PR 2002/73 - Income tax: Mary Valley Paulownia Project - Revised Arrangement

Product Ruling
Income tax: Mary Valley Paulownia Project - Revised Arrangement

Contents Para

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

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

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

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

Terms of Use of this Product Ruling

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

What this Product Ruling is about

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

Tax laws

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

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

Goods and Services Tax

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

Changes in the Law

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

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

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

Note to promoters and advisers

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

Class of persons

7. The class of persons to whom this Ruling applies is the persons who are more specifically identified in the Ruling part of this Product Ruling and who enter into the arrangement specified below on or after the date this Ruling is made. They will have a purpose of staying in the arrangement until it is completed (i.e., being a party to the relevant Agreements until their term expires) and deriving assessable income from this involvement. In this Ruling these persons are referred to as 'Growers'. This Ruling does not apply to Growers who elect to market the timber produce themselves.

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

Qualifications

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

10. A Product Ruling may only be reproduced in its entirety. Extracts may not be reproduced. As each Product Ruling is copyright, apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning

Date of effect

11. This Ruling applies prospectively from 29 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).

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

Withdrawal

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

Previous Ruling

14. This Ruling replaces Product Ruling PR 2001/171, which is withdrawn on and from the date this Ruling is made.

Arrangement

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

- Application for Product Ruling dated 24 August 2001;

- The Mary Valley Paulownia Project Prospectus, dated 5 March 2002;
- **Draft Management Agreement**, received 20 May 2002, between ARG Management Ltd (the “Responsible Entity”) and the Grower;
- Lease Agreement between Mary Valley Holdings Pty Ltd (“the lessor”) and ARG Management Ltd (“lessee”);
- **Draft Licence Agreement**, dated 19 April 2001, between Responsible Entity and the Grower;
- Constitution for the Mary Valley Paulownia Project 2001, dated 19 April 2002;
- Compliance Plan for The Mary Valley Paulownia Project;
- Project Management Agreement between the Responsible Entity and Mary Valley Investments Pty Ltd (the “Operational Manager”); and
- Correspondence received from the Applicant and or Representative dated 24 August 2001, 9 October 2001, 26 October 2001, 1 November 2001, 7 November 2001, 28 November 2001, 29 November 2001, 3 December 2001, 4 December 2001, 5 December 2001, 11 December 2001, 19 April 2002, 29 April 2002, 7 May 2002, 10 May 2002, 14 May 2002, 15 May 2002, 20 May 2002 and 23 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 the Freedom of Information legislation.

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

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

Overview

18. This arrangement is called the Mary Valley Paulownia Project.

Location	222 Marys Creek Rd, Gympie, Queensland
Type of business each participant is carrying on	Commercial growing, and cultivation of Paulownia trees for the purpose of producing timber products.
Number of hectares under cultivation	160
Size of each Allotment	0.202 Ha
Number of trees per hectare	Approximately 250
Expected production	26 cubic metres per allotment.
The term of the investment	9.5 to 11.5 years
Minimum subscription	80 Allotments
Initial cost	$5,802.50
Initial cost per hectare	$28,725.25
Ongoing costs	Licence and Management fees, harvesting expenses, milling expenses, marketing expenses and insurance.

19. Growers participating in the arrangement will enter into a Licence Agreement and a Management Agreement for the Project. These agreements are set out in the Schedule to the Constitution. The Licence Agreement gives a Grower a licence to use from ARG Management Ltd (the "Licensor") over an identifiable area of land called an 'Allotment' until the trees are harvested and sold and net income distributed. Each Allotment is 0.202 of a hectare in size. Through the Management Agreement, a Grower engages the Responsible Entity (ARG Management Ltd) to establish and maintain a Paulownia plantation on the land for the 9.5 years period when it is expected that the trees are harvested and sold and net income distributed. The Manager may delay the harvest for a further 2 years if it is deemed necessary due to poor seasonal growths.

20. The Project Land is situated at 222 Marys Creek Road, Gympie, Queensland. ARG Management Ltd will licence the Allotments to the Growers to enable the Growers to carry on a

long-term commercial afforestation business. Growers are specifically granted rights to harvest timber on their Allotments for this purpose.

21. There is a minimum subscription of 80 Allotments under the Prospectus. Each investor may subscribe for a minimum of one Allotment, at an initial cost of $5,802.50 per Allotment.

22. When Growers lodge their application for an Allotment, they will execute a Power of Attorney enabling the Responsible Entity, ARG Management Ltd, to act on their behalf as required.

Constitution

23. The Constitution for the Project sets out the terms and conditions under which the Responsible Entity agrees to act for the Growers and to manage the Project. The Responsible Entity will keep a register of Growers. Growers are entitled to assign their Grower's interest in certain circumstances. The Licence Agreement and the Management Agreement are annexed to the Constitution and will be executed on behalf of the Growers following them signing the Application and a Power of Attorney Form in the Prospectus. Growers are bound by the Constitution by virtue of their participation in the Project.

Compliance plan

24. The Responsible Entity has prepared a Compliance Plan in accordance with the Corporations Law. Under the Compliance Plan, a Compliance Committee will monitor to what extent the Responsible Entity meets its obligations as the Responsible Entity of the Project and the rights of the Growers are protected.

Interest in land

25. Growers participating in the arrangement will enter into a Licence Agreement between ARG Management Ltd (the "Licensor") and the Growers. Growers are granted an interest in land in the form of a licence to use their Allotments for the purpose of conducting their afforestation business.

Licence Agreement

26. Each Grower whose application is accepted and the agreements executed must pay a Licence fee on application to the Responsible Entity of an amount equal to $192.50 per Allotment for the initial period, from the date of acceptance in the Project until

30 June following acceptance date. Growers must pay Licence fees to the Responsible Entity each year thereafter of the amounts equal to those of the preceding year's Licence fees indexed annually according to CPI. The term of the Grower's licence is up to the date the trees are harvested and sold and net income distributed, being 9.5 to 11.5 years from commencement of the Project.

Management Agreement

27. Each Grower enters into a Management Agreement with the Responsible Entity for each Allotment. Growers contract with the Responsible Entity to establish and maintain the plantation until maturity. Each Grower must pay a Management Fee to the Responsible Entity of an amount equal to $5,610.00 per Allotment for Plantation Establishment Services, $577.50 per Allotment for the period immediately following the completion of the Plantation Establishment Services to 30 June of that income year, $363.00 per Allotment for the following year, then indexed to CPI annually for each year thereafter.

28. The Management Agreement provides that each Grower appoints the Responsible Entity to perform services under the agreement. The Schedule to the Agreement specifies the services to be performed by the Responsible Entity. The Responsible Entity will supervise and manage all silvicultural activities on behalf of each Grower and must provide the Plantation Establishment Services including:

- the acquisition of appropriate seeds and seedlings;
- the preparation of the Allotment for planting; and
- the planting of Paulownia seedlings on the land.

29. Management Services to be provided after the Plantation Establishment Services include:

- keeping access roads in good repair; and
- maintaining the Allotment according to good silvicultural and forestry practices.

30. The Responsible Entity will harvest and sell the timber produce on the Growers behalf, at the highest price possible for the timber produce. Growers may elect to market the timber produce themselves. Growers who do elect to market the timber produce themselves are not considered to be included in the class of persons to whom this Ruling applies. The Grower shall be responsible for paying the cost of annual insurance on the Allotment.

Planting

31. The Responsible Entity is required to plant Paulownia seedlings on the Allotments within 12 months after the date of acceptance in the Project. It is expected that these seedlings will be planted in the late Winter/early Spring of the relevant year. From the time of planting, the Responsible Entity will maintain the trees in accordance with good silvicultural practice. The services to be provided by the Responsible Entity over the term of the Project are outlined in the Schedule to the Management Agreement.

Fees

32. The initial fee payable under the Licence Agreement and the Management Agreement is $5,802.50 per Allotment. This fee is for the establishment of the plantation.

33. Each Grower must pay a Management Fee to the Responsible Entity of an amount equal to $5,610.00 per Allotment on application, $577.50 per Allotment for the period immediately following the completion of the Plantation Establishment Services to 30 June of that income year, $363.00 per Allotment for the following year, then indexed to CPI annually for each year thereafter. The Annual Management Fee for the period immediately after the completion of the Plantation Establishment Services is payable on the 1st day of the month following notification of the completion of the Plantation Establishment Services. All subsequent Annual Management Fees are payable in advance on 1 July of each year.

34. Each Grower whose application is accepted and the agreements executed must pay a Licence fee to the Responsible Entity of an amount equal to $192.50 per Allotment for the period up to and including the 30 June following settlement. Growers pay the annual Licence fees, which are payable from 1 July and by no later than 1 September for each year after acceptance in the Project. For year two and thereafter Growers pay amounts equal to those of the preceding years' Licence fees indexed annually to CPI.

35. The Harvesting costs will be funded by the Responsible Entity. These costs will be recouped by the Responsible Entity from the Growers gross sale proceeds (Item 3(b)(iv) of the Schedule to Licence and Management Agreement). The Responsible Entity will fund the Milling and Marketing costs. The Milling and Marketing costs will be recouped from the Growers gross sale proceeds.

Finance

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

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

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

Ruling

Application of this Ruling

38. This Ruling applies only to Growers who are accepted to participate in the Project on or before 5 April 2003 and who have executed a Management Agreement and a Licence Agreement on or before that date. The Grower's participation in the Project must constitute the carrying on of a business of primary production. This Ruling does not apply to Growers who elect to market the timber produce themselves.

Minimum subscription

39. A Grower is not eligible to claim any tax deductions until the Grower's application to enter the Project is accepted and the Project has commenced. Under the terms of the prospectus, a Grower's

application will not be accepted and the Project will not proceed until the minimum subscription of 80 Allotments is achieved.

The Simplified Tax System ('STS')

Division 328

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

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

Qualification

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

Tax outcomes for Growers who are not 'STS taxpayers'

Assessable Income

Section 6-5

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

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

Deductions for Management Fees and Licence Fee for Growers accepted into the Project on or before 30 June 2002

Section 8-1

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

Fee Type	**ITAA 1997 Section**	**Year ended 30 June 2002**	**Year ended 30 June 2003**	**Year ended 30 June 2004**
Management Fee for Plantation Establishment Services	8-1	$5,610.00 – See Notes (i) & (ii) (below)		
Management Fee for Management Services	8-1		$577.50 – See Notes (i) & (iii) (below)	Amounts must be calculated – See Notes (i), (iii) & (iv) (below)
Licence Fee (Rent)	8-1	$192.50 – See Notes (i) & (iii) (below)	Amounts must be calculated – See Notes (i) & (iii) (below)	Amounts must be calculated - see Notes (i), (iii) & (iv) (below)

Deductions for Management Fees and Licence Fee for Growers accepted into the Project after 30 June 2002 and on or before 5 April 2003

Section 8-1

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

Fee Type	**ITAA 1997 Section**	**Year ended 30 June 2003**	**Year ended 30 June 2004**
Management Fee for Plantation Establishment Services	8-1	$5,610.00 – See Notes (i) & (ii) (below)	
Management Fee for Management Services where Plantation Establishment Services completed in year ended 30 June 2003	8-1	$577.50 – See Notes (i) & (iii) (below)	$363.00 – See Notes (i) & (iii) (below)
Management Fee for Management Services where Plantation Establishment Services completed in year ended 30 June 2004	8-1		$577.50 – See Notes (i) & (iii) (below)
Licence Fee (Rent)	8-1	$192.50 – See Notes (i) & (iii) (below)	Amounts must be calculated – See Notes (i) & (iii) (below)

Notes:

(i) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g., input tax credits): Division 27. See Example at paragraph 120;

(ii) Expenditure for 'seasonally dependent agronomic activities' is deductible in the income year in which it is incurred;

(iii) Where a Grower who is not an 'STS taxpayer', pays the Management Fee and the Licence Fee in the relevant income years shown in the Management Agreement and the Licence Agreement, those fees are deductible in full in the year that they are incurred. However, if a Grower **chooses** to prepay fees for the doing of a thing (e.g., the provision of management services or the licensing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA 1936 may apply to apportion those fees (see pargraphs 75 to 88). In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 82 unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than $1,000. The Licence Fees payable for year 2 and thereafter will be equal to the Licence Fees paid in the previous year increased by CPI;

(iv) If any portion of the trees are destroyed for any reason whatsoever after the second year of participation in the Project then, following a report by an independent expert, the Management fees and Licence fees are accordingly reduced.

Tax outcomes for Growers who are 'STS taxpayers'

Assessable Income

Section 6-5

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

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

Deductions for Management Fees and Licence Fee for Growers accepted into the Project on or before 30 June 2002

Section 8-1 and section 328-105

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

Fee Type	ITAA 1997 Sections	Year ended 30 June 2002	Year ended 30 June 2003	Year ended 30 June 2004
Management Fee for Plantation Establishment Services	8-1	$5,610.00 See Notes (v) & (vi) (below)		
Management Fee for Management Services	8-1		$577.50 – See Notes (v) & (vii) (below)	Amounts must be calculated – See Notes (v), (vii) & (viii) (below)
Licence Fee (Rent)	8-1	$192.50 – See Notes (v) & (vii) (below)	Amounts must be calculated – See Notes (v) & (vii) (below)	Amounts must be calculated – See Notes (v), (vii) & (viii) (below)

Deductions for Management Fees and Licence Fee for Growers accepted into the Project after 30 June 2002 and on or before 5 April 2003

Section 8-1 and section 328-105

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

Fee Type	ITAA 1997 Sections	Year ended 30 June 2003	Year ended 30 June 2004
Management Fee for Plantation Establishment Services	8-1	$5,610.00 See Notes (v) & (vi) (below)	
Management Fee for Management Services where Plantation Establishment Services completed in year ended 30 June 2003	8-1	$577.50 – See Notes (v) & (vii) (below)	$363.00 – See Notes (v) & (vii) (below)
Management Fee for Management Services where Plantation Establishment Services completed in year ended 30 June 2004	8-1		$577.50 – See Notes (v) & (vii) (below)
Licence Fee (Rent)	8-1	$192.50 – See Notes (v) & (vii) (below)	Amounts must be calculated – See Notes (v) & (vii) (below)

Notes:

(v) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g., input tax credits). See Example at paragraph 120;

(vi) Expenditure for 'seasonally dependent agronomic activities' is deductible in the income year in which it is incurred;

(vii) Where a Grower who is an 'STS taxpayer', pays the Management Fee and the Licence Fee in the relevant income years shown in the Management Agreement and the Licence Agreement, those fees are deductible in full in the year that they are paid. However, if a Grower **chooses** to prepay fees for the doing of a thing (e.g., the provision of management services or the licensing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA may apply to apportion those fees (see paragraphs 75 to

88). In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 82, unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules, and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than $1,000. The Licence Fees payable for year 2 and thereafter will be equal to the Licence Fees paid in the previous year increased by CPI;

(viii) If any portion of the trees are destroyed for any reason whatsoever after the second year of participation in the Project then, following a report by an independent expert, the Management fees and Licence fees are accordingly reduced.

Tax outcomes that apply to all Growers

Interest

50. The deductibility or otherwise of interest incurred by Growers who finance their participation in the Project through a loan facility with a bank or other financier is outside the scope of this Ruling. However all Growers who borrow funds in order to participate in the Project, should read the discussion of the prepayment rules in paragraphs 75 to 88 (below) as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the prepayment is required under the relevant loan agreement or is at the Grower's choice.

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

Section 35-55 – Commissioner's discretion

51. For a Grower who is an individual and who enters the Project during the year ended 30 June 2002 the rule in section 35-10 may apply to the business activity comprised by their involvement in this Project. Under paragraph 35-55(1)(b) the Commissioner will decide for the income years ending 30 June 2002 to 30 June 2012 that the rule in section 35-10 does not apply to this activity provided that the Project is carried out in the manner described in this Ruling.

52. For a Grower who is an individual and who enters the Project during the year ended 30 June 2003 the rule in section 35-10 may apply to the business activity comprised by their involvement in this Project. Under paragraph 35-55(1)(b) the Commissioner will decide

for the income years ending 30 June 2002 to 30 June 2013 that the rule in section 35-10 does not apply to this activity provided that the Project is carried out in the manner described in this Ruling.

53. 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 104 in the Explanations part of this ruling, below); or
- a Grower’s business activity satisfies one of the tests in sections 35-30, 35-35, 35-40 or 35-45; or
- a Grower’s business activity produces assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsection 35-10(2)).

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

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

Section 82KL, and Part IVA

56. For a Grower who participates in the Project and incurs expenditure as required by the Management Agreement and the Licence 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 carrying on a business?

57. For the amounts set out in the Tables above to constitute allowable deductions the Grower's afforestation activities as a participant in the Mary Valley Paulownia Project must amount to the carrying on of a business of primary production.

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

59. For schemes such as that of the Mary Valley Paulownia Project, Taxation Ruling TR 2000/8 sets out in paragraph 89 the circumstances in which the Grower's activities can constitute the carrying on of a business. As Taxation Ruling TR 2000/8 sets out, these circumstances have been established in court decisions such as *FCT v. Lau* 84 ATC 4929; 16 ATR 55.

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

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

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

62. Under the Licence Agreement each individual Grower will have rights over a specific and identifiable area of 0.202 hectares of land. The Licence Agreement provides the Grower with an ongoing interest in the specific trees on the licensed area for the term of the Project. Under the licence the Grower must use the land in question for the purpose of carrying out afforestation activities, and for no other purpose. The licence allows the Project Manager come onto to the land to carry out its obligations under the Management Agreement.

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

64. The Project Manager is also engaged to harvest and sell, on the Grower's behalf, the timber grown on the Grower's Allotment.

65. 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.

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

67. The pooling of timber from the trees grown on the Grower's Allotment with the timber of other Growers is consistent with general afforestation practices. Each Grower's proportionate share of the sale proceeds of the pooled timber will reflect the proportion of the trees contributed from their Allotment.

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

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

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

The Simplified Tax System

Division 328

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

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

Deductibility of management fees and licence fees

Section 8-1

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

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

74. The Management Fees and Licence Fees associated with the afforestation activities will relate to the gaining of income from the Grower's business of afforestation (see above), and hence have a sufficient connection to the operations by which income (from the harvesting and sale of timber) is to be gained from this business. They will thus be deductible under the first limb of section 8-1. Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. The 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 82KZMG

75. 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 licensing 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.

76. For this Project, only section 82KZL (an interpretive provision) and sections 82KZME, 82KZMF and 82KZMG are relevant. Subject to section 82KZMG, if 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

77. Other than expenditure deductible under section 82KZMG, if 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)).

78. 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.

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

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

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

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

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

83. 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.

Section 82KZMG

84. Under section 82KZMG(1), expenditure is excluded from the prepayment rules that would otherwise apply, to the extent that the prepaid amount satisfies the requirements of subsections 82KZMG(2) to (4).

85. Subsection 82KZMG(2) requires that the expenditure is

- incurred on or after 2 October 2001 and on or before 30 June 2006; and
- the eligible service period must be 12 months or shorter and must end on or before the last day of the year of income after the expenditure year; and
- for the doing of a thing under the agreement that is not to be wholly done within the expenditure year.

86. To satisfy subsection 82KZMG(3) the agreement must satisfy the following requirements:

- it must be an agreement for planting and tending trees for felling; and
- be an agreement where the taxpayer does not have day to day control over the operations arising out of the agreement. (A right to be consulted or to give directions does not equate to day to day control for the purposes of this requirement); and
- either:
  - (i) there is more than one participant in the agreement in the same capacity as the taxpayer; or
  - (ii) the manager manages, arranges or promotes the agreement, or an associate of the manager, manages, arranges or promotes similar agreements.

87. Under subsection 82KZMG(4) the expenditure incurred by the taxpayer must be paid for 'seasonally dependent agronomic activities' undertaken by the manager during the 'establishment period' for the relevant planting of trees for felling.

88. Subsection 82KZMG(5) defines the 'establishment period' to commence at the time that the first 'seasonally dependent agronomic activity' is performed in relation to a specific planting of trees and to conclude with the planting of trees. Where it is necessary to apply a fertiliser or herbicide to the trees at the same time as planting then those activities fall within the establishment period. Planting of trees refers to the main planting of the particular plantation and expressly

excludes specific planting to replace existing seedlings that have not survived.

Application of the prepayment provisions to this Project

89. Under the Management Agreement, a Grower incurs a Year 1 Management Fee, for Plantation Establishment Services, consisting of expenditure of $5,610 per Allotment for 'seasonally dependent agronomic activities'.

90. The Management Agreement requires that the Manager provide the Plantation Establishment Services in accordance with good silvicultural practice. The Plantation Establishment Services means the preparation of the land for planting and includes the supply and planting of healthy paulownia plants to an average density of approximately 250 trees per hectare in accordance with good silvicultural practices. These activities are to be completed within 12 months from the date of acceptance of the Grower's application.

91. As the requirements of section 82KZMG have been met, a deduction is allowable in the income year ended 30 June 2002 (for Growers accepted into the Project on or before 30 June 2002) or in the income year ended 30 June 2003 (for Growers accepted into the Project after 30 June 2002 and on or before 5 April 2003) for the expenditure incurred under the Management Agreement for 'seasonally dependent agronomic activities'.

92. The Management Agreement also requires that a Grower incurs a Management Fee of $577.50 per Allotment for the period immediately following the completion of the Plantation Establishment Services to 30 June of that income year, $363.00 per Allotment for the following year and increased by CPI each year thereafter for the performance of management services during the term of the Project. Under the Licence Agreement a Grower incurs Licence Fees of $192.50 per Allotment, increased by CPI each year thereafter, to use the land during the term of the Project.

93. The Management Fee incurred under the Management Agreement (apart from the Management Fee paid on application relating to the Plantation Establishment Services) and the Licence Fees incurred under the Licence Agreement are not prepaid. These fees are charged for providing management services and for the licence of the land to a Grower until 30 June of the year in which the fees are incurred.

94. On this basis, the basic precondition in subsection 82KZME(2) is not satisfied and, in these circumstances, section 82KZMF will have no application to the Management Fees and the Licence Fees in Years 2 and subsequent years.

95. A Grower who is an 'STS taxpayer' can, therefore, claim an immediate deduction for each of the relevant fees in the income year in which the fee is paid. A Grower who is not an 'STS taxpayer' can claim an immediate deduction for each of the relevant fees in the income year in which the fee is incurred.

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

96. Although not required under either the Management Agreement or the Licence Agreement, a Grower participating in the Project may **choose** to prepay fees for a period beyond the 'expenditure year'. Where this occurs, contrary to the conclusion reached in paragraph 95 above, section 82KZMF will apply to apportion the expenditure and allow a deduction over the period in which the prepaid benefits are provided.

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

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

Interest deductibility

Section 8-1

99. The deductibility of interest incurred by Growers 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.

100. While the terms of any finance agreement entered into between relevant Growers and such financiers are subject to commercial negotiation, those agreements may require interest to be prepaid. Alternatively, a Grower may choose to prepay such interest. Unless such prepaid interest is 'excluded expenditure' any tax deduction that is allowable will be subject to the prepayment provisions of the ITAA 1936 (see paragraphs 75 to 88).

Deferral of losses from non-commercial business activities

Division 35

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

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

102. 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.

103. 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.

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

105. In broad terms, the tests require:

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

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

(c) at least $500,000 of real property, or an interest in real property, (excluding any private dwelling) is used on a continuing basis in carrying on the business activity in that year (section 35-40); or

(d) at least $100,000 of certain other assets (excluding cars, motor cycles and similar vehicles) are used on a continuing basis in carrying on the business activity in that year (section 35-45).

106. A Grower who participates in the Project will be carrying on a business activity that is subject to these provisions. Information provided with the application for this Product Ruling indicates that a Grower who acquires the minimum allocation of one Allotment in the Project during the year ended 30 June 2002 is unlikely to have their activity pass one of the tests until the income year ended 30 June 2013.

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

108. The first arm of the discretion in paragraph 35-55(1)(a) relates to 'special circumstances' applicable to the business activity, and has no relevance for the purposes of this Product Ruling. However, the second arm of the discretion in paragraph 35-55(1)(b) may be exercised by the Commissioner where the business activity has started to be carried on and for that, or those income years;

- because of its nature, the business activity has not satisfied, or will not satisfy one of the tests set out in Division 35; and
- there is an expectation that the business activity of an individual taxpayer will either pass one of the tests or produce a taxation profit within a period that is commercially viable for the industry concerned.

109. The Commissioner will decide for such a Grower that it would be reasonable to exercise the second arm of the discretion for all income years up to, and including the income year ended 30 June 2011.

110. Information provided with the application for this Product Ruling indicates that a Grower who acquires the minimum allocation of one Allotment in the Project during the year ended 30 June 2003 is unlikely to have their activity pass one of the tests until the income year ended 30 June 2014.

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

112. The first arm of the discretion in paragraph 35-55(1)(a) relates to 'special circumstances' applicable to the business activity, and has

no relevance for the purposes of this Product Ruling. However, the second arm of the discretion in paragraph 35-55(1)(b) may be exercised by the Commissioner where the business activity has started to be carried on and for that, or those income years;

- because of its nature, the business activity has not satisfied, or will not satisfy one of the tests set out in Division 35; and
- there is an expectation that the business activity of an individual taxpayer will either pass one of the tests or produce a taxation profit within a period that is commercially viable for the industry concerned.

113. The Commissioner will decide for such a Grower that it would be reasonable to exercise the second arm of the discretion for all income years up to, and including the income year ended 30 June 2012.

114. This Product Ruling is issued on a prospective basis (i.e., before an individual Grower's business activity starts to be carried on). The Project, however, may fail to be carried on during the income years specified above (see paragraphs 51 and 52), in the manner described in the Arrangement (see paragraphs 15 to 37). If so, this Ruling, and specifically the decision in relation to paragraph 35-55(1)(b), that it would be unreasonable that the loss deferral rule in subsection 35-10(2) not apply, may be affected, because the Ruling no longer applies (see paragraph 9). Growers may need to apply for private rulings on how paragraph 35-55(1)(b) will apply in such changed circumstances.

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

- the report of the independent forester and additional expert or scientific evidence provided with the application by the Responsible Entity; and
- independent, objective, and generally available information relating to the Paulownia industry which substantially supports cash flow projections and other claims, including prices and costs, in the Product Ruling application submitted by the Responsible Entity.

Section 82KL - recouped expenditure

116. The operation of section 82KL depends, among other things, on the identification of a certain quantum of 'additional benefits(s)'. Insufficient 'additional benefits' will be provided to trigger the

application of section 82KL. It will not apply to deny the deduction otherwise allowable under section 8-1.

Part IVA - general tax avoidance provisions

117. For Part IVA to apply there must be a 'scheme' (section 177A), a 'tax benefit' (section 177C) and a dominant purpose of entering into the scheme to obtain a tax benefit (section 177D).

118. The Mary Valley Paulownia Project will be a 'scheme'. A Grower will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 44, 45, 48 and 49 that would not have been obtained but for the scheme. However, it is not possible to conclude the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

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

Examples

Example - Entitlement to GST input tax credits

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

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

*Taxable supply

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

1/11 x $4400 = $400.

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

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

1/11 x $2200 = $200.

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

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

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

Detailed contents list

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

Commissioner of Taxation
29 May 2002

Previous draft:
Not previously issued in draft form

Related Rulings/Determinations:
TR 92/1; TR 92/20; TD 93/34; TR 97/11; TR 97/16; TR 98/22;

TR 2000/8; PR 1999/95;
PR 2001/171; IT 360

Subject references:

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

Legislative references:

- TAA 1953 Part IVAAA
- ITAA 1936 Div 3 of Part III
- ITAA 1936 82KL
- ITAA 1936 82KL(1)
- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZME
- ITAA 1936 82KZME(1)
- ITAA 1936 82KZME(2)
- ITAA 1936 82KZME(3)
- ITAA 1936 82KZME(4)
- ITAA 1936 82KZME(7)
- ITAA 1936 82KZMF
- ITAA 1936 82KZMF(1)
- ITAA 1936 82KZMG
- ITAA 1936 82KZMG(1)
- ITAA 1936 82KZMG(2)
- ITAA 1936 82KZMG(3)
- ITAA 1936 82KZMG(4)
- ITAA 1936 82KZMG(5)
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 17-5
- ITAA 1997 Div 27
- ITAA 1997 Div 35
- ITAA 1997 35-10
- ITAA 1997 35-10(2)
- ITAA 1997 35-10(3)
- ITAA 1997 35-10(4)
- ITAA 1997 35-30
- ITAA 1997 35-35
- ITAA 1997 35-40
- ITAA 1997 35-45
- ITAA 1997 35-55
- ITAA 1997 35-55(1)
- ITAA 1997 35-55(1)(a)
- ITAA 1997 35-55(1)(b)
- ITAA 1997 35-55(2)
- ITAA 1997 Div 328
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- ITAA 1997 328-105
- ITAA 1997 328-105(1)(a)
- ITAA 1997 328-105(1)(b)

Case references:

- FCT v. Lau 84 ATC 4929;
16 ATR 55

ATO references:
NO: T2001/013352
ISSN: 14411172