



# ***PR 2002/98 - Income tax: W.A. Blue Gum Project 2002***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *26 June 2002*



## Product Ruling

### Income tax: W.A. Blue Gum Project 2002

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

#### **Preamble**

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

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

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

Potential participants must form their own view about the commercial and financial viability of the product. This will involve a consideration of important issues such as whether projected returns are realistic, the 'track record' of the management, the level of fees in comparison to similar products, how 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**

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

## What this Product Ruling is about

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1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax 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 W.A. Blue Gum Project 2002, or 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 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'.

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

### **Qualifications**

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

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

## Date of effect

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11. This Ruling applies prospectively from 26 June 2002, the date this Ruling is made. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

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

## Withdrawal

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13. This Product Ruling is withdrawn and ceases to have effect after 30 June 2005. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons within the specified class who enter into the arrangement specified below. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the person's involvement in the arrangement.

## Arrangement

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

- Application for Product Ruling dated 3 May 2002;
- The W.A. Blue Gum Project 2002 Prospectus dated 23 May 2002;
- **Draft Sub-lease between W.A. Blue Gum Ltd (WABG) (the 'Landholder'), and the Grower;**
- **Draft Project Management Contract between WABG (as the Responsible Entity) and the Grower;**

- **Draft Wood Purchase Agreement between W.A. Chip & Pulp Co Pty Ltd (WACAP) and the Grower;**
- Constitution for W.A. Blue Gum Project 2002, dated 30 March 2000;
- **Loan Agreement between Albany Financial Pty Ltd and the Grower, undated;**
- Plantation Services Agreement 2002 Treefarm between WABG and WACAP Tree Farms Pty Ltd (the 'Contractor') ('the Plantation Services Agreement'), undated;
- Scheme Property Custody Agreement, undated.
- Compliance Plan for the W.A. Blue Gum Timber Project, undated;
- Additional correspondence from the Applicant's representative dated 27 May 2002, and 30 May 2002;
- Correspondence from the ATO to the Applicant's representative dated 28 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.**

15. 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.

16. 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.

**PR 2002/98****Overview**

17. This arrangement is called the W.A. Blue Gum Project 2002.

Location	South West region of Western Australia.
Type of business each participant is carrying on	Commercial growing, and cultivation of <i>Eucalyptus globulus</i> (Tasmanian Blue Gums) trees for the purpose of producing timber for wood chipping.
Number of hectares under cultivation	198 hectares, which may be increased to allow for oversubscriptions.
Size of each leasehold area	1 hectare
Number of trees per hectare	1,000 -1,250
The term of the Project	Approximately 10 years. The project will terminate when the Plantation Crop is Harvested for the 1 <sup>st</sup> time.
Minimum Subscription	Not Applicable.
Minimum Subscription per Grower	6 hectares
Initial cost per hectare	\$4,950
Ongoing costs	Maintenance of \$99 per hectare per annum increased by CPI and rent of \$374 per hectare per annum indexed by CPI.

**The Prospectus**

18. Under the Prospectus, W.A Blue Gum Ltd (WABG) as Project Manager, seeks to raise \$965,250 by offering participants (referred to hereafter as 'Growers') the opportunity to sub-lease land in Western Australia on which plantations of *Eucalyptus globulus* (Tasmanian Blue Gum) will be established. WABG may accept oversubscriptions, the amount of which will be subject to the availability of suitable land. There is no minimum amount to be raised under this Prospectus.

19. There are 198 hectares on offer at an initial cost of \$4,950 per hectare, with each Grower being required to contribute a minimum of \$29,700 (being the amount necessary to establish and plant 6 hectares of plantations). Thereafter the Grower may contribute in multiples of \$4,950 there being no limit on the maximum contribution per Grower.

20. Growers participating in the arrangement will enter into a Sub-lease, a Project Management Contract and a Wood Purchase

Agreement. A Grower who borrows from Albany Financial Ltd will also enter into a Loan Agreement.

21. WABG participates in the Project as Responsible Entity, Project Manager and Landholder.

22. The Sub - lease gives a Grower a sub-lease from WABG (as 'Landholder') over an identifiable area of land until the expiry of the sub-lease. Each leasehold area is 1 hectare in size.

23. The Project Land is situated in the South West region of Western Australia. Properties selected for lease are within a radius of 100km from either the Port of Bunbury or Albany. The land to be leased to Growers under the Sub-lease is situated as follows:

- 80 hectares part of Nelson locations 572 and 1517;
- 71 hectares part of Nelson locations 9003 and 11144, and;
- 47 hectares part of Nelson locations 503, 790, and 842.

In the event that the whole of the above identified land is taken up, efforts will be made to make available further areas of land located in other parts of the South West of Western Australia.

24. The Sub-lease enables the Growers to carry on a long term commercial afforestation business. Growers are specifically granted rights to harvest timber on their land for this purpose.

25. The Wood Purchase Agreement that Growers enter into has provisions governing the harvesting and sale of the timber grown on the leased land. Under the terms of the Wood Purchase Agreement, W.A. Chip & Pulp Co (WACAP) will harvest and buy the wood crop unless WABG can negotiate better terms with a reputable third party. WACAP then has the right to match these better terms, in which case WACAP will be the buyer.

26. The Project Management Contract that Growers enter into with WABG and URS Forestry Pty Ltd (URSF), sets out the services to be provided by WABG, as Project Manager, in establishing and maintaining Tasmanian Blue Gum (*Eucalyptus globulus*) seedlings planted on the leased land for the purpose of eventual felling and sale. Under the Project Management Contract URSF agrees to act as supervisor and adviser to the Project.

### **Constitution**

27. The Constitution for the Project sets out the terms and conditions under which the Responsible Entity agrees to act for the Grower and to manage the Project. The Responsible Entity will keep a



register of Growers (cl 9.1). Growers are bound by the Constitution by virtue of their participation in the Project.

## **Scheme Property Custody Agreement**

28. WABG as Responsible Entity, has engaged Sandhurst Trustees Ltd to act as custodian of the Project Property, which shall include all Application Moneys and timber sale proceeds until disbursed or distributed in accordance with the Constitution, the Project Agreements and the Head Lease.

## **Compliance Plan**

29. The Project has a Compliance Plan in accordance with the Corporations Act 2001. Under the Compliance Plan, a Compliance Committee monitors to what extent the Responsible Entity meets its obligations as the Responsible Entity of the Project and ensures the rights of the Growers are protected.

## **Sub-lease**

30. Growers participating in the arrangement will enter into a sub-lease with WABG in its capacity as Landholder.

31. The Sub - lease recites that the Landholder holds a lease or sub-lease over the land specified in the Schedule and that the Landholder has agreed to sub - let to the Grower the Leased Area for the purpose of establishing, tending and harvesting a plantation of eucalyptus trees for commercial wood production.

32. Each Grower must pay annual rent of \$374 per hectare, indexed after the 1<sup>st</sup> year by the CPI, Perth. The term of the Sub-lease is 12 years or until the first harvest of the trees grown on the land.

## **Project Management Contract**

33. The parties to the Project Management Contract are the Grower, WABG as Project Manager, and URS Forestry Pty Ltd (URSF). Under the Contract URSF agrees to provide supervisory services and independent professional advice on the Plantation Crop.

34. Growers contract with the Project Manager to establish and maintain the plantation until maturity. Each Grower pays an Application amount of \$4,950 per hectare being for Establishment of the Plantation Crop, which is defined to mean all seasonally dependent agronomic activities until and including the first planting of the Plantation Crop and the application of fertilisers and herbicides at the time of the first planting of the Plantation Crop. (cl 1.1) Thereafter

the Grower pays an annual management fee of \$99 (indexed) per hectare for ongoing maintenance.

35. The Project Management Contract provides that each Grower appoints the Project Manager to perform services in relation to the Land and the Plantation Crop as are set out in the Management Plan and specifies the services to be performed by the Project Manager. The Project Manager will manage all silvicultural activities on behalf of each Grower and must:

- establish the Plantation Crop (including the planting of *Eucalyptus globulus* seedlings on the land);
- maintain the plantation crop according to good silvicultural and forestry practices, in accordance with the Management Plan ; and
- keep access roads in good repair and each block free from rabbits and other vermin. (cl 4.1).

36. The Project Management Contract also provides an opportunity to participate in a second rotation plantation crop, by means of a coppice option. Growers who decide to take up this option will be required to pay extra amounts at a future date and enter into arrangements to extend the effect of the abovementioned Project agreements. They do not, however, have to decide whether to exercise this option until the time of the harvest of the first plantation crop. **The arrangement to be ruled on in this Product ruling does not include this coppice option.**

### **Plantation Services Agreement**

37. The parties to this agreement are WABG (the 'Project Manager') and WACAP Treefarms Pty Ltd (the 'Contractor').

38. Under this agreement, the Contractor agrees to carry out such plantation services as are required to establish, tend and maintain a plantation of eucalyptus trees on the Land as set out in the Plantation Development and Maintenance Plan and in accordance with sound silvicultural and environmental practices adopted within the forestry industry.

### **Fees**

39. Under the Project Management Contract the following fees are payable:

- (i) The Application Amount payable under the Project Management Contract is \$4,950 per hectare which is

paid for the Establishment of the Plantation Crop within 12 months of the Application.

- (ii) A maintenance fee of \$99 per hectare indexed from 30 June 2002 is payable on or before 28 February each year for services to be provided between 1 July and 30 June of that financial year. The initial financial year commences on 1 July 2002.
- (iii) 16.5% of the amount by which the net proceeds exceed the sum of \$10,000 per hectare (indexed from 30 June 2002).
- (iv) If unforeseen expenses in relation to fertiliser and/or insect issues arise, WABG is entitled to convene a meeting of all Growers. The Growers may vote to meet such expenses, in which case they will be borne between the Growers in proportion to the number of hectares held by each Grower.

40. Under the Sub-lease rent is \$374 per hectare per annum indexed. The first rent is payable on 15 November 2002 in respect of the period from 1 July 2002 until 30 June 2003. Thereafter it is payable annually on 30 September.

## Finance

41. Growers can fund their involvement in the Project themselves, borrow from Albany Financial Pty Ltd (a lender associated with the Responsible Entity) or borrow from an independent lender.

42. Those Growers who choose to borrow from Albany Financial Pty Ltd may enter into the following finance arrangement:

- a term ending on 30 September 2006, with repayments of principal and interest twice each year; and
- fixed interest rate of 8.5%.

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

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' are or will be granted to the borrowers for the purpose of section 82KL or the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;

- the loan or rate of interest is non-arm's length;
- repayments of the principal and payments of interest are linked to the derivation of income from the Project;
- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender or any associate of the lender;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- entities associated with the Project other than Albany Financial Pty Ltd are involved or become involved in the provision of finance to Growers for the Project.

## **Ruling**

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### **Application of this Ruling**

44. This Ruling applies only to Growers who are accepted to participate in the Project either on or before 30 June 2002, or, between 1 July 2002 and 25 May 2003 and who have executed the Sub-lease, the Project Management Contract and the Wood Purchase Agreement on or before the 30 June 2002 in the first instance and on or before 25 May 2003 in the second. The Ruling will not apply to any Grower who is allocated less than 6 hectares in the Project.

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

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

#### **Division 328**

46. 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**

47. 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**

48. 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.

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

**Deductions for Application Money, Management fees, Rent and Interest****Section 8-1**

50. A Grower who is not an 'STS taxpayer' and who is accepted into the Project on or before 30 June 2002 may claim, on a per hectare basis, tax deductions for the following revenue expenses:

<b>Fee Type</b>	<b>ITAA 1997 Section</b>	<b>Year ended 30 June 2002</b>	<b>Year ended 30 June 2003</b>	<b>Year ended 30 June 2004</b>
<b>Application Money -fees for 'seasonally dependent agronomic activities'</b>	8-1	\$4,950  See Notes (i) & (ii) (below)		
<b>Management fees</b>	8-1		\$99 – (indexed) See Notes (i) & (iii) (below)	\$99 – (indexed) See Notes (i) & (iii) (below)
<b>Rent</b>	8-1		\$374 (indexed) - See Notes (i) & (iii) (below)	\$374 (indexed) See Notes (i) & (iii) (below)
<b>Interest on loan with Albany Financial Pty Ltd</b>	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 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 122.
- (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 Rent in the relevant income years shown in the Project Management Contract, those fees are deductible in full in the year that they are incurred. These fees are charged for providing

maintenance services and for the lease of the land to a Grower until 30 June of the year in which the fees are incurred. However, if a Grower **chooses** to prepay fees for the doing of a thing (e.g., the provision of management services or the leasing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA 1936 may apply to apportion those fees (see paragraphs 79 to 99). In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 85 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. Where a Grower has a number of interests in the Project and the Grower chooses to make prepayments, it is the aggregate amount paid for each fee, (for example, Rent, or Management fees) that is the relevant figure to be used in determining whether an amount is 'excluded expenditure'. For example, where a Grower acquires the minimum allocation of 6 hectares, the aggregate amount of Rent is greater than \$1,000. A Grower who chooses to prepay Rent, (or other fees with an aggregate that exceeds \$1,000) **MUST** determine the relevant deduction for the prepaid fee, using the formula shown in paragraph 85. These Growers should carefully read the Explanations relating to the prepayment rules to correctly determine their deductions (see paragraphs 79 to 99 below).

- (iv) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Albany Financial Pty Ltd, the internal financier, is outside the scope of this Ruling. However all Growers, including those who finance their participation in the Project other than with Albany Financial Pty Ltd, should read the discussion of the prepayment rules in paragraphs 79 to 99 (below) as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the prepayment is required under the relevant loan agreement or is at the Grower's choice.

51. A Grower who is not an 'STS taxpayer' and who is accepted into the Project between 1 July 2002 and 25 May 2003 may claim, on a per hectare basis, tax deductions for the following revenue expenses:

<b>Fee Type</b>	<b>ITAA 1997 Section</b>	<b>Year ended 30 June 2003</b>	<b>Year ended 30 June 2004</b>	<b>Year ended 30 June 2005</b>
<b>Application Money - fees for 'seasonally dependent agronomic activities'</b>	8-1	\$4,950  See Notes (i) & (ii) (above)		
<b>Management fees</b>	8-1		\$99 (indexed) See Notes (i) & (iii) (above)	\$99 (indexed) See Notes (i) & (iii) (above)
<b>Rent</b>	8-1	\$374 (indexed) See Notes (i) & (iii) (above)	\$374 (indexed) See Notes (i) & (iii) (above)	\$374 (indexed) See Notes (i) & (iii) (above)
<b>Interest on loan with Albany Financial Pty Ltd</b>	8-1	As incurred See Note (iv) (above)	As incurred See Note (iv) (above)	As incurred See Note (iv) (above)

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

#### **Assessable Income**

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

52. 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.

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



**PR 2002/98****Deductions for Application Money, Management fees, Rent, and Interest****Section 8-1 and section 328-105**

54. A Grower who is an 'STS taxpayer' and who is accepted into the Project on or before 30 June 2002 may claim, on a per hectare basis, tax deductions for the following revenue expenses:

<b>Fee Type</b>	<b>ITAA 1997 Sections</b>	<b>Year ended 30 June 2002</b>	<b>Year ended 30 June 2003</b>	<b>Year ended 30 June 2004</b>
<b>Application Money - fees for 'seasonally dependent agronomic activities'</b>	8-1	\$4,950  See Notes (v), (vi) & (viii) (below)		
<b>Management fees</b>	8-1		\$99 – (indexed) See Notes (v), (vii) & (viii) (below)	\$99 – (indexed) See Notes (vi), (vii) & (viii) (below)
<b>Rent</b>	8-1		\$374 (indexed) See Notes (v), (vii) & (viii) (below)	\$374 (indexed) See Notes (v), (vii) & (viii) (below)
<b>Interest on loan with Albany Financial Pty Ltd</b>	8-1	When paid. See Notes (vii) & (ix) (below)	When paid. See Notes (vii) & (ix) (below)	When paid. See Notes (vii) & (ix) (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 122.
- (vi) Expenditure for 'seasonally dependent agronomic activities' is deductible in the income year in which it is incurred.
- (vii) If, for any reason, an amount shown in the Table above is not fully paid in the year in which it is incurred by a Grower who is an 'STS taxpayer' then the amount is

only deductible to the extent to which it has been paid, or has been paid for the Grower. Any amount or part of an amount shown in the Table above which is not paid in the year in which it is incurred will be deductible in the year in which it is actually paid.

- (viii) Where a Grower who is an 'STS taxpayer', pays the Management Fees and the Rent in the relevant income years shown in the Project Management Contract and the Sub-lease, those fees are deductible in full in the year they are paid. These fees are charged for providing maintenance services and for the lease of the land to a Grower until 30 June of the year in which the fees are paid. However, if a Grower chooses to prepay fees for the doing of a thing (e.g., the provision of management services or the leasing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA may apply to apportion those fees (see paragraphs 79 to 99). In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 85, 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. Where a Grower has a number of interests in the Project and the Grower chooses to make prepayments, it is the aggregate amount paid for each fee, (for example, Rent, or Management fees) that is the relevant figure to be used in determining whether an amount is 'excluded expenditure'. For example, where a Grower acquires the minimum allocation of 6 hectares, the aggregate amount of Rent is greater than \$1,000. A Grower who chooses to prepay Rent, (or other fees with an aggregate that exceeds \$1,000) MUST determine the relevant deduction for the prepaid fee, using the formula shown in paragraph 85. These Growers should carefully read the Explanations relating to the prepayment rules to correctly determine their deductions (see paragraphs 79 to 99 below).
- (ix) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Albany Financial Pty Ltd, the internal financier, is outside the scope of this Ruling. However all Growers, including those who finance their participation in the Project other than with Albany Financial Pty Ltd,

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should read the discussion of the prepayment rules in paragraphs 79 to 99 (below) as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the prepayment is required under the relevant loan agreement or is at the Grower's choice.

55. A Grower who is an 'STS taxpayer' and who is accepted into the Project between 1 July 2002 and 25 May 2003 may claim on a per hectare basis, tax deductions for the following revenue expenses:

<b>Fee Type</b>	<b>ITAA 1997 Sections</b>	<b>Year ended 30 June 2003</b>	<b>Year ended 30 June 2004</b>	<b>Year ended 30 June 2005</b>
<b>Application Money - fees for 'seasonally dependent agronomic activities'</b>	8-1	\$4,950  See Notes (v), (vi) & (vii) (above)		
<b>Management fees</b>	8-1		\$99 – (indexed) See Notes (v), (vii) & (viii) (above)	\$99 – (indexed) See Notes (v), (vii) & (viii) (above)
<b>Rent</b>	8-1	\$374 (indexed) See Notes (v), (vii) & (viii) (above)	\$374 (indexed) See Notes (v), (vii) & (viii) (above)	\$374 (indexed) See Notes (v), (vii) & (viii) (above)
<b>Interest on loan with Albany Financial Pty Ltd</b>	8-1	When paid. See Notes (vii) & (ix) (above)	When paid. See Notes (vii) & (ix) (above)	When paid. See Notes (vii) & (ix) (above)

**Tax outcomes that apply to all Growers****Division 35 - deferral of losses from non-commercial business activities****Section 35-55 – Commissioner's discretion**

56. 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. Similarly, for a Grower who enters the Project during the year ended 30 June 2003, the Commissioner will decide for the income years ending 30 June 2003 to 30 June 2013 that the rule in section 35-10 does not apply to this activity provided that the Project is carried out in the manner described in this Ruling.

57. 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 110 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)).

58. 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.

59. 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**

60. For a Grower who participates in the Project and incurs expenditure as required by the Project Management Contract and the Sub-lease the following provisions of the ITAA 1936 have application as indicated:

- section 82KL does not apply to deny the deductions otherwise allowable; and

- the relevant provisions in Part IVA will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

## Explanations

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### Is the Grower carrying on a business?

61. For the amounts set out in the Tables above to constitute allowable deductions the Grower's afforestation activities as a participant in the W.A. Blue Gum Project 2002 must amount to the carrying on of a business of primary production.

62. Where there is a business, or a future business, the gross proceeds from the sale of the wood produce 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.

63. For schemes such as that of the W.A. Blue Gum Project 2002, Taxation Ruling TR 2000/8 sets out in paragraph 89 the circumstances in which the Grower's activities can constitute the carrying on of a business. As Taxation Ruling TR 2000/8 sets out, these circumstances have been established in court decisions such as *FCT v. Lau* 84 ATC 4929, (1984) 16 ATR 55.

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

- the Grower has an identifiable interest (by lease or by licence) in the land on which the Grower's trees are established;
- the Grower has a right to harvest and sell the wood produce 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.

65. In this Project, each Grower enters into a Project Management Contract and a Sub-lease.

66. Under the Sub-lease each individual Grower will have rights over a specific and identifiable area of land. The Sub-lease provides the Grower with an ongoing interest in the specific trees on the leased area for the term of the Project. Under the Sub-lease the Grower must use the land in question for the purpose of carrying out afforestation activities, and for no other purpose. The Sub-lease allows the Project Manager to come onto the land to carry out its obligations under the Sub-lease and under the Project Management Contract.

67. Under the Project Management Contract the Project Manager is engaged by the Grower to establish and maintain a plantation 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 plantation on the Grower's behalf.

68. Under the Wood Purchase Agreement, WACAP is engaged to harvest and sell, on the Grower's behalf, the wood produce grown on the Grower's land.

69. 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.

70. 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 wood produce that will return a before-tax profit, i.e. a profit in cash terms that does not depend in its calculation on the fees in question being allowed as a deduction.

71. The pooling of wood produce from trees grown on the Grower's plantation with the wood produce of other Growers is consistent with general afforestation practices. Each Grower's proportionate share of the sale proceeds of the pooled wood products will reflect the proportion of the trees contributed from their area of land.

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

73. The Grower's degree of control over the Project Manager as evidenced by the Project Management Contract, 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 Plantation Crop 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.

74. 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 W.A. Blue Gum Project 2002 will constitute the carrying on of a business.

## **The Simplified Tax System**

### **Division 328**

75. 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.

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

## **Deductibility of the Application Money, Management fees and Rent**

### **Section 8-1**

77. Consideration of whether the Application Money, Management fees and Rent 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.

78. The Application Money, Management fees and Rent 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 wood produce) is to be gained from this business. They will thus be deductible under the first limb of section 8-1. Further, no 'non-income producing' purpose in incurring the fees is identifiable from the arrangement. The fees appear to be reasonable. There is no capital component of the Application Money or 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**

79. The prepayment provisions contained in Subdivision H of Division 3 of Part III of the ITAA 1936 affect the timing of deductions for certain prepaid expenditure. These provisions apply to certain expenditure incurred under an agreement in return for the doing of a thing under the agreement (eg. the performance of management services or the leasing of land) that will not be wholly done within the same year of income as the year in which the expenditure is incurred. If expenditure is incurred to cover the provision of services to be provided within the same year, then it is not expenditure to which the prepayment rules apply.

80. 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*

81. 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)).

82. 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.

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

84. 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.

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

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

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

86. 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*

87. 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).

88. 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.

89. 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:
  - (a) there is more than one participant in the agreement in the same capacity as the taxpayer; or

- (b) the manager manages, arranges or promotes the agreement, or an associate of the manager, manages, arranges or promotes similar agreements.

90. 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.

91. 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*

92. Under the Project Management Contract, a Grower incurs a Year 1 Management Fee consisting of expenditure of \$4,950 for 'seasonally dependent agronomic activities'.

93. As the requirements of section 82KZMG have been met, a deduction is allowable in the income year ended 30 June 2002 for those entering the Project prior to 30 June 2002 and in the income year ended 30 June 2003 for those entering the Project between 1 July 2002 and 25 May 2003 for the expenditure incurred under the Project Management Contract for 'seasonally dependent agronomic activities'.

94. The Project Management Contract also requires that a Grower incurs a Maintenance Fee of \$99 per year (indexed from 30 June 2002) from Year 2 to onward for the performance of maintenance services during the term of the Project. Under the Sub-lease a Grower incurs Rent of \$374 (indexed) to lease land during the term of the Project.

95. The Maintenance Fee incurred under the Project Management Contract in Years 2 onward and the Rent incurred under the Sub-lease are not prepaid. These fees are charged for providing maintenance services and for the lease of the land to a Grower until 30 June of the year in which the fees are incurred.

96. 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 in Years 2 onward and the Rent.

97. 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*

98. Although not required under either the Project Management Contract, the Sub-lease, or the Loan Agreement with Albany Financial Pty Ltd (see below), a Grower participating in the Project may **choose** to prepay fees/interest for a period beyond the 'expenditure year'. Where this occurs, contrary to the conclusion reached in paragraph 96 above, section 82KZMF will apply to apportion the expenditure and allow a deduction over the period in which the prepaid benefits are provided.

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

## **Interest deductibility**

### **Section 8-1**

*(i) Growers who use Albany Financial Pty Ltd as the finance provider*

100. Some Growers may finance their participation in the Project through a loan facility with Albany Financial 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 rent and management fees.

101. The interest incurred for the 1<sup>st</sup> Year of entry into the Project and in subsequent years of income will be in respect of a loan to finance the Grower's business operations - the cultivation and growing trees and the lease of the land on which the 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.

102. As with the Management fees and the Rent, in the absence of any application of the prepayment provisions (see paragraphs 79 to

99) the timing of deductions for interest will again depend upon whether a Grower is an 'STS taxpayer' or is not an 'STS taxpayer'.

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

104. If the Grower is an 'STS taxpayer' interest is not deductible until it has been both incurred and paid, or is paid for the Grower. 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.

*(ii) Growers who DO NOT use Albany Financial Pty Ltd as the finance provider*

105. The deductibility of interest incurred by Growers who finance their participation in the Project through a loan facility with a bank or financier other than Albany Financial Pty Ltd 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.

106. 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 79 to 99).

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

107. 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.

108. 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.

109. 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.

110. 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.

111. 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).

112. 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 6 hectares in the Project in the year ended 30 June 2002 is unlikely to have their activity pass one of the tests until the income year ended 30 June 2012. Similarly a Grower who acquires the minimum allocation of 6 hectares in the Project in the year ended 30 June 2003 is unlikely to have their activity pass one of the tests until the income year ended 30 June 2013. Growers who acquire more than one interest in the Project may however, find that their activity meets one of the tests in an earlier income year. 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.

113. 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.

114. Information provided with this Product Ruling indicates that a Grower who acquires the minimum investment of 6 hectares in the Project in the year ended 30 June 2002 is expected to be carrying on a business activity that will either pass one of the tests or produce a taxation profit, for the income year ended 30 June 2013. 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.

115. Similarly, a Grower who acquires the minimum investment of 6 hectares in the Project in the year ended 30 June 2003 is expected to be carrying on a business activity that will either pass one of the tests or produce a taxation profit, for the income year ended 30 June 2014. 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 2013.

116. This Product Ruling is issued on a prospective basis (i.e., before an individual Grower's business activity starts to be carried on). The Project, however, may fail to be carried on during the income years specified above (see paragraph 56), in the manner described in the Arrangement (see paragraphs 14 to 43). 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.

117. 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
- independent, objective, and generally available information relating to the afforestation industry which substantially supports cash flow projections and other claims, including prices and costs, in the Product Ruling application submitted by the Responsible Entity.

### **Losses and Outgoings incurred under Certain Tax Avoidance Schemes**

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

118. 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.

### **Schemes to Reduce Income Tax**

#### **Part IVA - general tax avoidance provisions**

119. 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).

120. The W.A. Blue Gum Project 2002 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 50, 51, 54 and 55 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.

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



## Example

### Example - Entitlement to GST input tax credits

122. 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).

## Detailed contents list

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

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**Commissioner of Taxation**

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*Subject references:*

- carrying on a business
- commencement of business
- fee expenses
- interest expenses
- management fees
- producing assessable income
- product rulings
- public rulings
- taxation administration
- tax avoidance
- tax benefits under tax avoidance
- schemes
- tax shelters
- tax shelters project

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