxi) & (xxii) below
Gravel & Headlands	328-185 & 328-190	Nil – See Note (xxiii)	Nil – See Note (xxiii)	Nil – See Note (xxiii)
Boundary Fencing	328-185 & 328-190	\$247.50 - See Notes (xxi) and (xxii) below	\$420.75 - See Notes (xxi) and (xxii) below	\$294.53 - See Notes (xxi) and (xxii) below
Vineyard Maintenance Equipment	328-185 & 328-190	Must be calculated - See Notes (xxi) and (xxii) below	Must be calculated - See Notes (xxi) and (xxii) below	Must be calculated - See Notes (xxi) and (xxii) below
Small Tools	328-180	\$550 - See Notes (xxi) & (xxiv) below		
Water facility (e.g., irrigation, dam, bore, etc)	40-515	\$11,538 - see Notes (xxi) & (xxv) below	\$11,538 - see Notes (xxi) & (xxv) below	\$11,538 - see Notes (xxi) & (xxv) below
Drainage & Fill	40-630	\$2,750 - see Notes (xxi) & (xxvi) below		

**Notes:**

- (xxii) 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 142;
- (xxiii) Trellising, Boundary Fencing and Vineyard Maintenance Equipment are ‘depreciating assets’. Each

Grower's interest in the trellising, Boundary Fencing and Vineyard Maintenance Equipment are 'depreciating assets' which can be allocated to a 'general STS pool'. The 'cost' of the asset is the amount paid by each Grower. The tax deduction allowable is determined in the year ended 30 June 2002 for Growers who commence to participate in the Project on or before 30 June 2002 and in the year ended 30 June 2003 for Growers who commence to participate in the Project on or after 1 July 2002 by multiplying the 'cost' of the interest by half the 'general STS pool rate', i.e., by 15%. Each Grower's interest in the trellising is allocated to their 'general STS pool' at the end of the year ended 30 June in the year in which the Grower commences participation in the Project and that part of the 'cost' not deducted in the first year is added to the pool balance. In subsequent years, the full pool rate of 30% will apply. Where a Grower commences to participate in the Project on or before 30 June 2002, the Grower will start to use the portion of the trellising for which the Grower will make a payment of \$14,419 on the date the Grower commences to participate in the Project. The portion of the trellising for which the Grower will make a payment of \$5,220 will be installed ready for use during the year ended 30 June 2003. Growers who commence to participate in the Project on or after 1 July 2002 will start to use the trellising, or have the trellising for which they will make a payment of \$19,639 installed ready for use, during the year ended 30 June 2003;

(xxiv) Gravel and Headlands Work is not a 'depreciating asset'. The Grower can **NOT** deduct an amount for the Gravel and Headlands Work;

(xxv) A small tool is a 'depreciating asset'. Each Grower holds an interest in each small tool 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 small tools 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. The Manager will advise when that 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 year ended 30 June of Year 1 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.

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

### **Deductions for capital expenditure**

#### **Division 40**

73. Growers will also be entitled to tax deductions relating to the establishment of Grapevines on the Grower's Vinelot. All deductions shown in the following tables are determined under Division 40.

#### *Grower Leases the Vinelot*

<b>Fee type</b>	<b>ITAA 1997 section</b>	<b>Year ended 30 June Year 1</b>	<b>Year ended 30 June Year 2</b>	<b>Year ended 30 June Year 3</b>
Establishment of horticultural plants	40-515	Nil - see Note (xxvii) below	Nil - see Note (xxvii) below	Nil - see Notes (xxvii) below

#### *Grower Owns the Vinelot*

<b>Fee type</b>	<b>ITAA 1997 section</b>	<b>Year ended 30 June Year 1</b>	<b>Year ended 30 June Year 2</b>	<b>Year ended 30 June Year 3</b>
Grapevines	40-515	Must be calculated - see Note (xxviii) below	\$2,502.50 - see Note (xxviii) below	\$2,502.50 - see Note (xxviii) below

#### **Notes:**

**PR 2002/36**

(xxviii) Where the Grower Leases the Vinelot, as grapevines are affixed to land which the Grower does not own, they are not owned by the Grower, the conditions in subsection 40-525(3) cannot be met, and the grapevines are not eligible for the 4 year write-off under section 40-550. However, grapevines are a 'horticultural plant' as defined in subsection 40-525(2). As Growers hold the land under a lease or 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 grapevines 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 grapevines have an 'effective life' of greater than 13 but fewer than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 13%. The deduction is allowable when the grapevines enter their first commercial season (section 40-530, item 2). The Manager will inform Growers of when the grapevines enter their first commercial season;

(xxix) Where a Put or Call Option granted under the Investment Agreement is exercised the Grower will purchase the Combined Lot. As grapevines are affixed to land which the Grower owns, they are owned by the Grower, the conditions in subsection 40-525(3) will be met, and the grapevines are eligible for the 4 year write-off under section 40-550. Subsection 40-550(1) provides the formula for determining the decline in value of a grapevine. In that formula, which is shown below, 'establishment expenditure' means the amount of capital expenditure incurred that is attributable to the establishment of the grapevine and 'write-off days in income year' is the number of days in the income year on which you satisfied a condition in subsection 40-525(3) for the grapevine and used it in a primary production business for the purpose of producing assessable income.

$$\text{Establishment expenditure} \times \frac{\text{Write-off days in income year}}{365} \times 25\%$$

**Interest**

74. 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. However all Growers who borrow funds in order to participate in the Project, should read the discussion of the prepayment rules in paragraphs 106 to 113 (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.

**Division 35 – Deferral of losses from non-commercial business activities****Section 35-55 – Commissioner's discretion**

75. For a Grower who is an individual and who enters the Project during the year ended 30 June 2002 or 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 2002, for Growers who are accepted into the Project on or before 30 June 2002, and 30 June 2003, for Growers who are accepted into the Project after 1 July 2002, to 30 June 2005 that the rule in section 35-10 does not apply to this activity provided that the Project is carried out in the manner described in this Ruling.

76. 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 129 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
- a 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)).

77. 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.

78. Growers are reminded of the important statement made on Page 1 of this Product Ruling. Therefore, Grower 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**

79. For a Grower who participates in the Project and incurs expenditure as required by the Management Agreement and the Lease 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.

## **Explanations**

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### **Corporations Act 2001**

80. For this Ruling to apply, an offer for an interest in the project must have been made to, and accepted by a Grower, who qualifies as a wholesale client as defined in Section 761G of the *Corporations Act 2001*. Offers to wholesale clients do not require a prospectus or product disclosure statement.

81. A Grower in the Project may be a person who is a wholesale client within the definition in section 761G. A person will be a wholesale client where the person satisfies the 'product value test' (paragraph 761G(7)(a)).

82. A participant in a managed investment scheme, referred to below as 'the person' or 'the person to whom the offer is made', will satisfy the 'product value test' where :

- 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
- 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.

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

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

84. For schemes such as that of the Grand Vin Estate 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.

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

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

86. In this Project, each Grower enters into an Investment Agreement, Vineyard Management Agreement and a Vineyard Lease and a Wine Marketing Agreement. Where a Put or Call Option granted under the Investment Agreement is exercised the Grower will purchase the Combined Lot on which the Grower's Vinelot is located.

87. Under the Lease each individual Grower will have rights over a specific and identifiable area of land. The Lease provides the Grower with an ongoing interest in the specific grapevines on the leased area for the term of the Project. Where a Put or Call Option granted under the Investment Agreement is exercised the Grower will purchase the Combined Lot on which the Grower's Vinelot is located. Under the agreements that the Grower is a party to the Grower must use the Vinelot in question for the purpose of carrying out viticultural

activities and for no other purpose. The lease allows the Manager to come onto the land to carry out its obligations under the Management Agreement.

88. Under the Investment Agreement, Brooklee must establish a Vineyard on the Land. Under the Vineyard Management Agreement the Manager is engaged by the Grower to maintain the Vinelot on 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 Vinelot on the Grower's behalf.

89. In establishing the Vinelot, the Grower engages Brooklee to purchase and install trellising, and water facilities (e.g., irrigation), to carry out 'landcare operations' and to acquire and plant vine seedlings/rootlings on the Grower's Vinelot. During the term of the Project, these assets will be used wholly to carry out the Grower's viticulture activities. The Manager is also engaged to harvest the grapes from the Vinelot, and process and sell, on the Grower's behalf, the Wine produced from the Grapes on the Grower's Vinelot.

90. 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.

91. 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 Wine 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.

92. The pooling of Wine produced from the grapes grown on the Grower's Vinelot with the Wine of other Growers is consistent with general viticulture practices. Each Grower's proportionate share of the sale proceeds of the pooled Wine will reflect the proportion of the grapes contributed from their Vinelot.

93. The Manager's services and the installation of assets on the Grower's behalf are also consistent with general viticulture practices. The assets are of the type ordinarily used in carrying on a business of viticulture. The Vinelot is of a size and scale to allow it to be commercially viable (see Taxation Ruling IT 360).

94. The Grower's degree of control over the Manager as evidenced by the Vineyard 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 Vinelot 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.

95. The viticulture 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’ viticulture activities in the Grand Vin Estate Project will constitute the carrying on of a business.

## **The Simplified Tax System**

### **Division 328**

96. 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.

97. 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’.

## **General Deductions**

### **Section 8-1**

98. Consideration of whether the initial Management Fee, Lease Fee, 2002 Vineyard Establishment Fee, 2003 Vineyard Establishment Fee and the Grand Vin Estate Establishment 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.

99. Any part of the expenditure of a Grower entering into a viticulture business 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 Grand Vin Estate Establishment Fee is paid in return for activities that the Manager has undertaken prior to the time the Grower will enter into the Investment Agreement. The Grand Vin Estate Establishment Fee, being an amount of \$32,471.50, is properly characterised as capital expenditure and can not be deducted under section 8-1.

100. Annual Management Fees, Rent, Variable Outgoings, Rates and Taxes, Strata Levy Fees that are incurred in respect to the Grower's Vinelot and levied by the Strata Company for administrative expenses to enable the Strata Company to control and manage the common property contained on the Land and to discharge its obligations, Additional Fees and Insurance associated with the viticulture activities will relate to the gaining of income from the Grower's business of viticulture (see above), and hence have a sufficient connection to the operations by which income (from the regular sale of grape 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 these Fees. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

#### ***Possible application of prepayment provisions***

101. Under the Agreements no fees other than the 2002 Vineyard Establishment Fees, where a Grower commences to participate in the Project during the period on or after 1 June 2002 and on or before 30 June 2002, and the 2003 Vineyard Establishment Fees, where a Grower commences to participate in the Project on or before 30 June 2002, are for things to be done beyond 30 June in the year in which the relevant amounts are incurred. In these circumstances, the prepayment provisions in sections 82KZME and 82KZMF have no application to these fees.

102. 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 106 to 113) 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***

103. In the absence of any application of the prepayment provisions, the timing of deductions for the 2002 Vineyard Establishment Fees, 2003 Vineyard Establishment Fees, Management Fees, Rent, Variable Outgoings, Rates & Taxes, Strata Levy Fees levied by the Strata Company for administrative expenses, Additional Fee and Insurance will depend upon whether a Grower is an 'STS taxpayer' or is not an 'STS taxpayer'.

104. If the Grower is not an 'STS taxpayer', fees are deductible in the year in which they are incurred.

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

### **Prepayment provisions**

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

106. 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.

107. 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***

108. 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)).

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

- the taxpayer's allowable deductions under the agreement for the 'expenditure year' exceed any assessable income attributable to the agreement for that year; and
- the taxpayer does not have effective day to day control over the operation of the agreement. That is, the significant aspects of the arrangement are managed by someone other than the taxpayer; and
- either :
  - a) there is more than one participant in the agreement in the same capacity as the taxpayer; or
  - b) the person who promotes, arranges or manages the agreement (or an associate of that person) promotes similar agreements for other taxpayers.

110. 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 bank or other financier. 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.

111. 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.

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

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

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

113. 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***

##### ***Prepaid 2002 Vineyard Establishment Fees and 2003 Vineyard Establishment Fees***

114. The expenditure for 2002 Vineyard Establishment Fees incurred by a Grower, where a Grower commences to participate in the Project during the period on or after 1 June 2002 and on or before 30 June 2002, and expenditure for 2003 Vineyard Establishment Fees, where a Grower commences to participate in the Project on or before 30 June 2002, meets the requirements of subsections 82KZME(1) and (2) and is incurred under an 'agreement' as described in subsection 82KZME(3). Therefore, unless one of the exceptions to section 82KZME applies, the amount and timing of tax deductions for those fees are determined under section 82KZMF.

115. The prepaid 2002 Vineyard Establishment Fees and 2003 Vineyard Establishment Fees incurred by Growers do not fall within any of the 5 exceptions to section 82KZME. Therefore, the deduction for each year is determined using the formula in subsection 82KZMF(1). Section 82KZMF will apportion the deduction for prepaid 2002 Vineyard Establishment Fees and 2003 Vineyard Establishment Fees over the period that the services for which the prepayment is made are provided.

*Fees other than prepaid 2002 Vineyard Establishment Fees and 2003 Vineyard Establishment Fees*

116. In this Project the 2002 Vineyard Establishment Fee, 2003 Vineyard Establishment Fee, Initial Management Fee and Initial Rent will be incurred on execution of the Investment Agreement. The Initial Management Fees and the Initial Rent Fees are charged for providing management services or leasing land to a Grower by 30 June of the year of execution of the Agreements. Where a Grower commences to participate in the Project on or before 31 May 2002 or on or after 1 July 2002 the 2002 Vineyard Establishment Fee is charged for providing management services to the Grower by 30 June of the year of execution of the Agreements. Where a Grower commences to participate in the Project on or after 1 July 2002 the 2003 Vineyard Establishment Fee is charged for providing management services to the Grower by 30 June of the year of execution of the Agreements. Under the Agreements, further annual expenditure is required each year during the term of the Project for the provision of management services and land until 30 June in those years.

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

118. There is also no evidence that might suggest the management services covered by the fee could not be provided within the relevant expenditure year. Thus, for the purposes of this Ruling, it can be accepted that no part of the initial management fee, and the fees for subsequent years, is for the Manager doing 'things' that are not to be wholly done within the expenditure year. Under the Lease, lease fees are payable annually in advance for the lease of the land during the expenditure year.

119. On this basis, provided a Grower incurs expenditure as required under the Project agreements, as set out in paragraphs 45 to 49, 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*

120. Although not required under the agreements to which a Grower is a party to, a Grower participating in the Project may **choose** to prepay fees 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 119 above, section 82KZMF will apply to apportion the expenditure and allow a deduction over the period in which the prepaid benefits are provided.

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

122. 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.

### **Expenditure of a capital nature**

#### **Division 40 and Division 328**

123. 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, expenditure attributable to trellising, boundary fencing, gravel and headland work, drainage and fill, vineyard maintenance equipment, small tools, water facilities, and the establishment of the grapevines is of a capital nature. This expenditure falls for consideration under Division 40 or Division 328 of the ITAA 1997.

124. 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'.

125. The tax treatment of capital expenditure has been dealt with in a representative way in paragraphs 64, 72 and 73 (above) in the Tables and the accompanying Notes.

### **Deferral of losses from non-commercial business activities**

#### **Division 35**

126. 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

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

127. 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.

128. 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.

129. 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.

130. 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).

131. 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 of one Vinelot in the Project is unlikely to have their activity pass one of the tests until the income year ended 30 June 2006. Grower 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.

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

133. 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 the business activity has started to be carried on and for that, or those income years;

- because of its nature, the business activity has not satisfied, or will not satisfy one of the tests set out in Division 35; and
- 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.

134. Information provided with this Product Ruling indicates that a Grower who acquires the minimum investment of one Vinelot in the Project is expected to be carrying on a business activity that will pass one of the tests in the income year ended 30 June 2006, or will produce a taxation profit, for the income years ended 30 June 2006 to 30 June of the year in which the Project terminates.

135. The Commissioner will decide for such a Grower that it would be reasonable to exercise the second arm of the discretion for all income years up to, and including the income year ended 30 June 2005.

136. This Product Ruling is issued on a prospective basis (i.e., 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 78), in the manner described in the Arrangement (see paragraphs 14 to 51). 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.

137. 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 viticulturist and additional expert or scientific evidence provided with the application by Brooklee;
- independent, objective, and generally available information relating to the viticulture industry which substantially supports cash flow projections and other claims, including prices and costs, in the Product Ruling application submitted by Brooklee;

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

138. 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**

139. 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).

140. The Grand Vin Estate 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 63 to 73 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.

141. 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 their grape produce. There are no facts that would suggest that Growers have the opportunity of obtaining a tax advantage other than the tax advantages identified in this Ruling. There are 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

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

142. 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

143. 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 Manager with a 'Power of Attorney' allowing the Manager to execute his Management Agreement and the other relevant agreements on his behalf. On 5 June 2002 the 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.

## **Detailed contents list**

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## Commissioner of Taxation

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10 April 2002

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Not previously released in draft form	- public rulings
	- schemes and shams
<i>Related Rulings/Determinations:</i>	- tax administration
TR 97/11; TR 97/16; PR 1999/95;	- tax avoidance
TR 92/1; TR 92/20; TD 93/34;	- tax benefits under tax avoidance
TR 98/22; TR 2000/8; IT 360	schemes
	- tax shelters
<i>Subject references:</i>	- tax shelters project
- carrying on a business	<i>Legislative references:</i>
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