



PR 2004/23 - Income tax: Sylvatech Tropical Timbers 2004

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Product Ruling

Income tax: Sylvatech Tropical Timbers 2004

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

Preamble

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

No guarantee of commercial success

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

Potential participants must form their own view about the commercial and financial viability of the product. This will involve a consideration of important issues such as whether projected returns are realistic, the 'track record' of the management, the level of fees in comparison to similar products, how 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 'Sylvatech Tropical Timbers 2004' 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 of the (ITAA 1997);
 - Section 17-5 of the (ITAA 1997);
 - Division 27 of the (ITAA 1997);
 - Division 35 of the (ITAA 1997);
 - Division 328 of the (ITAA 1997);
 - Section 82KL of the *Income Tax Assessment Act 1936* (ITAA 1936);
 - Section 82KZL of the (ITAA 1936);
 - Section 82KZME of the (ITAA 1936);
 - Section 82KZMF (ITAA 1936);
 - Section 82KZMG (ITAA 1936); and
 - Part IVA of the (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 (for example 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
- 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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Date of effect

11. This Ruling applies prospectively from 10 March 2004, 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 2006. 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

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

- Application for Product Ruling dated 24 November 2003 and additional correspondence dated 13 January 2004, 14 January 2004, 15 January 2004, 6 February 2004, 9 February 2004, 19 February 2004, 23 February 2004 and 24 February 2004;
- Draft Product Disclosure Statement for Sylvatech Tropical Timbers 2004, received 24 February 2004;
- **Replacement Constitution** for Sylvatech Tropical Timbers 2004, received 14 January 2004;
- **Draft Licence and Management Agreement** between Sylvatech Securities Ltd [the 'Responsible Entity'] and the Grower, received 14 January 2004;
- Memorandum of Lease ['Head Lease'] between Tiwi Aboriginal Land Trust [the 'Head Lessor'] and Sylvatech Ltd (formerly Australian Plantation Group), dated 1 January 2000;
- Memorandum of Lease ['Head Lease'] between the Landowner and Sylvatech Ltd [the 'Sub-Lessor'] dated 12 December 2002;
- Draft Sub-Lease between Sylvatech Ltd [the 'Sub-Lessor'] and Sylvatech Securities Ltd [the 'Responsible Entity'], dated 18 November 2003;
- Draft Operations Agreement between Sylvatech Securities Ltd ['Responsible Entity'] and Sylvatech Forestry Pty Ltd [the 'Manager'], received 14 January 2004;
- Draft loan agreement between an Australian bank and the Grower, received 23 February 2004;
- Draft Forestry Expert Report prepared for Sylvatech Securities Ltd [the 'Responsible Entity'], dated 16 November 2003; and
- Compliance Plan for Sylvatech Tropical Timbers 2004, dated 18 November 2003.

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. All terms capitalised throughout the Product Ruling are defined terms in the documentation received for this Project.

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.

Overview

17. This arrangement is called Sylvatech Tropical Timbers 2004.

Location	Melville Island, one of the Tiwi Islands in the Arafura Sea, 60 km north of Darwin in the Northern Territory, Australia
Type of business each participant is carrying on	Commercial growing and cultivation of <i>Acacia mangium</i> trees for the purpose of producing woodchip or other suitable timber products.
Number of hectares offered for cultivation	2,500 hectares offered under this Product Disclosure Statement, with provision for oversubscription.
Size of each interest	0.5 hectares
Number of trees per hectare	Minimum of 1,100
The term of the investment	Approximately 8 years
Initial cost per Treefarm Unit	\$2,750 or \$2,475 if an Applicant is allotted 40 or more Treefarm Units.
Initial cost per hectare	\$5,500 or \$4,950 if an Applicant is allotted 40 or more Treefarm Units.

Ongoing costs	Annual Management Fee (which may be deferred); Annual insurance premiums; Marketing Fees; Harvesting, processing and transporting costs; Responsible Entity's Performance Bonus.
Other costs	Future payment obligations which the Responsible Entity reasonably believes will fall due after a distribution is made to Growers (if any). Potential administration charge for arranging insurance. Reimbursement of expenses of the Responsible Entity for work to be done following the realisation of the Project Property (if any).

18. The Project, Sylvatech Tropical Timbers 2004 ASRN 107 390 796, is registered as a Managed Investment Scheme under the *Corporations Act 2001*. The Responsible Entity for this Project is Sylvatech Securities Limited. The Project land is situated on Melville Island, one of the Tiwi Islands in the Arafura Sea, 60 km north of Darwin in the Northern Territory, Australia.

19. Growers applying under the Product Disclosure Statement will enter into a Licence and Management Agreement with the Responsible Entity. The Landowner has leased the land to Sylvatech Ltd and has consented to the Sub-Lease Agreement to the Responsible Entity. The Responsible Entity will grant a licence to the Grower to enable the Grower to carry on the business of afforestation for the commercial production of *Acacia mangium* trees. Under the Licence and Management Agreement, Growers licence an area of land called a 'Treefarm' for a term of approximately 8 years. Each Treefarm consists of a minimum of one Treefarm Unit which is 0.5 hectares in size.

20. Under the Licence and Management Agreement, Growers appoint the Responsible Entity to manage their Treefarm. The Responsible Entity will enter into an Operations Agreement with Sylvatech Forestry Pty Ltd (the 'Manager') to perform the services required under the Licence and Management Agreement. Under the

Operations Agreement, the Manager will be responsible for the establishment, cultivation, harvesting and sale of the trees.

21. Applications may be accepted by the Responsible Entity on or before 28 February 2005. For the purposes of this Ruling, Growers whose Licence and Management Agreement is executed by 30 June 2004 are referred to as '2004 Growers'. Growers whose Licence and Management Agreement is executed between 1 July 2004 and 28 February 2005 are referred to as '2005 Growers'.

22. Under the Product Disclosure Statement, the Responsible Entity will offer a maximum of 5,000 Treefarm Units, with provision for oversubscription. There is no minimum subscription for the Project. Each participant may subscribe for one or more Treefarm Units at a cost of \$2,750 each. However, Growers who subscribe for 40 or more Treefarm Units will receive a discount of 10% of the subscription cost. Each Treefarm Unit will be planted with a minimum of 550 trees (1,100 per hectare).

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 operate the Project. Application monies will be held by the Responsible Entity on trust for the Applicants until an Interest is issued. Money will be transferred from the Application Fund where the following conditions are satisfied

- The Responsible Entity has issued an Interest to an Applicant;
- The Responsible Entity is ready, willing and able to perform its duties pursuant to the Licence and Management Agreement entered with the Applicant;
- Any matter required to be attend to which is necessary for the creation of the Growers' Interest whether by reason of this Constitution or otherwise has been attended to.

24. The Responsible Entity will keep a register of Growers (clause 8). The Licence and Management Agreement will be executed on behalf of the Grower following them signing the Application Form and the Power of Attorney in the Product Disclosure Statement. Growers are bound by the Constitution by virtue of their participation in the Project.

Compliance plan

25. The Responsible Entity has prepared a Compliance Plan in accordance with the *Corporations Act 2001*. Its purpose is to ensure that the Responsible Entity meets its obligations as the Responsible Entity of the Project and that the rights of the Growers are protected.

Interest in land

26. The Licence and Management Agreement commences on the date the Agreement is executed. The Agreement is terminated pursuant to the provisions of the Agreement or on the date of completion of the Project (see paragraph 28). The Responsible Entity grants a licence to the Grower under the terms of the Licence and Management Agreement. Should the Head Lease between the Head Lessor and the Sub-Lessor terminate for any reason, the Sub-Lease will continue as a Lease between the Grower and the Head Lessor (clause 11.2 of the Sub-Lease). Should the Sub-Lease between the Sub-Lessor and the Responsible Entity terminate, then to the greatest extent possible, the Sub-Lessor will honour and assume the obligations, duties and responsibilities of the Sub-Lessee under the Licence and Management Agreement as if it were the licensor under those agreements (clause 13.5 of the Sub-Lease).

27. Growers are granted an interest in land in the form of a licence to use and occupy their Treefarm for the purpose of planting, growing, maintaining, cultivating and harvesting *Acacia mangium* trees (clause 3.1(a) of the Licence and Management Agreement). Growers have a legal interest in the Trees grown on the Grower's Treefarm from the commencement of their Licence and Management Agreement until the date of first Clearfall (Schedule 1 – Dictionary of the Constitution). Growers must pay a licence fee to the Responsible Entity. This fee is included in the Management fees payable under the Licence and Management Agreement (clause 6).

Licence and Management Agreement

28. Each Grower enters into a Licence and Management Agreement with the Responsible Entity. The term of the Project is from the date of execution of this agreement until the earlier of the date the harvest of the trees is completed, the termination of the Grower's interest under the Agreement or 30 June 2013, or such later date as determined by the Responsible Entity having regard to sound silvicultural practices.

29. Growers contract with the Responsible Entity to establish, maintain and manage the Grower's Treefarm and perform the harvest, processing and sale of the Grower's Produce from the Grower's

Treefarm. Growers must pay an Establishment fee on application. Growers may elect on application to pay the Management fees for each year of the Project annually or use the deferred payment option. Under the deferred payment option, the fee is paid as a percentage out of the Gross Harvest Proceeds.

30. The Responsible Entity will engage the Manager to provide the following Establishment Services:

- supplying and planting seedlings or cuttings of *Acacia mangium*;
- ploughing, ripping and mounding the Treefarm;
- spraying the Treefarm for the control of weeds which may significantly interfere with the establishment of the trees;
- fertilising the Treefarm in accordance with sound silvicultural practices; and
- planting on the Treefarm sufficient trees in accordance with the number of trees per hectare specified in the Agreement.

31. The Responsible Entity will engage the Manager to perform the following ongoing services:

- maintain, tend and otherwise care for the Trees as and when required;
- in the wet season of planting, replant any significant area(s) of the Treefarm where tree deaths will limit the overall yield of the Treefarm;
- monitor and control weed growth during the first wet season post planting that may limit the growth of the Treefarm;
- monitor the development of the Treefarm and if economically feasible, conduct form pruning operations to reduce the incidence of multi stemmed trees;
- monitor and control, to the extent necessary, any insects or vermin that may be causing significant damage to the trees;
- monitor soil and foliar nutrient status and, to the extent determined necessary, fertilise the trees; and
- maintain in good repair and condition access to the Treefarm.

Planting

32. Under the Licence and Management Agreement, the Responsible Entity is required to prepare the land for planting and supply the necessary seedlings or cuttings of *Acacia mangium*. The Responsible Entity will engage the Manager to provide these services and to plant the seedlings or cuttings on the Treefarms by 31 March 2005 or within 12 months of the application being accepted, whichever is the earlier for both 2004 Growers and 2005 Growers. Each Treefarm will be planted with seedlings or cuttings at a minimum of 1,100 per hectare. The Manager will, in the wet season of planting, replant any significant areas where tree deaths will limit the overall yield of the Plantation to the extent agreed by the Manager and the Responsible Entity (Item 4(b), Schedule 1 of the Operations Agreement).

Harvesting

33. The Manager has been contracted by the Responsible Entity to perform all harvesting activities on the Plantation from the Date of First Clearfall (Item 6, Schedule 1 of the Operations Agreement). Growers appoint the Responsible Entity to sell the Grower's Produce. The Responsible Entity will use all reasonable endeavours to arrange for the sale of the Grower's Produce from the clearfalling of the Treefarm (clause 10.1, Licence and Management Agreement).

34. The Responsible Entity will place into the Proceeds Fund Bank Account the Gross Harvest Proceeds from the sale of the Trees. The Responsible Entity is entitled to deduct from the Proceeds Fund prior to a Grower receiving a distribution:

- Costs of Production;
- Any insurance premiums, effected by the Responsible Entity under the Licence and Management Agreement, in respect of those Growers' Treefarms remaining at the relevant time and yet to be harvested;
- Management fees after the Date of First Clearfall, payable in respect of Treefarms remaining at the time and yet to be harvested (such fees calculated in accordance with the Licence and Management Agreement); and
- Fees payable under the Licence and Management Agreement. (Clause 10.6 of the Licence and Management Agreement).

35. Upon, the winding up of the Project, the Responsible Entity may retain from the proceeds of realisation of Project Property money to meet future payment obligations which the Responsible Entity

reasonably believes will fall due after a distribution is made to Growers and to pay its own remuneration and expenses for work to be done following the realisation of Project Property.

36. The net amount available for each Grower, after all deductions are made by the Responsible Entity under the Constitution, must be paid to the Growers within 4 months after 30 June of the relevant year. However, if the amount to be distributed to a Grower is less than \$30 per Treefarm Unit, then except for the Final Distribution under the Constitution, the Responsible Entity may in its absolute discretion, not make a distribution. In this case, the net amount will be carried forward for subsequent distribution.

Fees

37. All Growers must pay an Establishment fee on application for establishment services. This fee is equal to \$2,750 per Treefarm Unit or \$2,475 per Treefarm Unit if an Applicant is allotted 40 or more Treefarm Units. For both 2004 Growers and 2005 Growers, the establishment services will be provided by 31 March 2005 or within 12 months of the application being accepted, whichever is the earlier.

38. Upon application, Growers may elect to pay the Management fee under the annual payment option or the deferred payment option. Under the annual payment option, Growers are required to pay an amount of \$125.40 in arrears by 30 June of each year of the Project until the Date of First Clearfall. This fee will be indexed annually commencing in the year ended 30 June 2006. From the date of First Clearfall, the amount of Management fees payable will be calculated by reference to the proportion of Treefarms yet to be harvested. This amount will be deducted by the Responsible Entity out of the Proceeds Fund once the Net Harvest Proceeds have been determined.

39. If the deferred payment option is selected, for the period up until the Date of First Clearfall, Growers must pay an amount of 15.95% of the Gross Harvest Proceeds which will be deducted from each distribution made from the Proceeds Fund. For the period after the date of First Clearfall, the amount of Management fees payable will be calculated by reference to the proportion of Treefarms yet to be harvested. This amount will be deducted by the Responsible Entity out of the Proceeds Fund once the Net Harvest Proceeds have been determined.

40. A licence fee is payable under the Licence and Management Agreement by all Growers. This fee is included in the annual Management fee and the deferred Management fee (clause 6, Licence and Management Agreement).

41. All Growers must pay a Marketing fee of 4.4% of the Gross Harvest Proceeds, in respect of marketing services provided under the

Licence and Management Agreement. This fee is payable at any time after the Gross Harvest Proceeds have been paid into the Proceeds Fund in accordance with the Constitution and the Net Harvest Proceeds have been determined.

42. All Growers must also pay a Performance Bonus to the Responsible Entity if the distributions paid and payable to the Grower exceed the Performance Bonus Target of \$7,600. The Performance Bonus will be equal to 22% of the distributions paid and payable to the Grower in excess of \$7,600 per Treefarm Unit.

43. The Responsible Entity is appointed to arrange insurance of the Growers' produce against the destruction of, or damage to, the Growers' Produce. Up until the date of First Clearfall the Grower will be liable for the annual cost of this insurance. After the Date of First Clearfall, the Responsible Entity will bear the cost of this insurance but will be entitled to have this cost reimbursed from the Proceeds Fund out of Gross Harvest Proceeds.

Finance

44. Growers can fund their investment in the Project themselves or borrow from an independent lender. The Responsible Entity has arranged for an Australian bank to provide a finance package for intending Growers. This finance arrangement will be on a full recourse basis and no funds from the Project will be used to provide such loans.

45. The terms of the loan under the finance package are either:

- 36 months interest only, then rate review, followed by 60 months principal and interest, then rate review, then up to 24 months principal and interest; or
- 60 months principal and interest only, then rate review, followed by 36 months principal and interest, then rate review, then up to 24 months principal and interest.

The balance of the loan is immediately due and payable on the date of distribution of the proceeds of sale of harvest or upon distribution by the Responsible Entity of the insurance proceeds if the Growers' Treefarm is damaged.

46. 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;
- entities involved with the project (other than the finance package) are involved in the provision of finance to the Grower for this project;

- 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

47. This Ruling applies only to Growers who are accepted to participate in the Project on or before 28 February 2005 and who have executed a Licence and Management Agreement by this date. A Grower is not eligible to claim any tax deductions until the Grower's application to enter the Project is accepted and the Project has commenced.

The Simplified Tax System ('STS')

Division 328

48. For a Grower participating in the Project, the recognition of income and the timing of tax deductions, including those related to capital allowances, 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

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

Tax outcomes for Growers who are not 'STS taxpayers'**Assessable Income*****Section 6-5***

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

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

Deductions for Establishment fee, Management fee, Insurance and Interest***Section 8-1***

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

2004 Growers

Fee Type	ITAA 1997 Section	Year ended 30/6/2004	Year ended 30/6/2005	Year ended 30/6/2006
Establishment Fee	8-1	See Notes (i) & (ii)		
Management Fees (Annual Payment Option Only)	8-1		\$125.40 - See Notes (i), (iii) & (iv)	\$125.40 (indexed) - See Notes (i), (iii) & (iv)

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Insurance	8-1		As incurred – See Notes (i) & (v)	As incurred – See Notes (i) & (v)
Interest	8-1	As incurred – See Notes (i) & (vi)	As incurred – See Notes (i) & (vi)	As incurred – See Notes (i) & (vi)

2005 Growers

Fee Type	ITAA 1997 Section	Year ended 30/6/2004	Year ended 30/6/2005	Year ended 30/6/2006
Establishment Fee	8-1		See Notes (i) & (ii)	
Management Fees (Annual Payment Option only)	8-1		\$125.40 – See Notes (i), (iii) & (iv)	\$125.40 – See Notes (i), (iii) & (iv)
Insurance	8-1		As incurred – See Notes (i) & (v)	As incurred – See Notes (i) & (v)
Interest	8-1		As incurred – See Notes (i) & (vi)	As incurred – See Notes (i) & (vi)

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 (for example input tax credits): Division 27. See Example 1 at paragraph 111;
- (ii) The Establishment Fee payable is equal to \$2,750 per Treefarm Unit or \$2,475 per Treefarm Unit if an Applicant is allotted 40 or more Treefarm Units. For 2004 Growers this constitutes expenditure for 'seasonally dependant agronomic activities' and is deductible in the income year in which it is incurred.

For 2005 Growers, this fee is not prepaid and therefore is deductible in full in the year incurred;

- (iii) Where a Grower who is not an 'STS taxpayer' pays the Management fee in the relevant income years shown in the Licence and Management Agreement, those fees are deductible in full in the year they are incurred;
- (iv) This amount is only deductible by Growers who elect on application to pay management fees under the annual payment option. **Growers who elect to pay management fees under the deferred payment option are not entitled to this deduction;**
- (v) The cost of insuring the Grower's Produce is deductible when incurred. However, Growers should read the discussion of the prepayment rules in paragraph 78 to 90 as those rules may be applicable if the insurance cost is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the amount is required to be prepaid or is prepaid at the Grower's choice; and
- (vi) Interest paid under the finance package (see paragraph 44) will be deductible when incurred. However, Growers should read the discussion of the prepayment rules in paragraph 78 to 90 as those rules may be applicable if the interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the amount is required to be prepaid or is prepaid at the Grower's choice.

Tax outcomes for Growers who are 'STS taxpayers'

Assessable Income

Section 6-5

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

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

PR 2004/23**Deductions for Establishment fee, Management fee, Insurance and Interest*****Section 8-1 and section 328-105***

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

2004 Growers

Fee Type	ITAA 1997 Sections	Year ended 30/6/2004	Year ended 30/6/2005	Year ended 30/6/2006
Establishment fee	8-1 & 328-105	See Notes (vii), (viii) & (ix)		
Management Fee (Annual Payment Option Only)	8-1 & 328-105		\$125.40 - See Notes (vii), (viii), (x) & (xi)	\$125.40 - See Notes (vii), (viii), (x) & (xi)
Insurance	8-1 & 328-105		When Paid - See Notes (vii) & (xii)	When Paid - See Notes (vii) & (xii)
Interest	8-1 & 328-105	When Paid - See Notes (vii) & (xiii)	When Paid - See Notes (vii) & (xiii)	When Paid - See Notes (vii) & (xiii)

2005 Growers

Fee Type	ITAA 1997 Sections	Year Ended 30/6/2004	Year ended 30/6/2005	Year ended 30/6/2006
Establishment fee	8-1 & 328-105		See Notes (vii), (viii) & (ix)	
Management Fee	8-1 & 328-105		\$125.40 - See Notes (vii), (viii), (x)	\$125.40 - See Notes (vii), (viii), (x)

			& (xi)	& (xi)
Insurance	8-1 & 328-105		When Paid - See Notes (vii) & (xii)	When Paid - See Notes (vii) & (xii)
Interest	8-1 & 328-105		When Paid - See Notes (vii) & (xiii)	When Paid - See Notes (vii) & (xiii)

Notes:

- (vii) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (for example input tax credits): Division 27. See Example 1 at paragraph 111;
- (viii) 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;
- (ix) The Establishment Fee payable is equal to \$2,750 per Treefarm Unit or \$2,475 per Treefarm Unit if an Applicant is allotted 40 or more Treefarm Units. For 2004 Growers this constitutes expenditure for 'seasonally dependant agronomic activities' and is deductible in the income year in which it is incurred. For 2005 Growers, this fee is not prepaid and therefore is deductible in full in the year incurred;
- (x) Where a Grower who is an 'STS taxpayer', pays the management fee in the relevant income years shown in the Licence and Management Agreement, those fees are deductible in full in the year that they are paid;
- (xi) This amount is only deductible by Growers who elect on application to pay management fees under the annual payment option. **Growers who elect to pay management fees under the deferred payment option are not entitled to this deduction;**

- (xii) The cost of insuring the Grower's Produce is deductible when paid. However, Growers should read the discussion of the prepayment rules in paragraph 78 to 90 (below) as those rules may be applicable if the insurance cost is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the amount is required to be prepaid or is prepaid at the Grower's choice; and
- (xiii) Interest paid under the finance package (see paragraph 44) will be deductible when paid. However, Growers should read the discussion of the prepayment rules in paragraph 78 to 90 as those rules may be applicable if the interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the amount is required to be prepaid or is prepaid at the Grower's choice.

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 2004 or 30 June 2005 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 2004 to 30 June 2012 for 2004 Growers and 30 June 2005 to 30 June 2012 for 2005 Growers 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 100 in the Explanations part of this ruling);
- a Grower's business activity satisfies one of the tests in sections 35-30, 35-35, 35-40 or 35-45; or

- the Grower's business activity produces assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsection 35-10(2)).

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, for example 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.

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

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

- expenditure by a Grower does not fall within the scope of sections 82KZME-82KZMF (but see paragraphs 78 to 90);
- 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.

Explanation

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 Sylvatech Tropical Timbers 2004 must amount to the carrying on of a business of primary production.

62. For schemes such as Sylvatech Tropical Timbers 2004, 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 *Commissioner of Taxation v. Lau* (1984) 6 FCR 202; 84 ATC 4929; (1984) 16 ATR 55.

63. 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 an afforestation business; and
- the weight and influence of general indicators point to the carrying on of a business.

64. In this Project, each Grower enters into a Licence and Management Agreement. Under the licence, each individual Grower will have rights over a specific and identifiable area of land (Treefarm). The Licence and Management Agreement provides the Grower with an ongoing interest in the specific trees on the Treefarm for the term of the Project.

65. Under the licence the Grower must use the Treefarm in question for the purpose of carrying out afforestation activities and for no other purpose. The licence allows the Responsible Entity to come onto the land to carry out its obligations under the Licence and Management Agreement.

66. Under the Licence and Management Agreement the Responsible Entity is engaged by the Grower to maintain the trees on the Grower's Treefarm during the term of the Project, according to the principles of sound afforestation practice which includes fertilisation and weed control. The Responsible Entity will subcontract the management services to the Manager under the Operations Agreement. The Manager has provided evidence that it holds the appropriate professional skills and credentials to provide the management services to maintain the Treefarm on the Grower's behalf.

67. The Responsible Entity is also engaged to harvest and sell, on the Grower's behalf, the trees grown on the Grower's Treefarm.

68. 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.

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

70. The pooling of wood produce from trees grown on the Growers' Treefarm 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 Treefarm.

71. The Responsible Entity's services are consistent with general afforestation practices. While the size of a Treefarm is relatively small, it is of a size and scale to allow it to be commercially viable (see Taxation Ruling IT 360).

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

73. 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 Sylvatech Tropical Timbers 2004 will constitute the carrying on of a business.

The Simplified Tax System

Division 328

74. 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.

75. 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 Establishment Fees and Management Fees***Section 8-1***

76. Consideration of whether the initial establishment 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.

77. The Establishment fee and Management fee associated with the afforestation activities will relate to the gaining of income from the Grower's business of afforestation, and hence have a sufficient connection to the operations by which income (from the regular 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 fee is identifiable from the arrangement. The fee appears to be reasonable. There is no capital component of the Establishment fee 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***

78. The prepayment provisions contained in Subdivision H of Division 3 of Part III of the ITAA 1936 affect the timing of deductions for certain prepaid expenditure. These provisions apply to certain expenditure incurred under an agreement in return for the doing of a thing under the agreement (e.g. the performance of management services or the leasing of land) that will not be wholly done within the same year of income as the year in which the

expenditure is incurred. If expenditure is incurred to cover the provision of services to be provided within the same year, then it is not expenditure to which the prepayment rules apply.

79. For this Project, only section 82KZL (an interpretive provision) and section 82KZMG are relevant.

Section 82KZMG

80. 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).

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

- incurred on or after 2 October 2001 and on or before 30 June 2006;
- 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.

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

- it must be an agreement for planting and tending trees for felling;
- 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.

83. 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.

84. 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

85. Under the Licence and Management Agreement, a 2004 Grower incurs an Establishment fee in Year 1 consisting of expenditure of \$2,750 or \$2,475 if 40 or more Treefarm Units are allotted, in respect of 'seasonally dependent agronomic activities'.

86. As the requirements of section 82KZMG have been met, a deduction is allowable in the income year ended 30 June 2004 for 2004 Growers for the expenditure incurred under the Licence and Management Agreement for 'seasonally dependent agronomic activities'.

87. For 2004 Growers and 2005 Growers who elect to pay the Management fee under the annual payment option, the Licence and Management Agreement also requires Growers to incur a Management fee of \$125.40 (plus indexation) per year during Years 2 to 9, for the performance of management services during the term of the Project. Under the Licence and Management Agreement, 2004 Growers and 2005 Growers incur licence fees which are incorporated into the Management fee to licence land during the term of the Project.

88. The Management fees incurred under the Licence and Management Agreement in Years 2 to 9 is not prepaid. The Establishment fee incurred under the Licence and Management Agreement by 2005 Growers is also not prepaid. The Management fee is 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. The Establishment fee is for establishment services to be provided in the first year of the Project.

89. 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 to 9, or to the Establishment fee incurred by 2005 Growers.

90. 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.

Interest deductibility

(i) Growers who use the finance package

91. Some Growers may finance their participation in the Project through the finance package (see paragraph 44). Under the terms of the finance package, interest must be paid.

92. Whether the resulting interest costs are deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of the establishment and management fee. The interest incurred for the year ended 30 June 2004 and in subsequent years of income will be in respect of a loan to finance the Project business operations of growing trees and is therefore 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. However, interest will only be deductible up to the date net harvest proceeds are paid to the grower under the terms of the Constitution.

(ii) Growers who DO NOT use the finance package

93. The deductibility of interest incurred by Growers who finance their participation in the Project through a loan facility other than with the finance package (see paragraph 44) 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.

94. All Growers who borrow funds in order to participate in the Project should read the discussion of the prepayment rules in paragraphs 78 to 90 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.

Deferral of losses from non-commercial business activities

Division 35

95. 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.

96. 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.

97. 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.

98. 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.

99. 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).

100. 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 is accepted into the Project on or before 28 February 2005 and engages the Responsible Entity to arrange for the harvesting

of the trees and marketing of timber will not have their activity pass one of the tests.

101. 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.

102. 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.

103. Information provided with this Product Ruling indicates that a Grower (who is accepted to participate in the Project on or before 28 February 2005) who acquires the minimum investment of 1 Treefarm in the Project is expected to be carrying on a business activity that will produce a taxation profit in the income year ended 30 June 2013.

104. 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.

105. 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 103), in the manner described in the Arrangement (see paragraphs 14 to 47). If so, this Ruling, and specifically the decision in relation to paragraph 35-55(1), 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 11). Growers may need to apply for private rulings on how paragraph 35-55(1) will apply in such changed circumstances.

106. 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 market reports provided with the Application; and
- independent, objective, and generally available information relating to the afforestation industry.

Section 82KL

107. The operation of section 82KL depends, among other things, on the identification of a certain quantum of ‘additional benefit(s)’. Insufficient ‘additional benefits’ will be provided to trigger the application of section 82KL. It will not apply to deny the deduction otherwise allowable under section 8-1.

Part IVA

108. 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).

109. Sylvatech Tropical Timbers 2004 will be a ‘scheme’ commencing with the issue of the Product Disclosure Statement. A Grower will obtain a ‘tax benefit’ from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 52 and 55 that would not have been obtained but for the scheme. However, it is not possible to conclude that the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

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

Example

Example 1 - Entitlement to GST input tax credits

111. Susan, who is a sole trader and registered for GST, contracts with a manager to manage her afforestation 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	<u>\$6,600</u>
(includes GST of \$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:

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

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

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

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

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

In preparing her income tax return for the year ended 30 June 2002, Susan is aware that the management fee is deductible in the year incurred. She calculates her management fee deduction as \$4,000 (not \$4,400).

Susan is aware that the electricity upgrade is deductible 10% per year over a 10 year period. She calculates her deduction for the power upgrade as \$200 (one tenth of \$2,000 only, not one tenth of \$2,200).

Detailed contents list

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Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

TR 2000/8; PR 1999/95; TR 92/1;
TR 92/20; TR 97/11; TR 97/16;
TD 93/34; TR 98/22; IT 360

Subject references:

- carrying on a business
- commencement of business
- non-commercial losses
- primary production
- primary production expenses
- management fee expenses
- producing assessable income
- product rulings
- public rulings
- schemes and shams
- taxation administration
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters

Legislative references:

- 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 Div 328
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- ITAA 1997 328-105
- ITAA 1997 328-105(1)(a)
- ITAA 1936 Pt III – Div 3
- ITAA 1936 82KL
- ITAA 1936 82KZL
- ITAA 1936 82KZME
- ITAA 1936 82KZME(2)
- ITAA 1936 82KZMF
- ITAA 1936 82KZMF(1)
- 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)
- Copyright Act 1968
- Corporations Act 2001
- TAA 1953 Pt IVAAA

Other Related Ruling/Determination:

TR 2001/14, TD 2003/12.

Case references:

- *Commissioner of Taxation v. Lau*
(1984) 6 FCR 202; 84 ATC 4929;
(1984) 16 ATR 55.

ATO references:

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