

PR 2004/60 - Income tax: Environinvest Eucalypt Project No. 7

⚠ This cover sheet is provided for information only. It does not form part of *PR 2004/60 - Income tax: Environinvest Eucalypt Project No. 7*

⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *19 May 2004*



Product Ruling

Income tax: Environinvest Eucalypt Project No. 7

| | |
|------------------------------------------|------------|
| Contents | Para |
| What this Product Ruling is about | 1 |
| Date of effect | 11 |
| Withdrawal | 13 |
| Arrangement | 14 |
| Ruling | 51 |
| Explanation | 66 |
| Example | 113 |
| Detailed contents list | 114 |

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

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

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

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

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

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

Terms of use of this Product Ruling

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

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.

What this Product Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates. In this Ruling this arrangement is sometimes referred to as the 'Environinvest Eucalypt Project No. 7' 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);
 - Section 25-25 (ITAA 1997);
 - Division 27 (ITAA 1997);
 - Division 35 (ITAA 1997);
 - Division 328 (ITAA 1997);
 - Section 82KL of the *Income Tax Assessment Act 1936* (ITAA 1936);
 - Section 82KZL (ITAA 1936);
 - Sections 82KZME to 82KZMG (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; and
- Persons who are accepted to participate in the Project after 30 June 2005.

Qualifications

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

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

Commonwealth Copyright Administration
Intellectual Property Branch
Department of Communications, Information Technology and
the Arts
GPO Box 2154
Canberra ACT 2601

or by email to: commonwealth.copyright@dcita.gov.au

Date of effect

11. This Ruling applies prospectively from 19 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

13. This Product Ruling is withdrawn and ceases to have effect after 30 June 2007. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons within the specified class who enter into the arrangement specified below. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the persons' involvement in the arrangement.

Arrangement

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

- Application for a Product Ruling for the Environinvest Eucalypt Project No. 7, dated 21 April 2004 as constituted by documents provided on 2 April 2004, 21 April 2004, 26 April 2004, 28 April 2004, 29 April 2004, 5 May 2004, 6 May 2004 and 10 May 2004 and additional correspondence (including e-mails) from the applicant to the Tax Office, dated 26 April 2004, 28 April 2004, 29 April 2004, 5 May 2004, 6 May 2004 and 10 May 2004;
- Draft **Product Disclosure Statement** ('PDS') for the Environinvest Eucalypt Project No. 7 and Land Trust 2004, prepared for Environinvest Limited ('Environinvest') A.C.N. 080 743 791, undated, received 6 May 2004;
- Draft **Loan application form**, undated, received 5 May 2004;
- Draft **Loan agreements** relating to the Principal Only Loan, Interest Only Loan, and Principal and Interest Loan, undated, received 10 May 2004;
- Draft **Constitution** of Environinvest Eucalypt Project No. 7, undated, received 26 April 2004;
- Draft Compliance Plan of Environinvest Eucalypt Project No. 7, undated, received 2 April 2004;
- Draft Constitution of the Environinvest Forestry Property Trust (the 'Property Trust'), undated, received 2 April 2004;
- Draft Compliance Plan of the Environinvest Forestry Property Trust, undated, received 2 April 2004;

- Draft **Agreement for Lease** between Environinvest (as 'the Lessor'), and the Grower, undated, received 5 May 2004;
- Draft **Environinvest Eucalypt Project No. 7 Grower Lease** between Environinvest (as 'the Lessor'), and the Grower, undated, received 5 May 2004;
- Draft Head Lease between Environinvest (as 'the Lessor'), and Environinvest Land Lease Pty Limited ('the Lessee'), undated, received 2 April 2004;
- Draft Sub-Lease between Environinvest Land Lease Pty Limited (as 'the Sub-Lessor'), and Environinvest (as 'the Sub-Lessee'), undated, received 2 April 2004;
- Draft **Environinvest Eucalypt Project No. 7 Management Agreement** between Environinvest (as 'the Manager'), and the Grower, undated, received 28 April 2004;
- Draft Heads of Agreement between Environinvest and East Victoria Plantation Forest Company of Australia Pty Ltd ACN 086 331 928 undated, received 6 May 2004; and
- Forester's Report undated, received 2 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 the Environinvest Eucalypt Project No. 7 are as follows:

| | |
|-------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Location | Western District of Victoria, South-East South Australia and Queensland. |
| Type of business to be carried on by each participant | Commercial growing of Tasmanian Blue Gum for the purpose of producing timber for woodchipping. |
| Size of each 'Allotment' | 0.5 hectares |
| Minimum allocation per participant | 2 'Allotments' |
| Minimum subscription | 4 'Allotments' |
| Number of trees per hectare | Minimum of 900. |
| Term of the Project | 8-12 years. |
| Initial cost for 2 Allotments | \$6,545 |
| Initial cost per hectare | \$6,545 |
| Ongoing costs per hectare | Rent of \$286 per year. Maintenance Fee of \$132 per year. |
| Other fees and costs | The harvest costs; Performance Bonus Fee of 25% of the amount received above the Benchmark per Allotment; and Insurance, including a 10% service fee, based on the premium. |

18. The Project will be registered as a managed investment scheme under the *Corporations Act 2001*. Applications to participate in the Project must be made on the Application Form shown in the PDS.

19. Under a Power of Attorney contained on the Application Form, Applicants who are accepted to participate in the Project will enter into agreements with Environinvest and its associates to establish, manage and harvest *Eucalyptus globulus* (Tasmanian Blue Gum) for the purpose of sale as woodchips.

20. Growers entering the Project will lease land owned by the unit holders in the 'Property Trust' or owned or leased by Environinvest. Growers, or their associates, may also participate in the 'Property Trust'. Applications for Units in the Property Trust are also made under the PDS. The Property Trust will only proceed if the minimum subscription is met for the Project (being subscriptions for 4 Allotments) and if applications totalling at least \$200,000 for Units in the Property Trust are received and accepted. This Product Ruling deals only briefly with investment in the Property Trust but Growers should note the tax implications set out in paragraphs 60 to 62.

21. Growers entering into the Project will lease the land from Environinvest, in Victoria, South Australia, or Queensland.

22. The minimum area of land that will be leased by each Grower is 2 'Allotments' of 0.5 hectares. Environinvest will only approve land for use in the Project which:

- is assessed as capable of producing a gross yield of pulpwood of between 250 and 300 cubic metres per 'Allotment';
- has soils of acceptable depth and structure for root penetration and nutrients to provide the required yields;
- receives more than 650mm average annual rainfall; and
- has been put to agricultural use and has a flat topography suitable for commercial plantations.

23. A Grower will also enter into a Management Agreement with Environinvest to have suitable Eucalyptus seedlings planted on their 'Allotment' for the purpose of felling and sale in approximately 8-12 years after planting. Environinvest will establish the 'Allotment' within 12 months of the payment of the 'Establishment Fee'. Under the Management Agreement Environinvest will also cultivate, harvest and sell the Grower's 'Trees'. A Grower appoints Environinvest as its sole agent to carry out the 'Harvesting Services'.

Constitution

24. The Constitution establishes the Project and operates as a deed binding all of the Growers and Environinvest. The Constitution sets out the terms and conditions under which Environinvest agrees to act as Responsible Entity and thereby manage the Project.

25. Under clause 7.4 of the Constitution Environinvest holds the 'Application Moneys' on bare trust. Environinvest accounts for the 'Application Moneys' in a special trust account and deposits the money into a bank account solely for 'Application Moneys' for this Project. Once Environinvest is satisfied that all documents have been executed and any finance has been approved for an applicant, the 'Application Moneys' are released to Environinvest (clause 8).

26. In summary, the Constitution also sets out provisions relating to:

- invitations and offers under the PDS (clause 7);
- appointment of Environinvest as the Grower's irrevocable agent, representative and attorney (clause 3);
- procedures relating to Applications (clause 7);
- the discretion of Environinvest to refuse an Application (clause 7.3);
- the effect of an Applicant's Application being accepted by Environinvest (clause 8);
- preparation and execution of the Grower Lease, and Management Agreement by Environinvest (clause 9);
- the setting up and maintenance of a Register of Growers (clause 15);
- Environinvest's liabilities and indemnities (clause 20);
- the right of Environinvest to be paid fees and other expenses (clause 17);
- the status, the retention by Environinvest, and termination by Environinvest or the Growers, of the Management Agreement and Grower Lease (clause 9);
- the assignment and transmission of 'Allotments' (clauses 22 and 23);
- distributions from the 'Project Account' of 'Proceeds' to Growers (clause 18.3);
- resolution of complaints made by the Grower in relation to the Project or Environinvest (clause 19); and
- termination of the Project (clause 30).

27. Although clause 7.1(d)(ii) of the Constitution provides that Growers may pay the 'Application Moneys' by instalments, **this Product Ruling does not apply to any Grower who enters into an arrangement to pay their 'Application Moneys' by instalments.**

Compliance Plan

28. As required by the *Corporations Act 2001*, Environinvest has prepared a Compliance Plan. The purpose of the Compliance Plan is to ensure that Environinvest manages the Project in accordance with its obligations and responsibilities contained in the Constitution and that the interests of Growers are protected.

Head Lease

29. Land for the Project will be owned by the Property Trust. As trustee of the 'Property Trust', Environinvest will lease the land to Environinvest Land Lease Pty Limited.

Sub-Lease

30. Environinvest Land Lease Pty Limited will sub-lease the land to Environinvest under this agreement.

Agreement for Lease

31. The Agreement for Lease is made between Environinvest (as 'the Lessor'), and the Grower. Under clause 3.3 the Grower authorises the Lessor to complete the Grower Lease.

Grower Lease

32. Growers will enter into a Grower Lease (being a further sub-lease under the Agreement for Sub-Lease) with Environinvest. Under clauses 2 and 3, Environinvest grants a lease to the Grower of at least 2 'Allotments' for the purpose of carrying on a 'Business' including planting, growing, tending and harvesting of the 'Trees' for commercial profit. Subject to the occurrence of certain termination events, the term of the Grower Lease is from the Commencement Date until the day after completion of 'Harvesting Services'.

33. Under clause 4 of the Grower Lease, Environinvest acknowledges that the 'Trees' are the property of the Grower during the term of the Grower Lease. The rights and interests granted to the Grower under clauses 3 and 4 constitute a proprietary interest in the Growers 'Allotment(s)'. During the term of the Grower Lease the Grower grants a general lien of their 'Trees' for any sum owing under the Agreement (clause 14).

34. Among other things, the Grower Lease also sets out:

- the annual 'Rent' payable by Growers (clause 5 and Item 5 of the Schedule);
- the obligations and rights of the Grower (clauses 3, 4 and 6) and the obligations and rights of Environinvest (clause 7);
- provisions relating to early termination of the Grower Lease by the Grower and the rights and obligations of the parties following such termination (clause 8);
- what constitutes an 'Event of Default' and the rights of the Lessor terminate the Grower Lease if the Grower is in default (clause 13); and

- procedures relating to dispute resolution (clause 15).

Management Agreement

35. Under clause 2 of the Management Agreement a Grower engages Environinvest as the 'Manager' to provide the 'Establishment Services', 'Planting Services' and the 'Maintenance Services' and, as an agent, to carry out the 'Harvesting Services', including felling, advertising and selling the 'Trees' on their behalf.

36. The Management Agreement specifies the 'Establishment Services' (clause 1.1) that will be carried out by Environinvest within 12 months of the payment of the 'Establishment Fee' (clause 3.1).

37. The 'Establishment Services' include:

- ploughing and ripping 'Allotments'; and
- soil improvement and fertilizing.

38. Commencing as soon as practical after the completion of the 'Establishment Services', the 'Manager' will provide the 'Planting Services' to Growers (clause 3.2). These are defined as the acquisition, supply and planting of the 'Trees' to an average density of 450 seedlings per 'Allotment' (clause 1.1). The 'Planting Services' are to be completed within 12 months of the payment of the 'Establishment Fee'.

39. At the completion of the 'Establishment Services' and the 'Planting Services' the Manager will provide the 'Maintenance Services' in the first 'Subsequent Year' and each 'Subsequent Year' thereafter (clause 3.3). The 'Maintenance Services' are defined (clause 1.1) as including:

- replanting to 90% of the average initial planting density, any 'Trees' that die during the first year after planting;
- control of disease, vegetation, vermin or other pests affecting the growth of the 'Trees';
- fertilising the 'Trees';
- thinning and pruning the 'Trees'; and
- provision of written reports to the Growers.

40. The Manager will carry out 'Harvesting Services' in any years it considers appropriate. The 'Harvest Year' is expected to be between the eighth and twelfth 'Subsequent Year' (clause 3.4). 'Harvesting Services' includes felling and transport of the 'Trees', advertising the timber for sale, and negotiation and execution of sales contracts (clause 1.1).

41. Clause 5 sets out a formula to determine the Grower's entitlement to receive a proportionate share of the 'Net Harvest Proceeds' for the 'Trees' harvested and sold by the Manager on their behalf.

42. The Management Agreement also sets out:

- provisions dealing with damage to or reduction in the viability of the Grower's 'Allotments' and the resultant reduction in a 'Grower's Interest' (clause 1.1);
- the duties and rights of Environinvest and each Grower (clauses 5, 7, and 8);
- the right of the Manager to engage subcontractors to carry out services required under the Management Agreement (clause 11); and
- dispute resolution procedures (clause 18).

Pooling of amounts and distribution of 'Proceeds'

43. Both the Constitution (clause 18.3) and the Management Agreement (clause 5) set out provisions relating to the pooling of amounts from the sale of the Growers' 'Trees' and the distribution of 'Net Harvest Proceeds' from that sale or from insurance proceeds. This Product Ruling only applies where the following principles apply to those pooling and distribution arrangements:

- only Growers who have contributed 'Trees' or insurance proceeds to the pool making up the 'Proceeds' are entitled to benefit from distributions from those 'Proceeds'; and
- any pooled 'Trees' or other 'Proceeds' must consist only of 'Trees' or other 'Proceeds' contributed by Growers participating in the Environinvest Eucalypt Project No. 7.

Heads of Agreement

44. Environinvest, as 'Supplier', intends to enter into a Heads of Agreement with East Victoria Plantation Forest Company of Australia Pty Ltd as 'Purchaser' for the sale of the Growers' 'Trees' (clause 2). Under clause 7 Environinvest has a right to invite offers from third parties to purchase the 'Wood' but the Purchaser has a right to match or exceed any such offer.

Fees

45. The following fees, **per Allotment**, are set out in the Management Agreement and the Grower Lease:

- \$3,272.50 'Establishment Fee', payable on application;
- \$66.00 per annum 'Maintenance Fee', payable out of the 'Harvest Proceeds'. The fee may be indexed in accordance with the All Group Consumer Price Index at the Manager's discretion;
- Annual 'Rent' of \$143 payable out of the 'Harvest Proceeds'. The fee may be indexed in accordance with the All Group Consumer Price Index at the Lessor's discretion;
- To the extent that they have not been deducted from the purchase price payable for the sale of the 'Trees', the harvest costs;
- Performance Bonus Fee of 25% of the amount received above the Benchmark per Allotment; and
- Insurance, including a 10% service fee, based on the premium.

Finance

46. Growers can fund their involvement in the Project by borrowing from independent sources or from Environinvest (as 'the Lender').

47. 'The Lender' will provide Growers with loans on a full recourse basis and will pursue legal action against any defaulting borrowers. Details of the three types of loan that will be offered to Growers by 'the Lender' are set out in the relevant 'Loan Application Form' and 'Loan Agreement'. These documents are summarised as follows:

- i) A **Principal Only** Loan with the following features:
 - the Grower must provide Environinvest with a deposit of not less than 10% of the 'Application Fee', (being the 'Establishment Fee');
 - the principal is repayable in 12 equal monthly instalments, in arrears;
 - a loan establishment fee of no more than \$100 is payable; and
 - security by fixed charge over the Grower's interest in the lease and the 'Trees'.

- ii) A **Principal and Interest Loan** with the following features:
- the Grower must provide Environinvest with a deposit of not less than 10% of the 'Application Fee', (being the 'Establishment Fee');
 - the term of the loan may be up to 9 years;
 - from the 'Commencement Date' the principal and interest is repayable in equal monthly instalments, in arrears;
 - the rate of interest is fixed over the term of the loan;
 - the fixed rate of interest per annum will not be more than 4% above the base rate per annum that is charged from time to time by the National Australia Bank Ltd or its successor on unsecured or overdraft accounts rate;
 - a loan establishment fee of no more than \$100 is payable; and
 - security by fixed charge over the Grower's interest in the lease and the 'Trees'.
- iii) An **Interest Only Loan** with the following features:
- the Grower must provide Environinvest with a deposit of not less than 10% of the 'Application Fee', (being the 'Establishment Fee');
 - the term of the loan may be up to 9 years;
 - the rate of interest is fixed over the term of the loan;
 - the fixed rate of interest per annum will not be more than 4% above the base rate per annum that is charged from time to time by the National Australia Bank Ltd or its successor on unsecured or overdraft accounts;
 - interest is payable annually in advance in equal amounts, beginning on the 'Commencement Date';
 - the principal is payable on the Final Repayment Date as set out in Item 10 of the Schedule;
 - a loan establishment fee of no more than \$100 is payable; and
 - security by fixed charge over the Grower's interest in the lease and the 'Trees'.

48. Growers cannot rely on this Product Ruling if they enter into a finance agreement with 'the Lender' that materially differs from the terms and conditions of the loans set out above in paragraph 47.

49. Growers also cannot rely on this Product Ruling if the 'Application Fee' otherwise remains unpaid by 30 June in the 'Application Year'. Where an application is accepted 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 the Responsible Entity by 30 June of the 'Application Year'.

50. This Ruling does not apply if the finance arrangement entered into by the Grower with 'the Lender' or any other lender 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 Environinvest, are involved or become involved in the provision of finance to Growers for the Project.

Ruling

Application of this Ruling

51. This Ruling applies only to Growers who are accepted to participate in the Project and who have executed a Management Agreement and a Grower Lease:

- on or after the date of this Product Ruling and on or before 30 June 2004 ('2004 Growers'); and
- on or after 1 July 2004 and on or before 30 June 2005 ('2005 Growers');

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

52. A Grower is not eligible to claim any tax deductions until the Grower's application to enter the Project is accepted and the Project has commenced. Under the terms of the Product Disclosure Statement, a Grower's application will not be accepted and the Project will not proceed until the minimum subscription of 4 'Allotments is achieved.

The Simplified Tax System ('STS')

Division 328

53. 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

54. 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***

55. 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.

56. A Grower who is not an 'STS taxpayer' recognises ordinary income from carrying on the business of afforestation at the time that income is derived.

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

Deductions for the Establishment Fee, Borrowing Costs, and Interest***Section 8-1, section 328-105, and section 25-25***

58. In the Table below the 'Application Year', 'Year 1' and 'Year 2' is a reference to the year ended:

- 30 June 2004, 30 June 2005, and 30 June 2006 (for 2004 Growers); or
- 30 June 2005, 30 June 2006, and 30 June 2007 (for 2005 Growers)

PR 2004/60

59. A 2004 Grower or a 2005 Grower may claim, on a per 'Allotment' basis, tax deductions for the amounts set out in the Table:

| Fee Type | 'Application Year' | Year 1 | Year 2 |
|------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| Establishment Fee | \$3,272.50 See Notes (i) & (ii) | | |
| Interest (Principal and interest loan from Environinvest) | As incurred (Non-STs taxpayers) Or as paid (STs taxpayers) See Notes (iii) (vi) & (vii) | As incurred (Non-STs taxpayers) Or as paid (STs taxpayers) See Notes (iii) (vi) & (vii) | As incurred (Non-STs taxpayers) Or as paid (STs taxpayers) See Notes (iii) (vi) & (vii) |
| Interest (Interest only loan from Environinvest) | Must be calculated - See Note (iv) (vi) & (vii) | Must be calculated - See Note (iv) (vi) & (vii) | Must be calculated - See Note (iv) (vi) & (vii) |
| Borrowing costs for loans with Environinvest | \$100 - See Note (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 (for example, input tax credits): Division 27. See Example 1 at paragraph 113;
- (ii) The 'Establishment Fee' is expenditure for 'seasonally dependent agronomic activities' (see paragraphs 91 to 95) and is deductible under section 8-1 in the income year in which 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'**) (paragraph 328-105(1)(b));
- (iii) Growers who enter into a Principal and Interest Loan with Environinvest incur interest monthly, in arrears. Such interest is deductible under section 8-1 in full in the year that it is incurred (where the Grower is **not an 'STs taxpayer'**) or, under paragraph 328-105(1)(b) in the year in which it is paid (where the Grower is an **'STs taxpayer'**);

- (iv) Growers who enter into an Interest Only Loan with Environinvest incur interest annually in advance, beginning from the Commencement Date. Such interest is NOT deductible in full in the year in which it is incurred, unless the amount of the interest is 'excluded expenditure' (see paragraphs 96 and 97). Where the amount of interest is not 'excluded expenditure' the deduction for the interest paid in advance each year must be determined using the formula in subsection 82KZMF(1) (see paragraph 88, and paragraphs 96 to 100);
- (v) Borrowing expenses are deductible under section 25-25 where the borrowed moneys are used or will be used during that income year for income producing purposes. Borrowing expenses of \$100 or less are deductible in the year in which they are incurred (subsection 25-25(6));
- (vi) This Ruling does not apply to Growers who choose, or who are required to prepay interest under a loan agreement other than as discussed in Note (iv) above. 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 sections 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
- (vii) The deductibility or otherwise of interest arising from loan arrangements entered into with financiers other than Environinvest is outside the scope of this Ruling. Growers who borrow from lenders other than Environinvest may request a private ruling on the deductibility of the interest incurred.

Units in Property Trust

60. The Units in the 'Property Trust' are CGT assets (section 108-5 of the ITAA 1997) and the amounts payable for Units in the Property Trust upon subscription constitute an outgoing of capital and are not allowable deductions.

61. The amounts paid for each Unit will represent the first element of the cost base of the unit (subsection 110-25(2) of the ITAA 1997). Any disposal of the Units by a Grower will be a CGT event and may give rise to a capital gain or loss.

62. Income distributions by the 'Property Trust' are included in the assessable income of a Grower or an associate of the Grower who is a Unit holder, in accordance with Division 6 of the ITAA 1936.

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

Section 35-55 – Exercise of Commissioner’s discretion

63. A Grower who is an individual accepted into the Project may have losses arising from their participation in the Project that would be deferred to a later income year under section 35-10.

64. 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 2016** (for 2004 Growers);
- **30 June 2005 to 30 June 2017** (for 2005 Growers);or
- in both cases, the income year preceding the ‘Harvest Year’ (whichever occurs sooner);

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 to 82KZMF, 82KL and Part IVA

65. For a Grower who participates in the Arrangement described above and incurs expenditure as required by the Management Agreement, the Grower Lease and any loan agreement with ‘the Lender’, the following provisions of the ITAA 1936 have application as indicated:

- the Establishment Fee and for interest incurred under the Principal and Interest Loan does not fall within the scope of sections 82KZME to 82KZMF;
- interest incurred under the Interest Only Loan falls within the scope of section 82KZME to 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

Is the Grower carrying on a business?

66. For the amounts set out in the Table above to constitute allowable deductions the Grower's afforestation activities as a participant in the Environinvest Eucalypt Project No. 7 must amount to the carrying on of a business of primary production.

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

68. For schemes such as that of the Environinvest Eucalypt Project No. 7, 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. Taxation Rulings are available from the Tax Office or the ATO's Internet site at <http://www.ato.gov.au>.

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

- the Grower has an identifiable interest in the land (by lease) or rights over the land (by licence) 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.

70. In this Project, each Grower enters into a Management Agreement and a Grower Lease.

71. Under the Grower Lease each individual Grower will have rights over a specific and identifiable area of at least 1 hectare of land. The Grower Lease provides the Grower with an ongoing interest in the specific 'Trees' on their leased 'Allotments' for the term of the Project from the 'Commencement Date' of the Grower Lease. Under the Grower Lease the Grower must use the land in question for the purpose of carrying out afforestation activities, and for no other purpose. The Grower Lease allows Environinvest, to come onto the land to carry out their obligations under the Management Agreement.

72. Under the Management Agreement Environinvest is engaged by the Grower to provide 'Establishment Services', 'Planting Services' and 'Maintenance Services' on the Grower's identifiable area of land during the term of the Project.

73. Environinvest is also engaged to harvest and sell, on the Grower's behalf, the 'Trees' grown on the Grower's Allotment(s).

74. 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.

75. 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 'Trees' 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.

76. The pooling of the 'Trees' from the 'Trees' grown on the Grower's 'Allotment' with the 'Trees' of other Growers in the Environinvest Eucalypt Project No. 7 is consistent with general afforestation practices. Each Grower's proportionate share of the sale proceeds of the pooled 'Trees' will reflect the proportion of the 'Trees' contributed from their 'Allotments'.

77. The services provided under the Management Agreement are also consistent with general silvicultural practices. They are of the type ordinarily found in afforestation ventures that would commonly be said to be businesses. While the size of an individual 'Allotment' is relatively small, it is of a size and scale to allow it to be commercially viable.

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

79. The afforestation activities, and hence the fees associated with their procurement, are consistent with an intention to commence regular activities that have an 'air of permanence' about them. For the purposes of this Ruling, the Growers' afforestation activities in the Environinvest Eucalypt Project No. 7 will constitute the carrying on of a business.

The Simplified Tax System ('STS')

Division 328

80. 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.

81. 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 Fee

Section 8-1

82. Consideration of whether the 'Establishment Fee' is 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.

83. The 'Establishment 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 harvesting and sale of wood produce) is to be gained from this business. They will thus be deductible under the first limb of section 8-1. Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. The fees appear to be reasonable. There is no capital component of these 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

(i) Growers who use Environinvest as the finance provider

84. Some Growers may finance their participation in the Project through one of several loan facilities with Environinvest. These loans are described in paragraph 47. Whether the resulting interest costs are deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of the fees for the 'Establishment Services' and the 'Planting Services' under the Management Agreement.

85. The interest incurred in the Application Year and in subsequent years of income will be in respect of a loan to finance the Grower's business operations - the cultivation and growing of trees and the Grower Lease of the land on which the trees will have been planted - that will continue to be directly connected with the gaining of 'business income' from the Project. Such interest will, therefore, have a sufficient connection with the gaining of assessable income to be deductible under section 8-1.

(ii) Growers who DO NOT use Environinvest as the finance provider

86. 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 Environinvest 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 82KZMG**

87. 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 (for example, 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.

Sections 82KZME and 82KZMF

88. Where the requirements of section 82KZME are met, section 82KZMF applies to apportion relevant prepaid expenditure, over the 'eligible service period'. Section 82KZMF uses the formula below, to apportion the prepaid expenditure and allow a deduction over the period that the expenditure relates to.

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

89. In the formula 'eligible service period' (defined in subsection 82KZL(1)) means, the period during which the thing under the agreement is to be done. The eligible service period begins on the day on which the thing under the agreement commences to be done or on the day on which the expenditure is incurred, whichever is the later, and ends on the last day on which the thing under the agreement ceases to be done, up to a maximum of 10 years. There are a number of exceptions to these rules, but for Growers participating in this Project, only the 'excluded expenditure' exception in subsection 82KZME(7) is relevant.

90. 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.

Section 82KZMG

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

92. 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.

93. 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:
 - (i) there is more than one participant in the agreement in the same capacity as the taxpayer; or
 - (ii) the manager manages, arranges or promotes the agreement, or an associate of the manager, manages, arranges or promotes similar agreements.

94. 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.

95. 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 provisions to this Project

Sections 82KZME and 82KZMF

96. A Grower who finances their investment using the Interest Only Loan facility with Environinvest will incur interest that is subject to sections 82KZME and 82KZMF. Such interest is NOT deductible in full in the year in which it is incurred, unless it is 'excluded expenditure' (subsection 82KZME(7)). 'Excluded expenditure' is defined in subsection 82KZL(1).

97. For the purposes of Growers in this Project, 'excluded expenditure' is prepaid expenditure (that is, interest) incurred under the arrangement (that is the Interest Only Loan) that is less than \$1,000. Subject to paragraph 102, where interest of less than \$1,000 is incurred in an income year it is immediately deductible.

98. Where the interest incurred in an income year is \$1,000 or more, it is not 'excluded expenditure' and the deductions allowable in the income year to which the interest relates must be determined using the formula in subsection 82KZMF(1) (see paragraph 88).

99. For example, if a Grower who is accepted into the Project on or before the 30 June 2004 incurs interest of \$1,000 or more in the Application Year (that is, the income year ended 30 June 2004), the three elements of the formula would be determined as follows:

- The expenditure would be the amount of interest incurred;
- the 'Number of days of eligible service period in the year of income' for the Application Year will be the number of days between the Commencement Date and the 30 June 2004; and
- the 'eligible service period' will be 365 days.

100. The deductions determined under the formula in subsection 82KZMF(1) are subject to paragraph 102.

101. For Growers who finance their investment using the Principal and Interest Loan facility the interest payable to Environinvest is incurred monthly. Accordingly, the provisions in sections 82KZME to 82KZMF have no application to this interest.

102. A Grower who is an 'STS taxpayer' can, therefore, claim an immediate deduction for each of the relevant amounts in the income year in which the amount is paid. A Grower who is not an 'STS taxpayer' can claim an immediate 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 to a Grower if the Grower were to choose to prepay all or some of the interest under the Principal and Interest Loan facility or chose to prepay interest under a loan agreement with lenders other than Environinvest.

104. As noted in the Ruling section above, Growers who prepay interest (other than under the Interest Only Loan with Environinvest) are not covered by this Product Ruling and may instead request a private ruling on the tax consequences of their participation in this Project.

Section 82KZMG

105. Under the Management Agreement, a Grower incurs a fee for 'Establishment Services' and 'Planting Services' consisting of expenditure of \$3,272.50 for 'seasonally dependent agronomic activities'. (**Note:** Seasonally dependent agronomic activities are explained in Taxation Determination TD 2003/12.)

106. As this expenditure will meet the requirements of section 82KZMG, a Grower who is an 'STS taxpayer' can, therefore, claim an immediate deduction for the fee for Establishment Services in the income year in which the amount is paid. A Grower who is not an 'STS taxpayer' can claim an immediate deduction for the fee for the Establishment Services in the income year in which the fee is incurred.

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

107. 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 2016 (for '2004 Growers');
- 30 June 2005 to 30 June 2017 (for '2005 Growers'); or
- in both cases, the income year preceding the 'Harvest Year' (whichever occurs sooner);

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:

- it is because of its nature that 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 afforestation 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.

108. 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

109. 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

110. 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).

111. The Environinvest Eucalypt Project No. 7 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 paragraph 59 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.

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

Example

Entitlement to GST input tax credits

113. 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

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

| | Paragraph |
|---------------------------------------------------------------------|------------------|
| What this Product Ruling is about | 1 |
| Tax law(s) | 2 |
| Goods and services tax | 3 |
| Changes in the law | 4 |
| Note to promoters and advisers | 6 |
| Class of persons | 7 |
| Qualifications | 9 |
| Date of effect | 11 |
| Withdrawal | 13 |
| Arrangement | 14 |
| Overview | 17 |
| Constitution | 24 |
| Compliance Plan | 28 |
| Head Lease | 29 |
| Sub-lease | 30 |
| Agreement for Lease | 31 |
| Grower Lease | 32 |
| Management Agreement | 35 |
| Pooling of amounts and distribution of 'Proceeds' | 43 |
| Heads of Agreement | 44 |
| Fees | 45 |
| Finance | 46 |
| Ruling | 51 |
| Application of this Ruling | 51 |
| The Simplified Tax System ('STS') | 53 |
| <i>Division 328</i> | 53 |
| Qualification | 54 |
| Assessable Income | 55 |
| <i>Section 6-5 and section 328-105</i> | 55 |
| Deductions for the Establishment Fee, Borrowing Costs, and Interest | 58 |

| | |
|--------------------------------------------------------------------------|------------|
| <i>Section 8-1, section 328-105, and section 25-25</i> | 58 |
| Units in Property Trust | 60 |
| Division 35 – Deferral of losses from non-commercial business activities | 63 |
| <i>Section 35-55 – Exercise of Commissioner’s discretion</i> | 63 |
| <i>Sections 82KZME to 82KZMF, 82KL and Part IVA</i> | 65 |
| Explanation | 66 |
| Is the Grower carrying on a business? | 66 |
| The Simplified Tax System ('STS') | 80 |
| <i>Division 328</i> | 80 |
| Deductibility of Establishment Fee | 82 |
| <i>Section 8-1</i> | 82 |
| Interest deductibility | 84 |
| <i>Section 8-1</i> | 84 |
| <i>(i) Growers who use Environinvest as the finance provider</i> | 84 |
| <i>(ii) Growers who DO NOT use Environinvest as the finance provider</i> | 86 |
| Prepayment provisions | 87 |
| <i>Sections 82KZL to 82KZMG</i> | 87 |
| <i>Sections 82KZME and 82KZMF</i> | 88 |
| <i>Section 82KZMG</i> | 91 |
| Application of the prepayment provisions to this Project | 96 |
| <i>Sections 82KZME and 82KZMF</i> | 96 |
| <i>Section 82KZMG</i> | 105 |
| Division 35 – Deferral of losses from non-commercial business activities | 107 |
| <i>Section 35-55 – Exercise of Commissioner’s discretion</i> | 107 |
| <i>Section 82KL – recouped expenditure</i> | 109 |
| Part IVA – general tax avoidance provisions | 110 |
| Example | 113 |
| Entitlement to GST input tax credits | 113 |
| Detailed contents list | 114 |

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 2001/14, TR 2000/8;
TR 97/11; TD 2003/12

Subject references:

- advance deductions and expenses for certain forestry expenditure
- carrying on a business
- commencement of business
- fee expenses
- forestry agreement
- interest expenses
- management fees
- non commercial losses
- producing assessable income
- product rulings
- public rulings
- seasonally dependent agronomic activity
- taxation administration
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters
- tax shelters project

Legislative references:

- ITAA 1936 Div 3 Subdiv H Pt III
- ITAA 1936 Div 6
- ITAA 1936 82KL
- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZME
- ITAA 1936 82KZME(7)

- ITAA 1936 82KZMF
- ITAA 1936 82KZMF(1)
- ITAA 1936 82KZMG
- ITAA 1936 82KZMG(1)
- ITAA 1936 82KZMG(2)
- ITAA 1936 82KZMG(3)
- ITAA 1936 82KZMG(4)
- ITAA 1936 82KZMG(5)
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1936 318
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 17-5
- ITAA 1997 25-25
- ITAA 1997 25-25(6)
- 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 108-5
- ITAA 1997 110-25(2)
- ITAA 1997 Div 328
- ITAA 1997 328-105
- ITAA 1997 328-105(1)(a)
- ITAA 1997 328-105(1)(b)
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- TAA 1953 Pt IVAAA
- Copyright Act 1968
- Corporations Act 2001

Case references:

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

ATO references

NO: 2004/3549

ISSN: 1441-1172