



PR 2002/61 - Income tax: Barkworth Olives Project No 6

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 This document has changed over time. This is a consolidated version of the ruling which was published on *8 May 2002*



Product Ruling

Income tax: Barkworth Olives Project No 6

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

Preamble

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

No guarantee of commercial success

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

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

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

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

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

Terms of Use of this Product Ruling

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

What this Product Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates. In this Ruling this arrangement is sometimes referred to as the Barkworth Olives Project No 6, or just simply as 'the Project'.

Tax law(s)

2. The tax laws dealt with in this Ruling are:
- Section 6-5 of the *Income Tax Assessment Act 1997* ('ITAA 1997');
 - section 8-1 (ITAA 1997);
 - section 17-5 (ITAA 1997);
 - Division 27 (ITAA 1997);
 - Division 35 (ITAA 1997);
 - Division 40 (ITAA 1997);
 - section 70-35 (ITAA 1997);
 - Division 328 (ITAA 1997);
 - subsection 44(1) of the *Income Tax Assessment Act 1936* ('ITAA 1936');
 - section 82KL (ITAA 1936);
 - section 82KZL (ITAA 1936);
 - section 82KZM (ITAA 1936);
 - sections 82KZMB - 82KZMF (ITAA 1936); and
 - Part IVA (ITAA 1936).

Goods and Services Tax

3. 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/Processor) to be entitled to claim input tax credits for the GST included in its expenditure, it must be registered or required to be registered for GST and hold a valid tax invoice.

Changes in the Law

4. The Government is currently evaluating further changes to the tax system in response to the *Ralph Review of Business Taxation* and continuing business tax reform is expected to be implemented over a number of years. Although this Ruling deals with the taxation legislation enacted at the time it was issued, later amendments may impact on this Ruling. Any such changes will take precedence over the application of this Ruling and, to that extent, this Ruling will be superseded.

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

Note to promoters and advisers

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

Class of persons

7. The class of persons to whom this Ruling applies is the persons who are more specifically identified in the Ruling part of this Product Ruling and who enter into the arrangement specified below on or after the date this Ruling is made and on or before 31 May 2002. They will have a purpose of staying in the arrangement until it is completed (i.e., being a party to the management agreement until their term expires) and deriving assessable income from this involvement. In this Ruling, these persons are referred to as 'Grower/Processors'.

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

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

- persons who do not enter into the Management Agreement with the Responsible Entity;
- persons who enter into the Management Agreement with the Responsible Entity but make an election to do one or more of the following:

- carry out his/her own maintenance work e.g., weeding;
- request the Responsible Entity to harvest his/her own trees separately;
- harvest his/her own trees;
- market his/her own olives.

Qualifications

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

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Date of effect

12. This Ruling applies prospectively from 8 May 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).

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

Withdrawal

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

Arrangement

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

- Constitution (Articles of Association) of Barkworth Olive Groves Limited ("BOGL");
- Replacement Prospectus for Barkworth Olives Project No 6 dated 16 April 2002;
- Supplementary Prospectus for Barkworth Olives Project No 6 dated 1 May 2002;
- **Management Agreement between BOML and Grower/Processors as contained in the Replacement Prospectus;**
- Constitution of Barkworth Olives Project No 6;
- Compliance Plan of Barkworth Olives Project No 6 ("the Compliance Plan") dated 20 December 2001;
- Custodian Agreement of Barkworth Olives Project No 6, dated 15 February 2002 between BOML and ARG Custodians Limited ("Custodian Agreement");
- Factory Access Agreement between BOGL and Inglewood Olive Processors Limited ("the Factory Access Agreement") dated 18 February 2002;
- Olive Oil Purchase Agreement between BOML and IOPL dated 18 February 2002;
- Leases between BOGL (as lessor) and ARG (as lessee) ("the Lease") dated 15 December 1999 and 29 June 1999;

- Subleases between ARG (as lessor) and BOGL (as lessee) (“the Sublease”) dated 15 December 1999 and 29 June 1999;
- Variations of leases between BOGL (as lessor) and ARG (as lessee) (“the Lease”) dated 13 February 2002;
- Variations of subleases between ARG (as lessor) and BOGL (as lessee) (“the Sublease”) dated 13 February 2002;
- Loan Agreement between Barkworth Finance Pty Ltd (“BFPL”) and an applicant;
- Additional correspondence received from the applicant dated 15 November 2001, 27 November 2001, 3 January 2002, 9 January 2002, 15 January 2002, 14 April 2002, 23 April 2002, 24 April 2002, 26 April 2002, 29 April 2002 and 1 May 2002.

NOTE: Certain information received from the applicant 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 Grower/Processors enter into. There are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower/Processor, or an associate of the Grower/Processor 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.

Overview

18. This arrangement is called “Barkworth Olives Project No. 6”.

| | |
|--|---|
| Location | see paragraph 22 below |
| Type of business each participant is carrying on | Commercial olive growing and olive oil production |
| Number of hectares under cultivation | 78 hectares |
| Size of each farm | 0.25 hectare |
| Minimum subscription | 100 olive groves |
| Number of trees per hectare | 320 |
| The term of the investment | 20 years |

| | |
|--|---|
| Initial cost for the period to 30 June 2002 | \$6,732 plus \$750 for shares in the Land Owner |
| Initial cost per hectare | \$26,928 |
| Ongoing costs for management, harvesting, processing, factory access, and farm administration fees | \$2,172.50 for year ending 30 June 2003, \$687.50 for year ending 30 June 2004, and a percentage of sales in each year thereafter until the project ends. |
| Cash Outlay Required for first 3 years | \$9,592 plus \$750 for shares in the Land Owner |

19. Under the arrangement an applicant must purchase “F” class shares in Barkworth Olive Groves Limited (“BOGL”). The minimum parcel is 750 “F” Class shares and each parcel of 750 shares gives each applicant the right to occupy and farm an identifiable portion of the approximately 0.25 hectare of land owned by BOGL suitable for growing 80 olive trees called a farm and the right to appoint BOML to manage the farming Interest under the terms of the Management Agreement. Investor will become Members of BOGL upon having their application for “F” Class shares accepted by BOGL and Growers upon having their application for an Interest in the Project accepted by BOML. Growers who appoint BOML to manage their farming interest are called a Grower/Processors. Grower/Processors who appoint BOML may still elect to undertake the following

- weeding;
- harvesting his/her own trees;
- requesting the responsible entity to harvest his/her own trees separately; and
- market his/her own olives.

In the event that a Grower/Processor makes such an election, the management fees payable to BOML may be reduced. As tax implications may be different for Grower/Processors who elect to harvest and/or market their own olives and olive products this Ruling does not apply to Grower/Processors who make such elections.

20. Grower/Processors who do not elect to harvest and/or market their own produce accept a collateral obligation to permit the produce of the farm to be pooled with the produce of all other farms. The proceeds derived from the sale of the pooled produce will be allocated amongst all Project 6 Grower/Processors whose Interests contributed to the pool of produce available for marketing and sale and each

Grower/Processors entitlement to the proceeds is in direct proportion to the Grower/Processor's Interest

Minimum Subscription

21. The minimum subscription for this Project is 100 Interests. This Ruling does not apply if the minimum subscription is not achieved by 31 May 2002.

Project Land

22. The property to be used in this Project comprises 1680 hectares of land owned by BOGL located in the Carathool Shire in the Griffith region of New South Wales. The Properties are known as Bassano (796 hectares) and Kingston Park (884 hectares). The property descriptions are as follows:

| AREA | DESCRIPTION | PARISH | COUNTY | TITLE REFERENCE |
|----------------------------|--------------------------------------|--------------|-----------|-------------------------------|
| BASSANO 796 ha | Lot 6 & 11 DP755136 | Beaconsfield | Nicholson | Auto Consol 14258-96 |
| | Lot 58 DP755136 | Beaconsfield | Nicholson | Title Identifier 58/755136 |
| | Lot 2 DP802334 | Beaconsfield | Nicholson | Title Identifier 2/802334 |
| KINGSTON PARK 884 ha | Lot 9 DP756043 | Carrego | Sturt | Title Identifier 9/756043 |
| | Portion 11 and Part of Portion 10 | Carrego | Sturt | Volume 14258 Folio 97 |
| | Lots 1 and 2 DP133890 | Carrego | Sturt | Auto Consol 10866-154 |

Lease Agreement

23. The properties comprising the project land are covered by leases between the land owner, BOGL and Australian Rural Group Limited (ARGL) as lessee. ARGL has subsequently entered into sub-leases with BOGL in order to secure the project property for Grower/Processors. The terms of the leases and sub-leases run until 30 June 2022.

Licence to Use Farm

24. By becoming a shareholder in BOGL, the Grower/Processor obtains a licence to farm an identified area of cleared land of approximately 0.25 hectares. These rights contained in Clause 3 of Schedule 10-F of the Constitution of BOGL are reproduced on the reverse side of the Share Certificate issued to shareholders by BOGL.

Constitution of BOGL - Rights of shareholders

25. All Grower/Processors are shareholders in BOGL. The rights of shareholders are set out in BOGL's Constitution. In particular:

- A Grower/Processor shall have a licence to occupy a section of the land owned by BOGL subject to farm administration costs being paid to BOGL;
- A Grower/Processor shall be entitled to use the agricultural infrastructure necessary for the Grower/Processor's business, including but not limited to access to irrigation mains, storage areas and access roads;
- A Grower/Processor shall be entitled to use the processing infrastructure necessary for the Grower/Processor's business, including but not limited to loading and unloading equipment, storage areas, grading and sampling equipment;
- The "F" class shares will convert to ordinary shares on 1 July 2022. At that time, the benefit of and the responsibility for the olive trees situated on a Grower/Processor's farm will pass to BOGL. The Grower/Processor will no longer have a right to farm the land and his/her interest will be the rights attaching to that Grower/Processor's ordinary shares in BOGL. The taxation consequences, flowing from the events occurring at that time, do not form part of this Ruling; and
- A Grower/Processor may conduct that Grower/Processor's business personally, appoint an agent or contractor to manage the business, or appoint BOML to manage the business in accordance with the Management Agreement.

Constitution of Barkworth Olives Project No 6

26. The Constitution of Barkworth Olives Project No 6 outlines the relationship between the Grower/Processors and the Responsible Entity. It contains extensive provisions about the legal obligations of the parties and the rights and powers of each. The Constitution provided detailed procedures on how a complaint may be made by a Grower/Processor and on how it is to be dealt with by the Responsible Entity. In addition, the Constitution outlines the basis upon which the Responsible Entity and Grower/Processors may bring the Project to an

end. There are no withdrawal rights under the Project Constitution available to Grower/Processor's, however Grower/Processor's may sell their interest in the Project under certain conditions.

Compliance Plan

27. The Responsible Entity has prepared a Compliance Plan in accordance with the Corporations Act. The Compliance Plan is dated 20 December 2001 and has been lodged with ASIC. The purpose of the Compliance Plan is to ensure that the Responsible Entity meets its obligations and that the rights of Grower/Processors are protected. The Compliance Plan sets out, among other things, complaints handling procedures, and the appointment, monitoring and replacement of the Custodian.

Custodian Agreement

28. The Custodian Agreement is dated 15 February 2002 and sets out the terms upon which the relationship between the Manager and the Custodian is to be governed. ARG Custodians Limited (ARGCL) has agreed to act as Custodian for the Project. ARGCL, as Custodian, agrees to hold the project property as agent for BOML and to observe all of the duties and obligations of an agent acting in the best interest of its principal and in a professional and business like manner. The Custodian will hold all application monies pending acceptance of an applicant into the project. The Custodian will also hold cash generated from the sale of produce prior to distribution to Grower/Processors.

Management Agreement with BOML

29. Under the Management Agreement the Responsible Entity agrees to carry out the following initial duties (cl 4.1) in a manner according to sound agricultural, environmental and proper workplace practices until 30 June 2002:

- (a) Supply at least 80 olive trees to the Grower/Processors selected from high yield stock in healthy condition;
- (b) Carry out irrigation works to benefit the Grower/Processor's Farm;
- (c) Carry out drainage work and work to help prevent soil erosion on the Grower/Processor's Farm;
- (d) Prepare the Grower/Processor's Farm so that it will be suitable for the planting and growing of at least 80 olive trees;

- (e) Plant the olive trees supplied to the Grower/Processor on the Grower/Processor's Farm;
- (f) Tend the Trees and Grower/Processor's Farm in a proper and skilful manner;
- (g) Embark on such operations as may be required to prevent or combat land degradation on the Grower/Processor's Farm or land surrounding the Grower/Processor's Farm;
- (h) Carry out repair and maintenance work (if required) to the irrigation and drainage work for the benefit of the Grower/Processor's Farm.

30. Continuing duties to be performed by the Responsible Entity as per clauses 4.2 (in relation to the y/e 30 June 2003) and 4.3 (in relation to y/e 2004) of the Management Agreement include (but are not limited to):

- (a) Tend the trees and Grower/Processor's Farm in a proper and skilful manner;
- (b) Prune and shade trees;
- (c) Maintain the Grower/Processor's Farm by regular weeding and pest control;
- (d) Repair damage to roads, tracks, and fencing on the Project Property;
- (e) Harvest, market and sell the olives attributable to Grower/Processor's Farm using reasonable endeavours to obtain the maximum price available;
- (f) Carry out repairs and maintenance work to the irrigation and drainage work for the benefit of the Grower/Processor's Farm;
- (g) Embark on such operations as may be required to prevent or combat land degradation on the Grower/Processor's Farm.

31. BOML must account to the Grower/Processor for the proceeds of the sale of olive oil attributable to their farms. The Grower/Processor also authorises the Custodian to pay money held by the Custodian from time to time to discharge the Grower/Processor's responsibility to pay money under the Management Agreement. However nothing obliges the Custodian to pay any more than the amount of Grower/Processor's money that the Custodian holds.

PR 2002/61**Expenditure due to BOGL**

32. The amounts to be paid by a Grower/Processor to BOGL (the Land Owner) are as follows:

Year 0 (period to 30 June 2002)

| | |
|-----------------------------------|----------|
| Farm Administration Fee | \$137.50 |
| 750 x \$1 Shares paid to 20 cents | \$150.00 |

Year 1 (period from 1 July 2002 to 30 June 2003)

| | |
|--|----------|
| Farm Administration Fee | \$137.50 |
| 750 x \$1.00 Shares - payable to 80 cents | \$600.00 |

Year 2 (year ended 30 June 2004)

| | |
|-------------------------|----------|
| Farm Administration Fee | \$137.50 |
|-------------------------|----------|

Years 3 to 20 (years ended 30 June 2005 to 2022)

| | |
|-------------------------|--|
| Farm Administration Fee | The greater of 5% of gross income derived from the sale of olive oil attributable to the Grower/Processor's Farm based on 30 June 2004 CPI as the base, or \$137.50 indexed to the preceding year's CPI. |
| Factory Access Cost | The greater of \$247.50 per Grower/Processor's Farm indexed to the preceding year's CPI, or 7.5% of gross income derived from the sale of olive oil processed during the Grower/Processor's allocation. |

Expenditure due to BOML

33. The amounts to be paid under the Management Agreement by a Grower/Processor who appoints BOML as manager, are as follows:

Year 0 (period to 30 June 2002)

| | |
|------------------------------|------------|
| Management Fee | \$3,785.10 |
| Irrigation | \$1,815.00 |
| Payment for olive trees | \$418.00 |
| Establishment of olive trees | \$576.40 |

Year 1 (Period from 1 July 2002 to 30 June 2003)

| | |
|-----------------|------------|
| Management fees | \$2,035.00 |
|-----------------|------------|

Year 2 (Year ended 30 June 2004)

| | |
|-----------------|----------|
| Management fees | \$550.00 |
|-----------------|----------|

34. From Year 3, no fixed fees are payable and the Management Fees payable by the Grower/Processor to BOML are calculated as a percentage of income from the sale of olive oil as indicated below for the respective years, providing the average income from the sale of olive oil for each two year period commencing on 1 July 2004 does not exceed the best estimate forecast income set out in Section 13 of the Prospectus. Should the average income from the sale of olive oil for each two year period commencing on 1 July 2004 exceeds the best estimate forecast income, then BOML's Management Fees payable in respect of the excess income will be limited to 20% of the excess income, in addition to the percentage as indicated below for the respective years:

PR 2002/61

| Year ending | Manager's Management Fee |
|--|--------------------------|
| 30 June 2005 | 87.5% |
| 30 June 2006 | 55.0% |
| 30 June 2007 | 50.0% |
| 30 June 2008 | 45.0% |
| 30 June 2009 and each subsequent year until year ending 30 June 2022 | 40.0% |

In this table "Manager's Management Fee" means the percentage of gross income earned from the sale of olive oil attributable to the Grower/Processor's farm for that particular year. The Management Agreement (cl 7.1(d)) provides that Grower/Processor instructs the Responsible Entity to make these payments directly from the gross income earned from the sale of olive oil attributable to the Grower/Processor's farm for the relevant year before making any distribution of income to the Grower/Processor. For the year ended 30 June 2005 and subsequent years till termination of the Project, if there is no proceeds from the Grower/Processor's farm, then no Management Fee is payable to BOML.

35. Although not specifically noted in the Management Agreement, clause 32.2 of the Constitution provides that if there is insufficient money to make all of the required payments, then the payments are made first in satisfaction of all fees under the management Agreement, then all fees due under the constitution of the land owner in respect of the right to use a farm and last for all other amounts due. If there are any accruals of amounts to be paid, then the accrual must be paid in the same order of preference.

Timing of when expenses are due and payable

36. Participants wishing to subscribe to this Project must complete the Application Form and the Option Form contained within the Prospectus. When completing the Option Form participants have an option to pay the following amounts (excluding the payment for shares in BOGL) on the following due dates:

- (a) \$9,592.00 upon application in full settlement of all fees and charges to 30 June 2004; or
- (b) \$6,732.00 upon application, \$2,172.50 on or before 1 July 2002, and \$687.50 on or before 1 July 2003.

37. Payments made under the different options may have different taxation consequences. The extent of tax deductions available to

prospective participants in this Project are discussed in paragraphs 59 to 63 and 69 to 73 below.

Factory Access Agreement

38. BOGL has entered into a Factory Access Agreement dated 18 February 2002 with Inglewood Olive Processors Limited (IOPL). Under the agreement, IOPL authorises BOGL to licence portions of processing time in accordance with the constitution of BOGL, as a means of granting processing allocations to Grower/Processors.

Olive Oil Purchase Agreement

39. Under the terms of the Olive Oil Purchase Agreement between Inglewood Olive Processors Limited (IOPL) and BOML (acting on behalf of Grower/Processors), IOPL has agreed to purchase all of the processed olive oil attributable to the Project between the year ending 30 June 2005 and the termination of the Project. Processed olive oil attributable to the Project will be treated as subordinate only to the processed olive oil supplied by existing Barkworth Olive Projects. The purchase price for processed olive oil is dependent on whether the oil is surplus to IOPL's needs for use in the VIVA brand of olive oil.

Trading Stock

40. Under the terms of the Olive Oil Purchase Agreement between IOPL and BOML on behalf of Grower/Processors, it is anticipated that the sale of olive oil to IOPL would take place immediately after the extraction of oil from the Grower/Processors' olives delivered to the processing plant. However if there are olives on hand after harvest and prior to processing, then a Grower/Processor may have trading stock on hand. The treatment of such trading stock will depend on whether the Grower/Processor is an 'STS taxpayer' or not.

Water Rights and Irrigation Expense

41. Existing water rights of BOGL in respect of the Project property total 4,395 megalitres (ML) per annum. Water rights are a freely tradeable commodity in the Griffith area and water will be purchased as required to meet future needs.

42. Included in the management fee payable to BOML is an amount attributable to the installation of an irrigation system servicing the Grower/Processor's olive trees necessary for good horticultural practises and a requirement for growing olives.

Carbon Credit

43. Any income derived from the sale of carbon sequestration rights in respect of the olive trees subject to the Project will be income of BOGL.

Income

44. Under the arrangement, income will be received from a business and from dividends paid on the BOGL “F” Class Shares. Income from the cultivation of olives and the sale of olive oil would constitute assessable income. Dividends from BOGL “F” Class Shares will also constitute assessable income.

Finance

45. A Grower/Processor may finance his or her participation from:

- the Grower/Processor’s own cash reserves/resources;
- funds borrowed by the Grower/Processor from such external sources as the Grower/Processor arranges; or
- funds borrowed (by approved applicants) from Barkworth Finance Pty Ltd (“BFPL”). This finance will be offered with a maximum term of 4 years and an interest rate of 7.5% per annum will apply. A minimum cash payment or deposit of \$1,000 per interest will be required. The loan and interest will be repayable by monthly instalments over the term of the loan. The loan will be on a “full recourse” basis. Interest will be payable monthly in arrears and will not be prepaid.

46. This Ruling does not apply if a Grower/Processor enters into a finance agreement that includes 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 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;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- entities associated with the Project, other than BFPL, are involved in the provision of finance to Grower/Processors for the Project.

Ruling

Application of this Ruling

47. This Ruling applies only to Growers/Processors:

- who are accepted to participate in the Project after the date on which this Ruling is issued and on or before 31 May 2002;
- who have executed a Management Agreement within this period;
- do not elect to carry out his/her maintenance work e.g., weeding;
- do not direct the Manager to harvest his/her own olives separate from the harvest of other Growers;
- do not elect to harvest his/her own trees; and/or
- do not elect to market his/her own olives; and

whose participation in the Project constitutes the carrying on of a business of primary production.

Minimum Subscription

48. A Grower/Processor is not eligible to claim any tax deductions until the Grower/Processor's application to enter the Project is accepted and the Project has commenced. Under the terms of the prospectus, the minimum subscription is 100 Interests. This Ruling only applies if the minimum subscription is reached by 31 May 2002.

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

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

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

Qualification

50. This Product Ruling assumes that a Grower/Processor who is an 'STS taxpayer' is so for the income year in which his/her participation in the Project commences. A Grower/Processor may become an 'STS taxpayer' at a later point in time. Also, a Grower/Processor 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 Grower/Processors that cannot be accommodated in this Ruling. Such Grower/Processors can ask for a private ruling on how the taxation legislation applies to them.

Prepaid Management Fees and Farm Administration Fees

51. A Grower/Processor who is accepted into the Project and who exercises the option to prepay Management Fees and Farm Administration Fees until 2004 will be subject to the prepayment rules in sections 82KZME and 82KZMF.

52. Also, the prepayment rules in sections 82KZME and 82KZMF will apply to a Grower/Processor who does not exercise the option referred to above, but who incurs annual Management Fees and Farm Administration Fees before 1 July in any income year.

53. In this context, a prepayment refers to advance expenditure incurred by a Grower/Processor in return for the doing of a thing that will not be wholly done in the year in which the expenditure is incurred. Where the above fees are prepaid, the total amount incurred will not be deductible in full during the income year in which the relevant fee is incurred. Instead, such prepaid expenditure, that would otherwise be a general deduction under section 8-1 of the ITAA 1997 in the expenditure year, must be apportioned over the period the prepayment covers unless it is 'excluded expenditure'. For the purposes of this Project, an amount of less than \$1,000 is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the

prepayment rules and is deductible in full in the year in which it is incurred (see Example 3 at paragraph 142).

54. Subsection 82KZMF(1) provides the formula for determining how much of the prepaid expenditure a Grower/Processor 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.

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

55. In this Project, where the prepayment rules apply, the tax deductions allowable for prepaid Management Fees and Farm Administration Fees must be calculated by applying the above formula to the amount incurred each year by the Grower/Processor.

Tax outcomes for Grower/Processors who are not 'STS taxpayers'

Assessable Income

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

57. The Grower/Processor recognises ordinary income from carrying on the business of growing olives and producing olive oil at the time that income is derived.

58. Any dividends declared by BOGL will be assessable income of a Grower/Processor under subsection 44(1).

Deductions for Management Fees, Farm Administration Fees and Interest

Section 8-1

59. A Grower/Processor who is accepted to participate in the Project on or before 31 May 2002 and is not an 'STS taxpayer' may claim, on a per Farm basis, tax deductions for the following properly incurred revenue expenses:

PR 2002/61**(a) Where a Grower/Processor exercises the option to prepay the Management Fees and the Farm Administration Fees until 30 June 2004**

| Fee Type | ITAA 1997 Section | Year ended 30 June 2002 | Year ended 30 June 2003 | Year ended 30 June 2004 |
|---|--------------------------|--|--|--|
| Management Fees payable to BOML | 8-1 | Must be calculated See Notes (i) & (ii) below | Must be calculated See Notes (i) & (ii) below | Must be calculated See Notes (i) & (ii) below |
| Farm Administration fee payable to BOGL | 8-1 | \$412.50 See Notes (i) & (iii) below | | |
| Interest from loans with Barkworth Finance P/L | 8-1 | As incurred See Note (iv) below | As incurred See Note (iv) below | As incurred See Note (iv) below |

Notes:

- (i) If the Grower/Processor 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 140.
- (ii) During the income year ended 30 June 2002 a Grower/Processor with one Farm who exercises the option to prepay fees until 30 June 2004 will incur Management Fees of \$6,370.10 (comprising Management Fees of \$3,785.10 for Y0, \$2,035.00 for Y1 and \$550.00 for Y2 as per paragraph 33 above). This amount is not deductible in full in that income year. The deduction allowable is calculated for the each of the income years ended 30 June 2002, 30 June 2003, and 30 June 2004 using the formula in subsection 82KZMF(1). (See paragraph 54 above).

For the purposes of the formula, the 'Total number of days of eligible service period' will commence on the day on which the application is accepted and end on 30 June 2004. In the income year ended 30 June 2002, the 'Number of days of eligible service period in the year of income' will commence on the day on which the application is accepted and end on 30 June 2002. For the income years ended 30 June 2003 and 30 June

2004, the 'Number of days of eligible service period in the year of income' will be 365 and 366 respectively.

- (iii) During the income year ended 30 June 2002 a Grower/Processor with one Farm who exercises the option to prepay fees until 30 June 2004 will also incur Farm Administration Fees of \$412.50. This amount is 'excluded expenditure' and is deductible in full in the income year ended 30 June 2002. However, where a Grower/Processor acquires more than one Farm and the amount of the prepaid Farm Administration Fees is \$1,000 or more, the 'excluded expenditure' exception will not apply and deductions for Farm Administration Fees must also be calculated using the formula in subsection 82KZMF(1) (see paragraph 54 above).
- (iv) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Barkworth Finance Pty Ltd, is outside the scope of this Ruling. However, all Grower/Processors, including those who finance their participation in the Project other than with Barkworth Finance Pty Ltd should read the discussion of the prepayment rules in paragraphs 118 and 119 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.

(b) Where a Grower/Processor incurs the Management Fees and Farm Administration Fees in the year in which the services are to be wholly done, ie where these fees are NOT prepaid

60. A Grower/Processor who is not an 'STS taxpayer' may claim tax deductions for the following revenue expenses assuming the Management Fees and Farm Administration Fees for years ending 30 June 2003 and 30 June 2004 are not incurred on or before 30 June 2002 or 30 June 2003 respectively or where the fees are not incurred in full on application.

61. More specifically, the following table applies only to a Grower/Processor who:

- (a) is accepted into the project between the date of issue of this Ruling and 31 May 2002;
- (b) enters into a Management Agreement with BOML; and
- (c) makes no elections whatsoever as permitted within the Management Agreement.

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| Fee Type | ITAA 1997 Section | Year ended 30 June 2002 | Year ended 30 June 2003 | Year ended 30 June 2004 |
|---|----------------------------------|--|--|--|
| Management Fees payable to BOML | 8-1 | \$3,785.10 See Notes (v) & (vi) below | \$2,035.00 See Notes (v) & (vi) below | \$550.00 See Notes (v) & (vi) below |
| Farm Administration fee payable to BOGL | 8-1 | \$137.50 See Notes (v) & (vi) below | \$137.50 See Notes (v) & (vi) below | \$137.50 See Notes (v) & (vi) below |
| Interest from loans with Barkworth Finance P/L | 8-1 | See Note (vii) below | See Note (vii) below | See Note (vii) below |

Notes:

- (v) If the Grower/Processor 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 140.
- (vi) Where the Management Fees and the Farm Administration Fees are incurred in the income years shown above, those fees will be deductible in full in those income years.
- (vii) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Barkworth Finance Pty Ltd, is outside the scope of this Ruling. However, all Grower/Processors, including those who finance their participation in the Project other than with Barkworth Finance Pty Ltd should read the discussion of the prepayment rules in paragraphs 118 and 119 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.

(c) Where a Grower/Processor incurs the second and third year Management Fees and Farm Administration Fees on or before the 30 June of the relevant year, ie, where those fees ARE prepaid.

62. A Grower/Processor who is not an 'STS taxpayer' may claim tax deductions for the following revenue expenses assuming the

Management Fees and Farm Administration Fees for years ending 30 June 2003 and 30 June 2004 are paid on or before 30 June 2002 or 30 June 2003 respectively but are not paid in full on application. In these circumstances the Grower/Processor is subject to the prepayment rules as outlined in the Explanations paragraphs 101 to 112 below.

63. More specifically, the following table applies only to a Grower/Processor who:

- (a) is accepted into the project between the date of issue of this Ruling and 31 May 2002;
- (b) enters into a Management Agreement with BOML; and
- (c) makes no elections whatsoever as permitted within the Management Agreement

| Fee Type | ITAA 1997 Section | Year ended 30 June 2002 | Year ended 30 June 2003 | Year ended 30 June 2004 |
|---|-------------------------|---|---|---|
| Management Fees payable to BOML | 8-1 | \$3,785.10 See Notes (viii) & (ix) below | \$2,035.00 See Notes (viii) & (ix) below | \$550.00 See Notes (viii) & (ix) below |
| Farm Administration fee payable to BOGL | 8-1 | \$137.50 See Notes (viii) & (ix) below | \$137.50 See Notes (viii) & (ix) below | \$137.50 See Notes (viii) & (ix) below |
| Interest from loans with Barkworth Finance P/L | 8-1 | As incurred See Note (x) below | As incurred See Note (x) below | As incurred See Note (x) below |

Notes:

- (viii) If the Grower/Processor 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 140.
- (ix) Where the Management Fees and the Farm Administration Fees for the income year ended 30 June 2003 are incurred on or before 30 June 2002 or where those fees for the income year ended 30 June 2004 are incurred on or before 30 June 2003, the prepayment rules in section 82KZME and 82KZMF will apply to determine the timing of the deductions for those fees. Apart from amounts that are 'excluded expenditure',

the application of the prepayment provisions will mean that the relevant fees are deductible in the year shown in the Table above even where the fees are incurred in the previous income year (i.e., on or before 30 June of the relevant year). (See Example 3 at paragraph 142.

- (x) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Barkworth Finance Pty Ltd, is outside the scope of this Ruling. However, all Grower/Processors, including those who finance their participation in the Project other than with Barkworth Finance Pty Ltd should read the discussion of the prepayment rules in paragraphs 118 and 119 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.

Deductions for capital expenditure

Division 40

64. A Grower/Processor who is not an 'STS taxpayer' will also be entitled to tax deductions relating to 'water facilities' and the purchase of olive trees. All deductions shown in the following Table are determined under Division 40 and are not subject to the prepayment rules.

| Fee type | ITAA 1997 section | Year ended 30 June 2002 | Year ended 30 June 2003 | Year ended 30 June 2004 |
|--|----------------------------------|--|--|--|
| Water facility (Irrigation \$1,815.00) | 40-515 | \$605.00 See Notes (xi) & (xii) below | \$605.00 See Notes (xi) & (xii) below | \$605.00 See Notes (xi) & (xii) below |
| Cost of horticultural plants - olive trees (\$418.00) and establishment costs (\$576.40) | 40-515 | Nil - See Notes (xi) & (xiii) below | Nil - See Notes (xi) & (xiii) below | Nil - See Notes (xi) & (xiii) below |

Notes:

- (xi) If the Grower/Processor 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). See example 1 at paragraph 140.

- (xii) 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/Processor 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).
- (xiii) As olive trees are affixed to land which the Grower/Processor does not own, they are not owned by the Grower/Processor, the conditions in subsection 40-525(3) cannot be met, and the olive trees are not eligible for the write-off over 4 years under section 40-550. However, olive trees are a 'horticultural plant' as defined in subsection 40-525(2). As Grower/Processors hold the land under a licence, one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. The deduction for the olive trees is determined using the formula in section 40-545 and is based on the capital expenditure incurred by the Grower/Processor that is attributable to their establishment. If the olive trees 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 olive trees enter their first commercial season (section 40-530, item 2). The Responsible Entity will inform Grower/Processors of when the olive trees enter their first commercial season.

Treatment of trading stock

Section 70-35

65. A Grower/Processor who is not an 'STS taxpayer' may, in some years, hold processed olive oil that will constitute trading stock on hand. Where in an income year, the value of trading stock on hand at the end of an income year exceeds the value of trading stock on hand at the start of an income year, a Grower/Processor must include the amount of that excess in assessable income.

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

Tax outcomes for Grower/Processors who are ‘STS taxpayers’

Assessable Income

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

68. The Grower/Processor recognises ordinary income from carrying on the business of growing olives and producing olive oil at the time the income is received (paragraph 328-105(1)(a)). Where any consideration is paid or given otherwise than in cash, the money value of that consideration shall be assessable income. Any dividends declared by BOGL will be assessable income of a Grower/Processor.

Deductions for Management Fees, Farm Administration Fees and Interest

Section 8-1 and section 328-105

69. A Grower/Processor who is accepted to participate in the Project on or before 31 May 2002 may claim, on a per Farm basis, tax deductions for the following properly incurred and paid revenue expenses. If an amount of expenditure is not fully paid in the year shown in any of the tables below, it is only deductible to the extent that it is paid:

(a) Where a Grower/Processor exercises the option to prepay the Management Fees and the Farm Administration Fees until 30 June 2004

| Fee Type | ITAA 1997 Section | Year ended 30 June 2002 | Year ended 30 June 2003 | Year ended 30 June 2004 |
|---|----------------------------------|---|---|---|
| Management Fees payable to BOML | 8-1 | Must be calculated See Notes (xiv) & (xv) below | Must be calculated See Notes (xiv) & (xv) below | Must be calculated See Notes (xiv) & (xv) below |
| Farm Administration fee payable to BOGL | 8-1 | \$412.50 See Notes (xiv) & (xvi) below | | |
| Interest from loans with Barkworth Finance P/L | 8-1 | As incurred See Note (xvii) below | As incurred See Note (xvii) below | As incurred See Note (xvii) below |

Notes:

- (xiv) If the Grower/Processor 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 140.
- (xv) During the income year ended 30 June 2002 a Grower with one Farm who exercises the option to prepay fees until 30 June 2004 will incur Management Fees of \$6,370.10 (comprising Management Fees of \$3,785.10 for Y0, \$2,035.00 for Y1 and \$550.00 for Y2 as per paragraph 33 above). This amount is not deductible in full in that income year. The deduction allowable is calculated for the each of the income years ended 30 June 2002, 30 June 2003, and 30 June 2004 using the formula in subsection 82KZMF(1). (See paragraph 54 above).

For the purposes of the formula, the 'Total number of days of eligible service period' will commence on the day on which the application is accepted and end on 30 June 2004. In the income year ended 30 June 2002, the 'Number of days of eligible service period in the year of income' will commence on the day on which the application is accepted and end on 30 June 2002. For the income years ended 30 June 2003 and 30 June

2004, the 'Number of days of eligible service period in the year of income' will be 365 and 366 respectively.

- (xvi) During the income year ended 30 June 2002 a Grower/Processor with one Farm who exercises the option to prepay fees until 30 June 2004 will also incur Farm Administration Fees of \$412.50. This amount is 'excluded expenditure' and is deductible in full in the income year ended 30 June 2002. However, where a Grower/Processor acquires more than one Farm and the amount of the prepaid Farm Administration Fees is \$1,000 or more, the 'excluded expenditure' exception will not apply and deductions for Farm Administration Fees must also be calculated using the formula in subsection 82KZMF(1) (see paragraph 54 above).
- (xvii) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Barkworth Finance Pty Ltd, is outside the scope of this Ruling. However, all Grower/Processors, including those who finance their participation in the Project other than with Barkworth Finance Pty Ltd should read the discussion of the prepayment rules in paragraphs 118 and 119 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.

(b) Where a Grower/Processor incurs and pays the Management Fees and Farm Administration Fees in the year in which the services are to be wholly done, ie where these fees are NOT prepaid

70. A Grower/Processor who is an 'STS taxpayer' may claim tax deductions for the following revenue expenses assuming the Management Fees and Farm Administration Fees for years ending 2003 and 30 June 2004 are not incurred and paid on or before 30 June 2002 or 30 June 2003 respectively or are not incurred and paid in full on application.

71. More specifically, the following table applies only to a Grower/Processor who:

- (a) is accepted into the project between the date of issue of this Ruling and 31 May 2002, and
- (b) enters into a Management Agreement with BOML, and

- (c) makes no elections whatsoever as permitted within the Management Agreement

| Fee Type | ITAA 1997 Section | Year ended 30 June 2002 | Year ended 30 June 2003 | Year ended 30 June 2004 |
|---|----------------------------------|---|---|---|
| Management Fees payable to BOML | 8-1 | \$3,785.10 See Notes (xviii) & (xix) below | \$2,035.00 See Notes (xviii) & (xix) below | \$550.00 See Notes (xviii) & (xix) below |
| Farm Administration fee payable to BOGL | 8-1 | \$137.50 See Notes (xviii) & (xix) below | \$137.50 See Notes (xviii) & (xix) below | \$137.50 See Notes (xviii) & (xix) below |
| Interest from loans with Barkworth Finance P/L | 8-1 | See Note (xxi) below | See Note (xx) below | See Note (xx) below |

Notes:

- (xviii) If the Grower/Processor 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 140.
- (xix) Where the Management Fees and the Farm Administration Fees are incurred and paid in the income years shown above, those fees will be deductible in full in those income years.
- (xx) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Barkworth Finance Pty Ltd, is outside the scope of this Ruling. However, all Grower/Processors, including those who finance their participation in the Project other than with Barkworth Finance Pty Ltd should read the discussion of the prepayment rules in paragraphs 118 and 119 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.

(c) Where a Grower/Processor incurs and pays the second and third year Management Fees and Farm Administration Fees on or

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before the 30 June of the relevant year, ie, where those fees ARE prepaid.

72. A Grower/Processor who is an 'STS taxpayer' may claim tax deductions for the following revenue expenses assuming the Management Fees and Farm Administration Fees for the second and third years are incurred and paid on or before 30 June 2002 or 30 June 2003 respectively but are not incurred and paid in full on application. In these circumstances the Grower/Processor is subject to the prepayment rules as outlined in the Explanations paragraphs 101 to 112 below.

73. More specifically, the following table applies only to a Grower/Processor who:

- (a) is accepted into the project between the date of issue of this Ruling and 31 May 2002, and
- (b) enters into a Management Agreement with BOML, and
- (c) makes no elections whatsoever as permitted within the Management Agreement

| Fee Type | ITAA 1997 Section | Year ended 30 June 2002 | Year ended 30 June 2003 | Year ended 30 June 2004 |
|---|----------------------------------|--|--|--|
| Management Fees payable to BOML | 8-1 | \$3,785.10 See Notes (xxi) & (xxii) below | \$2,035.00 See Notes (xxi) & (xxii) below | \$550.00 See Notes (xxi) & (xxii) below |
| Farm Administration fee payable to BOGL | 8-1 | \$137.50 See Notes (xxi) & (xxii) below | \$137.50 See Notes (xxi) & (xxii) below | \$137.50 See Notes (xxi) & (xxii) below |
| Interest from loans with Barkworth Finance P/L | 8-1 | As incurred See Note (xxiii) below | As incurred See Note (xxiii) below | As incurred See Note (xxiii) below |

Notes:

- (xxi) If the Grower/Processor 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 140.
- (xxii) If the Management Fees and the Farm Administration Fees for the income year ended 30 June 2003 are incurred on or before 30 June 2002 or if the fees for the income year ended 30 June 2004 are incurred on or before 30 June 2003, the prepayment rules in section

82KZME and 82KZMF will apply to determine the timing of the deductions for those fees. Apart from amounts that are 'excluded expenditure', the application of the prepayment provisions will mean that the relevant fees are deductible in the year shown in the Table above even where the fees are incurred and paid in the previous income year (i.e., before 1 July of the relevant year). (See Example 3 at paragraph 142.)

- (xxiii) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Barkworth Finance Pty Ltd, is outside the scope of this Ruling. However, all Grower/Processors, including those who finance their participation in the Project other than with Barkworth Finance Pty Ltd should read the discussion of the prepayment rules in paragraphs 118 and 119 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.

Deductions for capital expenditure

Subdivision 328-D and Subdivision 40-F

74. A Grower/Processor who is an 'STS taxpayer' will also be entitled to tax deductions relating to 'water facilities' and the establishment of olive trees. If the 'water facility' expenditure is on a 'depreciating asset' used to carry on the business, an 'STS taxpayer' may choose to claim deductions under Division 328. Deductions for the olive trees must be determined under Subdivision 40-F.

75. The deductions shown in the following Table assume, for representative purposes only, that a Grower/Processor has either chosen to or can only claim deductions for expenditure on 'water facilities' under Subdivision 40-F 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 (xiii) and (xiv) below.

76. 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/Processor 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.

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| Fee type | ITAA 1997 section | Year ended 30 June 2002 | Year ended 30 June 2003 | Year ended 30 June 2004 |
|--|----------------------------------|---|---|---|
| Water facility (Irrigation - \$1,815.00) | 40-515 | Must be calculated See Notes (xxiv) & (xxv) below | Must be calculated See Notes (xxiv) & (xxv) below | Must be calculated See Notes (xxiv) & (xxv) below |
| Cost of horticultural plants - olive trees (\$418.00) and establishment costs (\$576.40) | 40-515 | Nil See Notes (xxiv) & (xxvi) below | Nil See Notes (xxiv) & (xxvi) below | Nil See Notes (xxiv) & (xxvi) below |

Notes:

- (xxiv) If the Grower/Processor 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 140.
- (xxv) 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/Processor may choose to claim a deduction under either Division 328 or Subdivision 40-F. For the purposes of Division 328, each Grower/Processor'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/Processor 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 2005 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, Grower/Processors 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/Processor 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).

- (xxvi) As olive trees are affixed to land which the Grower/Processor does not own, they are not owned by the Grower/Processor, the conditions in subsection 40-525(3) cannot be met, and the olive trees are not eligible for the write-off over 4 years under section 40-550. However, olive trees are a 'horticultural plant' as defined in subsection 40-525(2). As Grower/Processors hold the land under a licence, one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. The deduction for the olive trees is determined using the formula in section 40-545 and is based on the capital expenditure incurred by the Grower/Processor that is attributable to their establishment. If the olive trees have an 'effective life' of greater than 13 but fewer than 30 years for the purposes of section 40-545, this results in a write-off at a rate of 13%. The deduction is allowable when the olive trees enter their first commercial season (section 40-530(2)). The Responsible Entity will inform Grower/Processors of when the olive trees enter their first commercial season.

Treatment of trading stock

Section 328-285

77. A Grower/Processor who is an 'STS taxpayer' may, in some years, hold processed olive oil that will constitute trading stock on hand. Where, for such a Grower/Processor, 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)).

78. 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)).

Tax outcomes that apply to all Grower/Processors

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

Section 35-55 – Commissioner’s discretion

79. For a Grower/Processor who is an individual and who enters the Project during the year ended 30 June 2002 the rule in section 35-10 may apply to the business activity comprised by their involvement in this Project. Under paragraph 35-55(1)(b) the Commissioner will decide for the income years ending 30 June 2002 to 30 June 2004 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.

80. 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 126 in the Explanations part of this Ruling, below);
- a Grower/Processor’s business activity satisfies one of the tests in sections 35-30, 35-35, 35-40 or 35-45; or
- the Grower/Processor’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)).

81. Where, the ‘exception’ in subsection 35-10(4) applies, the Grower/Processor’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/Processor will not be required to defer any excess of deductions attributable to his/her business activity in excess of any assessable income from that activity, i.e., any ‘loss’ from that activity, to a later year. Instead, this ‘loss’ can be offset against other assessable income for the year in which it arises.

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

Sections 82KL, and Part IVA

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

- section 82KL does not apply to deny the deductions otherwise allowable; and
- the relevant provisions in Part IVA will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

Explanations**Is the Grower/Processor carrying on a business?**

84. For the amounts set out in the Tables above to constitute allowable deductions the Grower/Processor's olive growing activities as a participant in the Barkworth Olives Project No 6 must amount to the carrying on of a business of primary production. These olive-growing activities will fall within the definitions of 'horticulture' and 'commercial horticulture' in section 40-535 of the ITAA 1997.

85. For schemes such as that of the Barkworth Olives Project No 6, Taxation Ruling TR 2000/8 sets out in paragraph 89 the circumstances in which the Grower/Processor'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.

86. Generally, a Grower/Processor will be carrying on a business of growing olives, and hence primary production, if:

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

87. In this Project, each Grower/Processor enters into a Management Agreement and has a right to occupy a farm.

88. As per the constitution of the Land Owner, each individual Grower/Processor will have rights over a specific and identifiable area of land. The constitution provides the Grower/Processor with an ongoing interest in the specific olive trees on the licensed area for the term of the Project. Under the constitution, the Grower/Processor must use the land in question for the purpose of carrying out olive growing activities and for no other purpose. The licence allows the Responsible Entity to come onto the land to carry out its obligations under the Management Agreement.

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

90. In establishing the Farm, the Grower/Processor engages the Responsible Entity to carry out 'water facilities' and to acquire and plant olive trees on the Grower/Processor's Farm. During the term of the Project, these assets will be used wholly to carry out the Grower/Processor's olive growing activities. The Responsible Entity is also engaged to harvest and sell, on the Grower/Processor's behalf, the olives grown on the Grower/Processor's Farm.

91. 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.

92. 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/Processor in the Project will derive assessable income from the sale of its olives 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.

93. The pooling of olives grown on the Grower/Processor's Farm with the olives of other Grower/Processors is consistent with general olive growing practices. Each Grower/Processor's proportionate share of the sale proceeds of the pooled olives will reflect the proportion of the olives contributed from his/her Farm.

94. The Responsible Entity's services and the installation of assets on the Grower/Processor's behalf are also consistent with general olive growing practices. The assets are of the type ordinarily used in carrying on a business of growing olives. While the size of a Farm is

relatively small, it is of a size and scale to allow it to be commercially viable. (See Taxation Ruling IT 360).

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

96. The olive growing activities, and hence the fees associated with their procurement, are consistent with an intention to commence regular activities that have an 'air of permanence' about them. For the purposes of this Ruling, the Grower/Processors' olive growing activities in the Barkworth Olives Project No 6 will constitute the carrying on of a business.

The Simplified Tax System

Division 328

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

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

Deductibility of Management Fees and Farm Administration Fees

Section 8-1

99. Consideration of whether the Management Fees and Farm Administration Fees are deductible under section 8-1 begins with the first limb of the section. This view proceeds on the following basis:

- the outgoing in question must have a sufficient connection with the operations or activities that directly gain or produce the taxpayer's assessable income;
- the outgoings are not deductible under the second limb if they are incurred when the business has not commenced; and

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

100. The Management Fees and Farm Administration Fees associated with the olive growing activities will relate to the gaining of income from the Grower/Processor's business of growing olives, and hence have a sufficient connection to the operations by which income (from the regular sale of olives) is to be gained from this business. They will thus be deductible under the first limb of section 8-1. Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. The fee appears to be reasonable. There is no capital component of the management fee. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

Prepayment provisions

Sections 82KZL to 82KZMF

101. 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.

102. 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

103. 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)).

104. 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.

105. 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/Processor in this Project who, in order to participate in the Project may borrow funds from an associated 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/Processor prepays interest under such financing arrangements, the deductions allowable will be subject to apportionment under section 82KZMF.

106. There are a number of exceptions to these rules, but for Grower/Processors 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 Grower/Processors in this Project, 'excluded expenditure' is prepaid expenditure incurred under the arrangement that is less than \$1,000. Such expenditure is immediately deductible.

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

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

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

108. 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

109. The expenditure incurred by a Grower/Processor in the Project for the Management Fees and the Farm Administration Fees 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.

110. The prepaid Management Fees incurred by Grower/Processors 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 Management Fees over the period that the services for which the prepayment is made are provided.

111. The prepaid Farm Administration Fees, being amounts of less than \$1,000 in each expenditure year, constitute ‘excluded expenditure’ as defined in subsection 82KZL(1). Under Exception 3 (subsection 82KZME(7)) ‘excluded expenditure’ is specifically excluded from the operation of section 82KZMF. A Grower/Processor who is an ‘STS taxpayer’ can, therefore, claim an immediate deduction for the Farm Administration Fee in the income year in which it is paid. A Grower/Processor who is not an ‘STS taxpayer’ can claim an immediate deduction for the Farm Administration Fee in the income year in which it is incurred.

112. However, where a Grower/Processor acquires more than the minimum of one interest in the Project and the quantum of the prepaid Farm Administration Fees is \$1,000 or more, the deduction allowable for those amounts will also be subject to apportionment according to the formula in subsection 82KZMF(1).

Interest deductibility**Section 8-1*****(i) Grower/Processors who use Barkworth Finance Pty Ltd as the finance provider***

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

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

115. As with the management fees and the farm administration fees, in the absence of any application of the prepayment provisions (see paragraphs 101 to 112), the timing of deductions for interest will again depend upon whether a Grower/Processor is an 'STS taxpayer' or is not an 'STS taxpayer'.

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

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

(ii) Grower/Processors who borrow from an external and unrelated finance provider

118. The deductibility of interest incurred by Grower/Processors who finance their participation in the Project through a loan facility with a bank or financier is outside the scope of this Ruling. Product Rulings only deal with arrangements where all details and documentation have been provided to, and examined by the Tax Office.

119. While the terms of any finance agreement entered into between relevant Grower/Processors and such financiers are subject to commercial negotiation, those agreements may require interest to be prepaid. Alternatively, a Grower/Processor may choose to prepay

such interest. Unless such prepaid interest is ‘excluded expenditure’ any tax deduction that is allowable will be subject to the prepayment provisions of the ITAA 1936 (see paragraphs 101 to 112).

Expenditure of a capital nature

Division 40 and Division 328

120. Any part of the expenditure of a Grower/Processor 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 ‘water facilities’, and the establishment of the olive trees is of a capital nature. This expenditure falls for consideration under Division 40 or Division 328 of the ITAA 1997.

121. The application and extent to which a Grower/Processor claims deductions under Division 40 and Division 328 depends on whether or not the Grower/Processor is an ‘STS taxpayer’.

122. The tax treatment of capital expenditure has been dealt with in a representative way in paragraphs 64, and 74 to 76 (above) in the Tables and the accompanying Notes.

Deferral of losses from non-commercial business activities

Division 35

123. 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 incurred by an individual (including an individual in a general law partnership) from certain business activities will not be allowable in an income year unless:

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

124. 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.

125. 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.

126. 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 Grower/Processors who participate in the Project they are beyond the scope of this Product Ruling and are not considered further.

127. 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) that 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 dwellings) 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).

128. A Grower/Processor 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/Processor who acquires the minimum of one Farm in the Project during the year ended 30 June 2002 is unlikely to have his/her activity pass one of the tests until the income year ended 30 June 2007. Grower/Processors 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.

129. 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/Processor's participation in the Project.

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

- (i) the business activity has started to be carried on;
- (ii) because of its nature, it has not satisfied one of the tests; and
- (iii) there is an expectation that the business activity of an individual taxpayer will either pass one of the tests or produce a taxation profit within a period that is commercially viable for the industry concerned.

131. Information provided with the application for this Product Ruling indicates that a Grower/Processor who acquires the minimum of one Farm in the Project is expected to be carrying on a business activity that will either pass one of the tests, or produce a taxation profit for the year ended 30 June 2005 for a Grower/Processor who is accepted into the Project during the year ending 30 June 2002. The Commissioner will decide for such a Grower/Processor that it would be reasonable to exercise the second arm of the discretion until the year ended 30 June 2004.

132. This Product Ruling is issued on a prospective basis (i.e., before an individual Grower/Processor's business activity starts to be carried on). The Project, however, may fail to be carried on during the income years specified above, in the manner described in the Arrangement paragraphs above. 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 10). Grower/Processors may need to apply for private rulings on how paragraph 35-55(1)(b) will apply in such changed circumstances.

133. 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 an independent expert contained within the replacement Prospectus;
- independent, and generally available information relating to the olive industry which substantially supports cash flow projections and other claims, including prices and costs, in the Product Ruling application submitted by the applicant;

Section 82KL - recouped expenditure

134. Section 82KL is a specific anti-avoidance provision that operates to deny an otherwise allowable deduction for certain expenditure incurred, but effectively recouped, by the taxpayer. Under subsection 82KL(1), a deduction for certain expenditure is disallowed where the sum of the ‘additional benefit’ plus the ‘expected tax saving’ in relation to that expenditure equals or exceeds the ‘eligible relevant expenditure’.

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

136. Section 82KL’s operation depends, among other things, on the identification of a certain quantum of ‘additional benefits’. Here, there may be a loan provided to the Grower/Processor. The loan will be provided on a full recourse basis, and on commercial terms. Insufficient ‘additional benefits’ will be provided in respect of this Project, to trigger the application of section 82KL. It will not apply to deny the deductions otherwise allowable under section 8-1.

Part IVA - general tax avoidance provisions

137. 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).

138. Barkworth Olive Project No 6 will be a ‘scheme’. A Grower/Processor will obtain a ‘tax benefit’ from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 59 to 63 and 69 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.

139. Grower/Processors to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the harvesting and sale of the olives. There are no facts that would suggest that Grower/Processors have the opportunity of obtaining a tax advantage other than the tax advantages identified in this Ruling. There is no non-recourse financing or round robin characteristics, and no indication that the parties are not dealing at arm’s length or, if any parties are not dealing at arm’s length, that any adverse tax consequences result. Further, having regard to the factors to be

considered under paragraph 177D(b) it cannot be concluded, on the information available, that participants will enter into the scheme for the dominant purpose of obtaining a tax benefit.

Examples

Example 1 - Entitlement to GST input tax credits

140. 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

141. Murray decides to participate in the ABC Pineforest Prospectus which is offering 500 interests of 0.5ha in an afforestation project of 25 years. The management fees are \$5,000 in the first year and \$1,200 for years 2 and 3. From year 4 onwards the management fee will be the previous year's fee increased by the CPI. The first year's fees are payable on execution of the agreements for services to be provided in the following 12 months and thereafter, the fees are payable in advance each year on the anniversary of that date. The project is subject to a minimum subscription of 300 interests. Murray provides the Project Manager with a 'Power of Attorney' allowing the Manager to execute his Management Agreement and the other relevant agreements on his behalf. On 5 June 2002 the Project Manager informs Murray that the minimum subscription has been reached and the Project will go ahead. Murray's agreements are duly executed and management services start to be provided on that date.

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

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

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

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

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

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

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

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

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

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

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

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

142. On 1 June 2002 Kevin applies for an interest into the Western Bluegum Project, a prospectus based afforestation project of 12 years. Kevin is accepted into the project and executes a lease and management agreement with the Responsible Entity for the provision of management services and the lease of his Woodlot. The terms of the lease and management agreement require Kevin to prepay the management fees and the lease fee on or before the 30 June each year for the lease of his Woodlot and the provision of management services between the 1 July and 30 June in the following income year. Kevin pays the first year management fee of \$3,600 and first year lease fee of \$500 on 15 June 2002.

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

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

Management fee

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

Lease fee

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

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

$$\begin{array}{r} \$3,600 \times \frac{365}{365} \end{array}$$

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

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

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