



# ***PR 2004/55 - Income tax: Gunns Plantations Winegrape Project 2004***

 This cover sheet is provided for information only. It does not form part of *PR 2004/55 - Income tax: Gunns Plantations Winegrape Project 2004*

 This document has changed over time. This is a consolidated version of the ruling which was published on *12 May 2004*



## Product Ruling

### Income tax: Gunns Plantations Winegrape Project 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, **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 the investment fits an existing portfolio, etc. We recommend a financial (or other) adviser be consulted for such information.

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

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

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

#### **Terms of use of this Product Ruling**

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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 law(s) identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates. In this Ruling this arrangement is referred to as the 'Gunns Plantations Winegrape Project 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 (ITAA 1997);
- Section 17-5 (ITAA 1997);
- Division 27 (ITAA 1997);
- Division 35 (ITAA 1997);
- Division 40 (ITAA 1997);
- Division 328 (ITAA 1997);
- Section 82KL of the *Income Tax Assessment Act 1936* (ITAA 1936);
- Sections 82KZME - 82KZMF (ITAA 1936); and
- Part IVA (ITAA 1936).

### Goods and Services Tax

3. All fees and expenditure referred to in this Ruling include the 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. Although this Ruling deals with the laws 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 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 (that is., being a party to the relevant agreements until their term expires), and deriving assessable income from this involvement as set out in the description of the arrangement. 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;
- persons who participate in the Project through offers made other than through the Product Disclosure Statement;
- Gunns Plantations Ltd or its associates; and
- persons who are accepted to participate in the Project after 31 May 2004.

**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

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11. This Ruling applies prospectively from 12 May 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 the private ruling if the income year to which the private ruling relates has ended, or has commenced but not yet ended. However, if the arrangement covered by the private ruling has not 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 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 persons' involvement in the arrangement.

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## 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 a Product Ruling dated 13 April 2004, as constituted by documents provided on 12 December 2003, 14 and 31 January 2004 and 10 February and additional correspondence (including e-mails) dated 11 and 12 February 2004 and 18, 24, 26 and 30 March 2004 and 6, 7, 20, 21 and 26, 27 and 30 April 2004 and 3 and 4 May 2004;
- Draft Product Disclosure Statement ('PDS') for Gunns Plantations Winegrape Project 2004 received 3 May 2004;
- Draft **Constitution** of the Gunns Plantations Winegrape Project 2004 received 7 April 2004;
- Draft Compliance Plan for the Gunns Plantations Winegrape Project 2004 to be adopted by Gunns Plantations Limited (as 'Responsible Entity') received 27 April 2004;
- Draft Lease Agreement between Gunns Limited (as 'Landowner') and Gunns Plantations Limited ('Gunns Plantations') received 7 April 2004;
- Draft **Vine Right Agreement** between Gunns Plantations Limited and the Grower received 30 April 2004;
- Draft **Management Agreement** between Gunns Plantations Limited (as 'Manager') and Gunns and the Grower received 4 May 2004;
- Draft Establishment Works Sub-contracting Agreement between Gunns Plantations and Gunns Limited (as 'Sub-contractor') received 7 April 2004;
- Draft **Fee Facility Deed** between Gunns Finance Pty Ltd ('Gunns Finance') and the Grower received 3 May 2004;
- Draft **Finance Package** for the Gunns Plantations Winegrape Project 2004 between Gunns Finance and Growers entering into the Project on or before 31 May 2004, received 26 March 2004;
- Draft Grape Sale Agreement between Gunns Plantations Limited (as agent for each Grower) and Gunns Limited, received 30 April 2004;

- Deed Poll by Gunns Limited in favour of the Growers, received 30 April 2004; and
- Draft Amending Agreement to Custody Agreement between Gunns Plantations Limited (as 'Trustee') and Gunns Limited (as 'Custodian'), received 6 April 2004.

**NOTE:** certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

15. The documents highlighted are those that Growers may enter into. For the purposes of describing the arrangement to which this Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower, or any associate of a Grower, will be a party to, which are a part of the arrangement. In this Ruling the term 'associate' has the meaning given by section 318 of the ITAA 1936. The effect of these agreements is summarised as follows.

16. All Australian Securities and Investment Commission (ASIC) requirements are, or will be, complied with for the term of the agreements.

## Overview

17. The salient features of Gunns Plantations Winegrape Project are as follows:

Location	Northern Tasmania
Type of business to be carried on by each participant	Commercial growing of wine grapes for the purpose of harvesting and selling the produce.
Number of hectares offered for cultivation	200 hectares and oversubscription may be accepted.
Size of each interest	0.20 hectare 'Vinelot'
Minimum allocation	One 'Vinelot'
Number of vines per hectare	Will vary depending upon which of the four properties that are utilised.
Term of the Project	20 years
Initial cost	\$12,980
Initial cost per hectare	\$64,900
Ongoing costs per Vinelot	<ul style="list-style-type: none"> <li>• 'Vine Right Fee' of \$550, increased by the CPI annually commencing 30 June 2006;</li> <li>• 'Maintenance and Harvest Fee';</li> <li>• 'Sales Commission' of 2% of</li> </ul>

	<p>'Grape Sale Proceeds';</p> <ul style="list-style-type: none"> <li>• 'Performance Fee' of 20% of the 'Grape Sale Proceeds' when in any year the 'Grape Sales Proceeds' exceeds \$4,400 per 'Vinelot' indexed annually in accordance with CPI.</li> </ul>
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18. The Project is registered as a Managed Investment Scheme under the *Corporations Act 2001*. Gunns Plantations Limited ('Gunns Plantations') has been issued with an Australian Financial Service Licence and will be the Responsible Entity for the Project.

19. An offer to participate in the Project will be made through a Product Disclosure Statement (PDS). The offer under the PDS is for 200 hectares in the Project and will invite participants to subscribe in the Project on or before 31 May 2004.

20. To participate in the Project participants must complete the Application and Power of Attorney Form in the PDS and pay the 'Application Fee'. The 'Application Fee' will be banked into the relevant 'Applications Portion'. Payment of the 'Application Fee' constitutes full payment of the 'Initial Service Fee' and the 'Vine Right Fee' in respect of the period ending 30 June 2004. These monies will be released to Gunns Plantations when certain specified criteria have been met in accordance with clause 8 and 9 of the Constitution.

21. Growers who are accepted to participate in the Project will be growing wine grapes commercially for the purpose of harvesting and selling the produce during the term of the Project.

22. Growers will enter into a Vine Right Agreement with Gunns Plantations. The Vine Right Agreement will comprise contractual rights in relation a parcel of land of 0.20 hectares called a 'Vinelot'. The Vine Right Agreement will enable Growers to access the 'Land' to tend and maintain the 'Vines' and 'Harvest' the 'Grapes'.

23. Growers will also contract with Gunns Plantations as the 'Manager', under a Management Agreement, to supervise and manage on behalf of the Grower of the 'Establishment Works' to ensure the land owner is complying with its obligations. Gunns Plantations will also provide 'Maintenance and Harvest Services' and arrange to market and sell the 'Grapes'.

24. Gunns Plantations has the right to accept oversubscriptions. There is no minimum amount that must be raised under the PDS.



**Constitution**

25. The Constitution for the Project sets out the general functions, powers and duties under which the Responsible Entity agrees to act for the Growers and to manage the Project. The Vine Right Agreement, Management Agreement, Lease Agreement and Grape Sale Agreement are Schedules to the Constitution. These Agreements other than the Lease Agreement will be executed on behalf of each Grower who has signed the Application and Power of Attorney Form in the Product Disclosure Statement and who is accepted into the Project on or before 31 May 2004. After acceptance and execution of the Agreements, Growers are bound by the Constitution by virtue of their participation in the Project.

26. Under the terms of the Constitution, the Responsible Entity in its absolute discretion, may accept or refuse any application to enter into a Vine Right Agreement and Management Agreement within 28 days following the receipt of the application. The 'Application Fee' paid by the 'Applicant' will be paid directly to the Custodian and placed in the 'Application Portion' until the Responsible Entity instructs the Custodian to release the money in accordance with clauses 4 and 5.

27. Upon acceptance of an application, the Responsible Entity will allocate the 'Vinelot'(s) to the Grower and execute the Vine Right Agreement and Management Agreement in accordance with clause 6.

28. Before authorising or instructing the Custodian to release the 'Application Money', the Responsible Entity must be satisfied among other things that:

- the Vine Right Agreements have all been duly completed and executed;
- it has the capacity to grant the rights referred to in the Vine Right Agreement;
- all necessary consents have been obtained;
- the property that is the subject of the rights referred to in the Vine Right Agreement is not subject to any encumbrance or restrictions which detrimentally affects the interests of Growers;
- the Head Lease is registered prior to, or immediately after the acceptance of an application in respect of the Vine Right Agreement; and
- the Head Lease is not deregistered while it is subject to any Vine Right Agreement and Management Agreement entered into under the Constitution (clause 7).

29. The Responsible Entity under clause 10 will arrange for the Agreements to be stamped and, on behalf of the relevant Grower, will retain each in safe custody until termination of the Agreements. A Grower may obtain a copy of its Vine Right and Management Agreement by written request to the Responsible Entity accompanied by a fee not exceeding \$50.

30. The Responsible Entity is entitled to receive fees according to clause 11 and may instruct the Custodian to invest all or part of the 'Proceeds Portion' and 'Application Portion' according to clause 12.

31. Among other things the Constitution sets out in detail the following:

- general functions, powers and duties and complaints, clause 13 and clause 14;
- compliance committee requirement under the Corporations Act, clause 15;
- the Transfer and Transmission of Grower's interest, clause 18 and 19;
- retirement or removal of the Responsible Entity according to the *Corporations Act 2001*, clause 22;
- issue of Vinelot Statement and register of Members of the Project, clause 23 and 24; and
- Collections and payments of all 'Grape Sale Proceeds', the distribution from the 'Proceeds Portion' of the 'Fund' and deductions from Income or Profit, clause 26, 27 and 28.

### **Compliance Plan**

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

### **Lease Agreement**

33. Gunns is the registered proprietor of the 'Land' and Gunns has agreed to grant a 'Lease' of the 'Land', together with all the rights described in clauses 3.2 and 4, for the 'Term' of the Project.

34. The parties will sign the 'Registration Instrument' and any other document required to enable the 'Lease' to be registered against the title or titles to the 'Land'.

35. Clause 8 describes Gunns' covenants and acknowledges it will complete all the 'Establishment Works' by no later than 30 June 2004. Gunns will, in the event of destruction or serious fault, replace all 'Vineyard Infrastructure' for the 'Term' necessary for carrying out the Project. Gunns will also plant the 'Root Stock' on the 'Land' set aside for this Project by no later than 31 December 2004. Gunns will insure and in the event of destruction replant (as close to 100% of the average initial planting density of the 'Developed Area') all 'Vines' necessary for carrying out the Project.

## **Vine Right Agreement**

36. Growers participating in the Project will enter into a Vine Right Agreement with Gunns Plantations for the 'Term' of the Project. Gunns Plantations will grant to Growers 'Vine Rights' over the 'Vinelot' which include the following:

- to access the 'Vinelot' and the 'Common Areas';
- to access and use the 'Vineyard Infrastructure';
- an exclusive right to access, use and enjoy the benefit of the 'Vines';
- an exclusive right to 'Harvest' the 'Grapes'; and
- an exclusive right to take all right, title and interest in the 'Harvested Grapes'.

37. The Grower's and Gunns Plantations rights and obligations are set out in clauses 4 and 5 respectively which includes that the Grower will at all times have full right, title and interest in the 'Harvested Grapes'.

38. Under clause 6, Gunns Plantations is entitled to the 'Vine Right Fee' as described in Item 2 of Schedule 1 – Reference Table. In respect of the period to 30 June 2004, the 'Vine Right Fee' will be deducted from the 'Application Fee'.

39. After the second anniversary of the 'Commencement Date', if 100% of the Vines are destroyed or materially damaged by fire or any other cause, then Gunns Plantations may terminate this agreement by notice in writing to the Grower in accordance with clause 8.

**Management Agreement**

40. A Management Agreement is entered into between Gunns Plantations (as 'Manager'), Gunns and each Grower. The parties have agreed that the Manager will be appointed to perform the 'Services' in respect of the Grower's 'Vinelot' in accordance with the terms and conditions set out in this agreement. The Grower grants to the Manager for the 'Term', a licence to access the Grower's 'Vinelot' to carry out the 'Services'. The 'Services' are defined as the 'Initial Services', and the 'Maintenance and Harvest Services'.

41. For the 'Initial Service Fee' payable under clause 9.1(a), the Manager must use its best endeavours to complete all of the 'Initial Services' in relation to the Grower's 'Vinelot' before 30 June 2004 (clause 4). Payment of the 'Application Fee' constitutes full payment of the 'Initial Services Fee' (clause 9.1(b)). The 'Initial Services' include:

- supervision and management on behalf of the Grower of the 'Establishment Works' including ongoing inspection and monitoring of the 'Establishment Works', ensuring that the land owner is complying under the Lease Agreement and ensuring that the 'Vinelot' is of a standard required by the Responsible Entity;
- procure a written report from the Independent Viticulturist by 30 June confirming that all 'Establishment Works' have been performed in accordance with good viticultural practices;
- procure the necessary approvals and consents required in relation to provision of the 'Initial Services';
- undertake all administrative tasks required to be undertaken in the provision of the 'Initial Services';
- maintain all 'Vineyard Infrastructure' including undertaking any necessary repairs;
- eradicating weeds, pests and vermin on the 'Vinelot'; and
- undertake any other works necessary in order to ensure that the 'Vinelot' is maintained in accordance with good viticultural practice.

42. The Manager will perform the 'Maintenance and Harvest Services' in a proper and efficient manner and the Manager warrants to the Grower that it has access to such staff, personnel, consultants and other specialists services as may be reasonable necessary to perform the 'Maintenance and Harvest Services'.

43. Under clause 5, the Manager must rear the 'Vines' and maintain the Grower's 'Vinelot' in accordance with good viticultural practice, including:

- ensuring that Gunns replants any of the 'Vines' on a Grower's 'Vinelot' which die from any cause during the 'Term' after the 'Commencement Date' to as close to 100% of the average initial planting density of the 'Developed Area' at Gunns expense;
- general maintenance of the Grower's 'Vinelots' including control of vegetation and pests which may inhibit the growth of the 'Vines', including spraying of herbicides or insecticides;
- cultivate, tend, train and prune the 'Vines' as required and in accordance with good viticultural practice;
- maintenance and repair of all fire breaks and access roads in and around the Grower's 'Vinelots';
- the application of fertiliser to the Grower's 'Vinelots';
- annually prune all 'Vines', where required, to ensure the quality and quantity of 'Harvest' is maximised;
- maintain and repair the 'Vineyard Infrastructure' as to maintain satisfactory growth rates and quality 'Harvests';
- 'Harvest' all 'Grapes' grown on the 'Vinelot' in accordance with clause 6 and deliver them up for sale; and
- provide a written report in relation to the progress of the 'Vines' and the status of the Grower's 'Vinelot' from the Independent Viticulturist by 31 October in each year of the Project to year 4 and every second year from year 4.

44. The Manager is entitled to an annual 'Maintenance and Harvest Fee' in consideration for the performance of the 'Maintenance and Harvest Services' (clause 9.2).

45. Under this agreement the Grower appoints the Manager as sole agent to market, enter into negotiations and sell the 'Grapes' on the Grower's behalf on substantially similar terms and conditions to those set out in the Grape Sale Agreement (clause 10.1).

46. The Manager will be responsible for insuring the 'Vineyard' against public liability risk. If requested in writing by the Grower, the Manager will endeavour to procure for the Grower insurance cover against destruction or damage of the Grower's 'Grapes'. If the Manager is able to effect insurance as requested, the Manager will Invoice the Grower the relevant premium together with an administration charge of 10% of the amount of the premium in each 'Year' of the 'Term' (clause 13).

47. Growers who suffer financial hardship at any time after the fifth anniversary of the 'Commencement Date', may apply to the Manager to pay on the Grower's behalf all 'Ongoing Fees' payable by the Grower under the Management Agreement or the Vine Right Agreement.

### **Deed Poll**

48. The Manager will enter into a Deed Poll with Gunns whereby Gunns will agree to purchase the 'Harvested Grapes' for the 'Purchase Price' which is fair and reasonable having regard to several factors including the market price of 'Grapes' of a similar quality and quantity. These factors are set out in clause 5 of the Draft Grape Sale Agreement.

### **Pooling of 'Grapes' and distribution of proceeds**

49. The Constitution sets out the circumstances relating to the pooling of Growers 'Grapes' and the distribution of proceeds from that sale. This Product Ruling only applies where the following principles apply to those pooling and distribution arrangements:

- only Growers who have contributed 'Grapes' from a 'Harvest' to the pool making up the proceeds are entitled to benefit from distributions from those proceeds; and
- 'Grapes' can only be pooled with the 'Grapes' of Growers accepted to participate in the Gunns Plantations Winegrape Project 2004 on or before 31 May 2004.

### **Project Fees**

50. Under clause 9 of the Management Agreement Growers will make the following payments per 'Vinelot':

- \$12,934 for 'Initial Services' to be provided from 1 June 2004 ending 30 June 2004, payable on application;
- a 'Maintenance and Harvest Fee' to be paid annually;

- for 'Years' 1 to 4 of the Project, Growers will be 'Invoiced' for the 'Maintenance and Harvest Fee'. Where the Grower has elected to enter into a 'Fee Facility', the Manager will notify Gunns Finance of the amount of the 'Maintenance and Harvest Fee' by no later than 15 June;
- for 'Years' 5 to 20 of the Project, the 'Maintenance and Harvest Fee' will be deducted by the Custodian on behalf of the Manager from the 'Gross Proceeds Entitlement' and paid to the Manager in accordance with the Constitution. Where a Grower's obligation to pay the 'Maintenance and Harvest Fee', exceeds their 'Gross Proceeds Entitlement', an 'Invoice' will be sent to the Grower for the shortfall;
- The Manager is entitled to a 'Sales Commission' of 2% of the 'Grape Sale Proceeds'; and
- The Manager is entitled to a 'Performance Fee' equal to 20% of the amount by which the 'Grape Sale Proceeds' exceed \$4,400 per 'Vinelot' which will be indexed annually in accordance with the CPI.

51. Under clause 6 of the Vine Right Agreement Growers will make the following 'Vine Right Fee' payments per 'Vinelot':

- \$46 for the period from 1 June 2004 ending 30 June 2004, payable on application;
- \$550 for the period from 1 July 2004 ending 30 June 2005, payable 30 June 2005. The amount of the 'Vine Right Fee' payable in each subsequent year thereafter is increased by the Consumer Price Index;
- for 'Years' 1 to 4 of the Project, Growers will be 'Invoiced' for the 'Vine Right Fee'. Where the Grower has elected to enter into a 'Fee Facility', the Manager will notify Gunns Finance of the amount of the 'Vine Right Fee' by no later than 15 June; and
- for 'Years' 5 to 20 of the Project, the 'Vine Right Fee' will be deducted by the Custodian on behalf of the Manager from the 'Gross Proceeds Entitlement' and paid to the Manager in accordance with the Constitution. Where a Grower's obligation to pay the 'Vine Right Fee', exceeds their 'Gross Proceeds Entitlement', an 'Invoice' will be sent to the Grower for the shortfall.

**Finance**

52. Growers cannot rely on this Product Ruling if they enter into a finance arrangement, including a finance arrangement under the Fee Facility Deed (see below), with Gunns Finance that materially differs from those provided to the Tax Office by Gunns Plantations with the application for this Product Ruling. These finance packages are summarised below.

***Finance for the Application Fee***

53. A number of finance packages will be offered on commercial terms by Gunns Finance. Growers can borrow from Gunns Finance provided that the conditions precedent in clause 3 of Part B of the 'Loan Terms' are satisfied.

54. Loans may be for 3, 5, or 10 Years (principal and interest loans), a 12 month interest free option or Growers may also choose a 10 year loan that consists of an initial 5 year interest only followed by 5 years of principal plus interest.

55. Common features contained in each of these finance packages are that:

- the Grower's application to participate in the Project has been accepted by Gunns Plantations;
- the Grower pays a loan 'Establishment Fee' of \$150;
- security is held by mortgage over the interest in the project in all finance arrangements;
- additional 2% interest per annum applies to overdue repayments; and
- additional or 'break' costs of \$400 will apply when a loan is repaid early.

56. At the absolute discretion of Gunns Finance, deposits required to fund the 'Loan' may vary from 10% to 30% of the 'Application Fee'.

57. The Grower agrees to repay the 'Loan', and pay interest and all other 'Outstanding Monies' to Gunns Finance. The Grower will pay the 'Repayment Amount' on the 'Repayment Date' of each month during the 'Term' of the 'Loan' as detailed in Part D – Loan Schedule.

58. The Grower may repay the 'Outstanding Balance' in whole or in part at any time. However, where the loan is repaid early the Grower will pay to Gunns Finance the amount determined by Gunns Finance under clause 6.2 of the 'Loan Term'.



59. The specific features of each of the finance arrangements Growers may enter into are as follows:

**Standard Finance Package:**

**Principal only loan:**

- Growers will be entitled to elect to enter into a non-interest bearing loan with Gunns Finance;
- Growers who enter into this finance arrangement will be required to pay a 10% deposit and make 12 equal monthly repayments of the balance.

**Principal and interest loans:**

- the 'Term' of the 'Loan' is for 3, 5 or 10 years;
- an initial deposit equal to 20% of the 'Application Fee';
- an interest rate of 10.5%. For 10 year loans the interest rate will be reviewed after 5 years and fixed at 4% points above the ANZ Banking Group Ltd's 5 year swap reference rate;
- 'Repayment Amounts' are due as per Item 5 of the Loan Schedule and Part J – Vinelot Project Repayment Schedule; and
- Growers who enter into any of the 'Terms' under this finance arrangement will be required to make monthly equal repayments of the balance over the 'Term' of the 'Loan'.

60. Growers cannot rely on any part of this Product Ruling if the 'Application Fee', other than an 'Application Fee' payable subject to a finance arrangement, is not paid in full by 31 May 2004. Where an application is accepted by Gunns Plantations subject to finance approval by any lending institution, Growers cannot rely on this Ruling if written evidence of that approval has not been given to Gunns Plantations by 31 May 2004.

***Finance under the Fee Facility Deed***

61. Gunns Finance has agreed to make a 'Fee Facility' available to the Grower for the 'Term'. The 'Fee Facility' will operate such that Gunns Finance will loan the Grower an amount equal to the 'Vine Right Fee' and 'Maintenance and Harvest Fee' in each of 'Years' 1 to 4 of the Project. A Grower who takes up the 'Fee Facility' will be required to pay directly to Gunns Finance interest for 'Years' 1 to 4 and 'Annual Repayments Amounts' in 'Years' 5 to 15.

62. In 'Years' 1 to 4, the Grower will be invoiced annually and must pay directly to Gunns Finance the interest represented by the 'Invoiced Amount'. The 'Invoiced Amounts' will be payable within 14 days of the date of the invoice.

63. In each year of the Project commencing in 'Year' 5, the Grower must pay directly to Gunns Finance an amount equal to the 'Annual Repayment Amount' as payment against the 'Outstanding Balance' by the 'Repayment Date'.

64. The Grower may repay the 'Outstanding Balance' in whole or in part at any time. In the event that the Grower makes a prepayment a 'break fee' of \$100 will become immediately due and payable.

65. This Ruling also 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 Gunns Finance, are involved or become involved in the provision of finance to Growers for the Project.

## Ruling

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### Application of this Ruling

66. This Ruling applies only to Growers who are accepted to participate in the Project on or before 31 May 2004 and who have executed a Vine Right Agreement and a Management Agreement on or before that date.

67. The Grower's participation in the Project must constitute the carrying on of a business of primary production. 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*

68. 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

69. 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.

### Assessable Income

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

70. 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.

71. The Grower who is not an 'STS taxpayer' recognises ordinary income from carrying on the business of viticulture at the time that income is derived.

72. The Grower who is an 'STS taxpayer' recognises ordinary income from carrying on the business of viticulture at the time that income is received (paragraph 328-105(1)(a)).

**Deductions for 'Initial Services Fee', 'Maintenance and Harvest Fee', 'Vine Right Fee' and Interest**

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

73. A Grower may claim tax deductions under section 8-1 of the ITAA 1997, for the revenue expenses in the Table.

74. However, if for any reason, an amount shown or referred to in the Tables below 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 which is not paid in the year in which it is incurred will be deductible in the year in which it is actually paid.

<b>Fee Type</b>	<b>Year ended 30 June 2004</b>	<b>Year ended 30 June 2005</b>	<b>Year ended 30 June 2006</b>
<b>Initial Service Fee</b>	\$12,934 See Notes i) & ii)		
<b>Maintenance and Harvest Fee</b>		Amount to be 'Invoiced' annually by Gunns Plantations See Notes i), iii) and iv)	Amount to be 'Invoiced' annually by Gunns Plantations See Notes i), iii) and iv)
<b>Vine Right Fee</b>	\$46 See Notes i), iii) and iv)	\$550 See Notes i), iii) and iv)	\$550 See Notes i), iii) and iv)
<b>Interest</b>	As incurred <b>(Non-STs taxpayers)</b> or as paid <b>(STs taxpayers)</b> See Notes iv) and v)	As incurred <b>(Non-STs taxpayers)</b> or as paid <b>(STs taxpayers)</b> See Notes iv) and v)	As incurred <b>(Non-STs taxpayers)</b> or as paid <b>(STs taxpayers)</b> See Notes iv) and v)

**Notes:**

- i) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g. input tax credits): Division 27. See Example 1 at paragraph 114;
- ii) The 'Initial Service Fee' shown in the Management Agreement is deductible in full in the year that it is incurred (where the Grower is **not an 'STS taxpayer'**) or the year in which it is paid (where the Grower is an **'STS taxpayer'**);
- iii) Where a Grower pays the 'Vine Right Fee' and the 'Maintenance and Harvest Fee' in the relevant income years shown in the Vine Right Agreement and the Management Agreement, those fees are deductible in full in the year that they are incurred (where the Grower is **not an 'STS taxpayer'**) or the year in which they are paid (where the Grower is an **'STS taxpayer'**);
- iv) This Ruling does not apply to Growers who **choose** to prepay 'Vine Right Fees', 'Maintenance and Harvest Fees' or interest (see paragraph 101 to 107 below). Amounts that are prepaid for a period that extends beyond the income year in which the expenditure is incurred may be subject to the prepayment provisions in section 82KZME to 82KZMF of the ITAA 1936. Any Grower who prepays such amounts may request a private ruling on the taxation consequences of their participation in the Project; and
- v) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Gunns Finance, the internal financier, is outside the scope of this Ruling. Growers who borrow from lenders other than Gunns Finance is outside the scope of this Ruling. Growers who borrow from lenders other than Gunns Finance may request a private ruling on the deductibility of the interest incurred.

**Deductions for Horticultural Plant****Division 40**

75. Each Grower will also be entitled to tax deductions relating to the 'Vines' planted on the 'Vinelot'. 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 114.

76. A vine is considered to be a 'horticultural plant' as defined in subsection 40-520(2). A Grower holds a 'Vine Right' to cultivate the 'Vines' on a designated area of land called a 'Vinelot' for the growing of 'Grapes' for commercial gain. As a Grower holds the 'Vinelot' under a licence, one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value.

77. The deduction is determined using the formula in section 40-545. 'Vines' have an 'effective life' of greater than 13 but fewer than 30 years and, for the purposes of section 40-545, this results in a straight-line write-off at a rate of 13%. The deduction is allowable when the 'Vines' enter their first commercial season (section 40-530, item 2). Gunns Plantations will notify Growers when their 'Vines' enter their first commercial season and the amount that may be claimed.

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

#### ***Section 35-55 – Exercise of Commissioner's discretion***

78. A Grower who is an individual accepted into the Project by 31 May 2004 may have losses arising from their participation in the Project that would be deferred to a later income year under section 35-10. Subject to the Project being carried out in the manner described above, the Commissioner will exercise the discretion in paragraph 35-55(1)(b) for these Growers for the income years ending **30 June 2004 to 30 June 2008**. This conditional exercise of the discretion will allow those losses to be offset against the Grower's other assessable income in the income year in which the losses arise.

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

79. For a Grower who participates in the Project and incurs expenditure as required by the Management Agreement and the Vine Right 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;
- 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

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

80. For the amounts set out in the Tables above to constitute allowable deductions the Grower's viticulture activities as a participant in the Gunns Plantations Winegrape Project 2004 must amount to the carrying on of a business of primary production. These viticulture activities will fall within the definitions of 'horticulture' and 'commercial horticulture' in section 40-535 of the ITAA 1997.

81. Where there is a business, or a future business, the gross proceeds from the sale of the 'Grapes' 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.

82. For schemes such as that of the Gunns Winegrape Project 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.

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

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

84. In this Project, each Grower enters into a Management Agreement and a Vine Right Agreement.

85. Under the Vine Right Agreement each individual Grower is granted a 'Vine Right' in respect of specific and identifiable area of 0.20 hectares of land. The 'Vine Right' provides the Grower with an ongoing interest in the specific 'Vines' on the licensed area for the 'Term' of the Project. Under the 'Vine Right' a Grower must use the land in question for the purpose of carrying out viticulture activities, and for no other purpose. The 'Vine Right' allows the Manager to come onto the land to carry out its obligations under the Management Agreement.

86. Under the Management Agreement the Manager is engaged by the Grower to supervise the 'Establishment Works' and maintain the 'Vinelot' on the Grower's identifiable area of land during the 'Term' of the Project. The Manager has provided evidence that it holds the appropriate professional skills and credentials to provide the 'Services' on the Grower's behalf.

87. The Manager is also engaged to 'Harvest' and sell, on the Grower's behalf, the 'Grapes' grown on the Grower's 'Vinelot'.

88. 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.

89. 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 'Grapes' 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.

90. The pooling of 'Grapes' from the 'Vines' grown on the Grower's 'Vinelot' with the 'Grapes' of other Growers is consistent with general viticultural practices. Each Grower's proportionate share of the sale proceeds of the pooled 'Grapes' will reflect the proportion of the 'Vines' contributed from their 'Vinelot'.

91. The Manager's services are also consistent with general viticultural practices. They are of the type ordinarily found in horticulture ventures that would commonly be said to be businesses. While the size of a 'Vinelot' is relatively small, it is of a size and scale to allow it to be commercially viable.

92. The Grower's degree of control over the Manager as evidenced by the Management Agreement, and supplemented by the *Corporations Act 2001*, is sufficient. During the 'Term' of the Project, the Manager will provide the Grower with regular progress reports on the Grower's 'Vinelot' and the activities carried out on the Grower's behalf. Growers are able to terminate arrangements with the Project Manager in certain instances, such as cases of default or neglect.



93. The horticulture 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' viticultural activities in the Gunns Plantations Winegrape Project 2004 will constitute the carrying on of a business.

## **The Simplified Tax System**

### ***Division 328***

94. 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.

95. 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 'Initial Services' and 'Maintenance and Harvest Fees' and 'Vine Right Fees'**

### ***Section 8-1***

96. Consideration of whether the 'Initial Services Fee' and 'Maintenance and Harvest Fees' and 'Vine Right 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.

97. The 'Initial Services Fee' and 'Maintenance and Harvest Fees' and 'Vine Right Fees' associated with the viticulture activities will relate to the gaining of income from the Grower's business of horticulture, and hence have a sufficient connection to the operations by which income (from the harvesting and sale of 'Grapes') 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' purposes in incurring the fee is identifiable from the arrangement. The fee appears to be reasonable. There is no capital component of the 'Initial Services Fee' and 'Maintenance and Harvest Fees' and 'Vine Right Fees'. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

### **Interest deductibility**

#### ***Section 8-1***

##### *Growers who use Gunns Finance as the finance provider*

98. Some Growers may finance their participation in the Project through a loan facility with Gunns Finance. Whether the resulting interest costs are deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of 'Initial Services Fee' and 'Maintenance and Harvest Fees' and 'Vine Right Fees'.

99. 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 Grower's business operations - the cultivation and growing 'Vines' and the licence of the land on which the 'Vines' 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.

##### *Growers who DO NOT use Gunns Finance as the finance provider*

100. 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 Gunns Finance 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.

**Prepayment Provisions*****Sections 82KZL to 82KZMF***

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

***Application of the prepayment provisions to this Project***

102. Under the Arrangement to which this Product Ruling applies 'Maintenance and Harvest Fees' and 'Vine Right Fees' are incurred annually and interest payable to Gunns Finance is incurred monthly (for finance related to the 'Application Fee') and annually (for finance related to the 'Fee Facility'). Accordingly, the prepayment provisions in sections 82KZME and 82KZMF have no application to this Arrangement. A Grower who is an 'STS taxpayer' can, therefore, claim a deduction for each of the relevant amounts in the income year in which the amount is paid, or paid on their behalf. A Grower who is not an 'STS taxpayer' can claim a deduction for each of the relevant amounts in the income year in which the fee is incurred.

103. However, sections 82KZME and 82KZMF may have relevance if a Grower in this Project prepays all or some of the expenditure payable under the Management Agreement and/or the Vine Right Agreement or prepays interest under a loan agreement (including loan agreements with lenders other than Gunns Finance). Where such a prepayment is made these prepayment provisions will also apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes them from the operation of section 82KZMF.

104. As noted in the Ruling section above, Growers who prepay fees or interest are not covered by this Product Ruling and may instead request a private ruling on the tax consequences of their participation in this Project.

**Expenditure of Horticulture Plant*****Division 40 and Division 328***

105. Any part of the expenditure if a Grower that is attributable to acquiring an asset or advantage of an enduring kind is generally capital or capital in nature and will not be an allowable deduction under section 8-1. In this Project, expenditure attributable to grapevines is of a capital nature. This expenditure falls for consideration under Division 40 or Division 328 of the ITAA 1997.

106. The application and extent to which a Grower claims deductions under Division 40 and Division 328 depends on whether or not the Grower is an 'STS taxpayer'.

107. The tax treatment of capital expenditure has been dealt with in a representative way in paragraphs 75 to 77 .

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

108. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for the income years **30 June 2004 to 30 June 2008** the Commissioner has applied the principles set out in Taxation Ruling TR 2001/14 *Income tax: Division 35 – non commercial business losses*. Accordingly, based on the evidence supplied, the Commissioner has determined that for those income years ended 30 June 2004 up to and including 30 June 2008:

- it is because of its nature the business activity of a Grower will not satisfy one of the four tests in Division 35;
- there is an objective expectation that within a period that is commercially viable for the horticulture industry, a Grower's business activity will satisfy one of the four tests set out in Division 35 or produce a taxation profit; and
- a Grower who would otherwise be required to defer a loss arising from their participation in the Project under subsection 35-10(2) until a later income year is able to offset that loss against their other assessable income.

109. The exercise of the Commissioner's discretion under paragraph 35-55(1)(b) is conditional on the Project being carried on in the manner described in this Ruling during the income years specified. If the Project is carried out in a materially different way to that described in the Ruling a Grower will need to apply for a private ruling on the application of section 35-55 to those changed circumstances.

## **Section 82KL – recouped expenditure**

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

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

111. 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).

112. The Gunns Winegrape Project 2004 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 73 and 74 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.

113. 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 “Grapes”. 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

### Entitlement to GST input tax credits

114. 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 2003, 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 1/1/2004 to 30/6/2004	\$4,400*
Carrying out of upgrade of power for your vineyard as quoted	<u>\$2,200*</u>
Total due and payable by 1 January 2004 (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:

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

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 2004, 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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**Commissioner of Taxation**

12 May 2004



# PR 2004/55

*Previous draft:*

Not previously released in draft form

*Related Rulings/Determinations:*

PR 1999/95; TR 92/1; TR 97/16;  
TR 92/20; TD 93/34; TR 98/22;  
TR 2000/8; TR 97/11;  
TR 2001/14

*Subject references:*

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

*Legislative references:*

- ITAA 1936 82KL
- ITAA 1936 82KZL
- ITAA 1936 82KZME
- ITAA 1936 82KZMF
- ITAA 1936 Pt IVA
- ITAA 1936 318
- ITAA 1936 177A

- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1936 Pt III Div 3 Subdiv H
- 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 35-55
- ITAA 1997 35-55(1)(b)
- ITAA 1997 Div 40
- ITAA 1997 40-515(1)(b)
- ITAA 1997 40-520(2)
- ITAA 1997 40-525(2)
- ITAA 1997 40-530, item 2
- ITAA 1997 40-535
- ITAA 1997 40-545
- ITAA 1997 Div 328
- ITAA 1997 328-105
- ITAA 1997 328-105(1)(a)
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- TAA 1953 Pt IVA
- Copyright Act 1968
- Corporations Act 2001

*Case references:*

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

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