

PR 2004/62 - Income tax: Australian Cricket Bat Willow Project - Product Disclosure Statement 2004

⚠ This cover sheet is provided for information only. It does not form part of *PR 2004/62 - Income tax: Australian Cricket Bat Willow Project - Product Disclosure Statement 2004*

⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *23 November 2005*



Product Ruling

Income tax: Australian Cricket Bat Willow Project – Product Disclosure Statement 2004

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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.*

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

No guarantee of commercial success

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.

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.

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 'Australian Cricket Bat Willow Project - Product Disclosure Statement 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);
 - 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 (i.e. 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;
- Australian Cricket Bat Willow Plantation Management Services Limited ('ACBW') or its associates; 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.

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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).

Note: The Addendum to this Ruling that issued on 23 November 2005, applies on and from 1 July 2005.

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 dated 25 February 2004 as constituted by documents provided on 7, 23, 29 January 2004, 5 February 2004, 17 February 2004 and additional correspondence dated 26 and 28 February 2004, 23 March 2004, 1 April 2004, 14 April 2004, 5, 7 and 11 May 2004;
- Draft **Product Disclosure Statement** ('PDS') for the Australian Cricket Bat Willow Project 2004 issued by Australian Cricket Bat Willow Plantation Management Services Limited ('ACBW') the 'Responsible Entity', received by the Tax Office on 21 January 2004 and amended on 19 April 2004, including the Supplemental Deed to vary the Constitution received by the Tax Office 11 May 2004;
- The draft **Constitution** establishing the Australian Cricket Bat Willow Project – PDS 2004 ('the Constitution'), received by the Tax Office on 21 January 2004 and amended on 14 and 19 April 2004;
- The draft **Plantation Management Agreement**, to be entered into by each Grower and ACBW ('the Project Manager'), received by the Tax Office on 21 January 2004 and amended on 14 April 2004 and 7 May 2004;
- The draft **Plantation Lease** to be entered into by each Grower and Project Manager, received by the Tax Office on 21 January 2004 and amended on 14 April 2004, 7 and 11 May 2004;
- The draft Plantation Services Agreement between the Project Manager and Murray Valley Nurseries Pty Ltd ('the Contractor'), received by the Tax Office on 21 January 2004 and amended on 7 May 2004;
- The draft **Loan Agreement** 2000 which may be entered into by each Grower and Australian Plantation Finance Pty Ltd ('APF Pty Ltd'), received by the Tax Office on 21 January 2004;
- The draft Custody Agreement between the Project Manager and Sandhurst Trustees Limited ('the Custodian') received by the Tax Office on 21 January 2004;

- The draft Forestry Adviser's Agreement between the Project Manager and the Forestry Officer received by the Tax Office on 21 January 2004;
- The draft Administrative Services Agreement between Project Manager and Calculum Pty Ltd, received by the Tax Office on 21 January 2004;
- The draft Supply of Rootstock Agreement between Project Manager and Australian Cricket Willow Pty Ltd, received by the Tax Office on 21 January 2004;
- The draft Timber Sale Agreement between ACBW ('Vendor') and Callen International Pvt. Ltd. India ('Callen International'), ('Purchaser') dated 26 March 2004 received by the Tax Office on 10 May 2004; and
- The Draft Project Promotion and Timber Marketing Agreement between the Project Manager and Australian Cricket Willow Pty Ltd, received by the Tax Office on 24 January 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 *Income Tax Assessment Act 1936* (ITAA 1936).

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 Australian Cricket Bat Willow Project – Product Disclosure Statement 2004 arrangement are as follows:

Location	Koraleigh, New South Wales and Wood Wood, Victoria.
Type of business to be carried on by each participant	Commercial growing and cultivation of <i>Salix Alba Var. Caerulea</i> (Cricket Bat Willow Trees) for the purpose of harvesting and selling timber.
Number of hectares offered	Approximately 20 hectares,

for cultivation	oversubscriptions may be accepted.
Size of each Unit	150 m ² .
Minimum allocation	One 'Unit'.
Number of trees per <u>Unit</u>	20.
Term of the Project	10-12 years.
Initial cost per Unit	\$5,500 'Initial Plantation Management Fee'.
Initial cost per hectare	\$366,666 for 'Initial Plantation Management Fee'.
Ongoing costs per Unit	Annual Plantation Maintenance Services fee of \$220; and Annual Rental of \$55.
Other costs	Marketing Fee; Insurance; Harvest costs and expenses; and Loan application fee of \$250.

18. The Project is registered as a Managed Investment Scheme under the *Corporations Act 2001*. A Custodian has been appointed under the Custody Agreement to protect the interests of the Growers in their dealings with ACBW.

19. Applicants will become either 2004 Growers or 2005 Growers depending on their date of application. Growers will become 2004 Growers where an Application Form and Power of Attorney is completed with the appropriate 'Application Amount' on or after the date of this Product Ruling and on or before 30 June 2004. Applications of Growers accepted between a date on or after 1 July 2004 and on or before 30 June 2005, will commence participation as 2005 Growers.

20. The minimum 'Leased Area' that can be leased by a Grower under the Project is one 'Unit', a total area of 150 m² that will be planted with 20 trees. The total 'Leased Area' is called the Grower's 'Plantation Allotment'. Plantations in this Project will be established close to other existing plantation holdings that ACBW has established in New South Wales and Victoria. All plantations for use in this Project will be established on land with appropriate soil composition deemed suitable for forestry development and with access to a reliable supply of irrigation water.

21. The Growers will enter into a Plantation Management Agreement with ACBW to establish and maintain a 'Plantation' of 'Willow Trees' on their 'Plantation Allotment'. For a 2004 Grower or a 2005 Grower ACBW will establish the 'Plantation Allotment' during the optimal planting season but no later than 12 months after the acceptance of the application.

22. The Project will conclude upon harvest of the 'Plantation' when the Growers' 'Timber' will be jointly harvested and sold. The net proceeds from the sale of the 'Timber' will be pooled and distributed to the Growers on a pro rata basis.

Constitution

23. The Constitution establishes the Project and operates as a deed binding all of the Growers and ACBW. The Constitution sets out the terms and conditions under which ACBW agrees to act as Responsible Entity and thereby manage the Project. Growers are bound by the Constitution by virtue of their participation in the Project.

24. Under the terms of the Constitution, all moneys received from 'Applications' shall be paid to ACBW. ACBW shall, within a reasonable time or at time of the receipt of the 'Grower's Contributions', forward the payment to the Custodian. In accordance with section 1017E of the *Corporation Act 2001* ACBW must ensure that the Custodian deposits 'Grower's Contributions' into the designated 'Project Trust Account'. On the 30 June after the date of the PDS, the 'Grower's Contributions' will be released by the Custodian to the Lessor for the Lease Rental and the balance will be released to the Responsible Entity (clause 5.2).

25. Upon acceptance an 'Applicant' becomes a Grower and the Responsible Entity will enter into the 'Register' all relevant details of the Grower and their 'Plantation Allotment (clause 10).

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

- the destruction of the 'Plantation' (clause 8);
- the assignment of the Grower's interest in the Project (clause 11);
- ACBW's powers and duties (clause 16);
- meetings of Growers (clause 21); and
- winding up of the Project (clause 23).

Custody Agreement

27. The Responsible Entity has entered into a Custody Agreement with the Custodian. A condition of the Responsible Entity's Australian Financial Services Licence is that the Responsible Entity engages an agent to act as Custodian of 'Scheme Property'. The Custodian has agreed to accept the appointment on the terms set out in the Custody Agreement.

Plantation Management Agreement

28. Under clause 3.1 of the Plantation Management Agreement, Growers engage the Manager as an independent contractor to perform the 'Plantation Services' during the 'Term' of the Project. Other than termination for default (clause 12), the 'Term' of the Agreement will continue until the 'Plantation' has been 'Harvested' and the 'Timber' sold (clause 3.2).

29. The Manager will establish and maintain a 'Plantation' of 'Willow Trees' on the 'Grower's Plantation Allotment' in accordance with the 'Management Plan' and 'Best Silvicultural Practice' (clause 4.1). The services related to establishment and planting of the 'Plantation' (the 'Plantation Establishment Services') shall be completed no later than the 'Plantation Establishment Date' being within 12 months after the 'Commencement Date'.

30. The Manager will provide the 'Plantation Services' described in clause 4.2 of the agreement. These include:

- the establishment and management of the Willow Tree Plantation;
- planting of a 'Plantation' of 'Willow Trees';
- maintaining and monitoring of the 'Plantation';
- harvesting of the 'Plantation';
- provision of sufficient 'Willow Tree' root stock;
- repair of all damage done to roads, tracks or fences; and
- prevention of land degradation.

31. Further, Part 1 of the Schedule to the Agreement sets out the 'Management Plan' and provides that the Manager will ensure that, among other things:

- the 'Plantation Allotment' is clear and prepared for planting with initial spraying of herbicides, deep ripping and ploughing;
- the 'Initial Maintenance Services' are performed;
- sufficient salix alba var.caerulea rootstock (stems) are provided to achieve a stocking rate of 20 trees per 150m²;
- the 'Willow Trees' are planted in rows, equally spaced, at a stocking rate of 20 trees per 150m² on or before the 'Plantation Establishment Date';
- the 'Plantation' is tended, maintained and monitored including the use of, when appropriate, fertilisers and herbicides;
- measures are taken to prevent land degradation;

- the insurance policies for fire and public liability are maintained as agreed;
- the 'Plantation' is harvested at maturity and processed; and
- reports are issued to Growers regarding the 'Plantation Allotment'.

32. At maturity, the 'Willow Trees' will be 'Harvested' and the 'Timber' sold on behalf of the Grower (clause 9.1). Growers will pay or reimburse the Manager, on a pro-rata basis, for cost of harvesting the 'Willow Trees' (clause 9.3).

Plantation Services Agreement (Stage 4)

33. The Responsible Entity, as 'Project Manager', has engaged Murray Valley Nurseries Pty Ltd as an independent contractor to carry out the 'Plantation Services' in relation to Stage 4 of the Project during the Term in accordance with the 'Plantation Establishment and Maintenance Plan' (attached as a Schedule to the Agreement).

Plantation Lease

34. The parties to the Plantation Lease (the 'Sub-Lease') are Australian Cricket Bat Willow Plantation Management Services Limited (the Landholder) and the Grower. Under the terms of the Lease, the Grower is granted an interest over an identifiable interest of land called the 'Plantation Allotment' consisting of at least 150m² (one 'Unit').

35. The Grower will sublease their 'Plantation Allotment' from the Landholder for a Term of 10 years. However, as the 'Willow Trees' may take longer to attain a suitable size and density for the production of clefts, the Grower will be granted an option to extend the term of their Sub-Lease for an additional 4 years or until the earlier harvesting of the 'Willow Trees'.

36. Pursuant to the Sub-Lease, the Grower is required to pay 'Rent' for their 'Plantation Allotment' and 'Rent' is inclusive of water consumption and the cost of leasing irrigation equipment. Clause 7.13 and 7.14, provides for the Landholder to install and maintain a trickle irrigation system to water the 'Plantation Allotments' contained within the area of the Head Lease of up to 6 mega litres of water per hectare, per annum.

37. Among other things, the Sub-Lease sets out:

- the purpose for which the Grower may use the land (clause 3);
- the Grower's covenants (clause 6);
- the Landholder's covenants (clause 7); and
- mutual covenants (clause 8).

Timber sale agreement

38. The 'Willow Trees' planted in Stage 4 of the Project will be harvested by the Project Manager when the trees attain commercial maturity. ACBW has entered into a forward contract with Callen International for the sale of 'Timber' upon commercial maturity of the 'Willow Trees'. The term of the agreement shall be from the date the contract is signed until the harvesting and processing of all timber associated with the 'Trees' planted in conjunction with the 2004 PDS. The determined price will reflect the current market value of Australian grown willow clefts and any and all excess material at a time no later than 90 days after the processing date.

Fees

39. Upon Application, for each 150 m² of the Grower's 'Plantation Allotment' the following fees (referred to in the PDS as the 'Initial Plantation Management Fee') are payable :

- \$5,335, for the 'Plantation Establishment Services';
- \$110, for 'Initial Maintenance Services'; and
- \$55 for 'Rent' for the period from 1 July 2004 to 30 June 2005 (for 2004 Growers) or 1 July 2005 to 30 June 2006 (for 2005 Growers).

40. In each subsequent year, for each 150 m² of the Grower's 'Plantation Allotment' the following fees are payable:

- \$220 (indexed), for 'annual management fees', first payable on 1 August 2005 for the period 1 July 2005 to 30 June 2006 (for 2004 Growers) or 1 August 2006 for the period 1 July 2006 to 30 June 2007 (for 2005 Growers) and thereafter 1 August each following year during the 'Term' of the Project; and
- \$55 (indexed), for Rent first payable on 1 August 2005 for the period 1 July 2005 to 30 June 2006 (for 2004 Growers) or 1 August 2006 for the period 1 July 2006 to 30 June 2007 (for 2005 Growers) and thereafter 1 August each following year during the 'Term' of the Project.

41. Other fees and costs are set out in the Table above at paragraph 17.

42. All Growers have the option of paying the annual fees shown in paragraph 40 either as they fall due, or accruing them with interest in an annual fees deferral account to be deducted from net proceeds of sale due to the Grower on the sale of the Timber. This Product Ruling does not rule on the deductibility or otherwise of fees deferred under this option, nor does it rule on the deductibility or otherwise of interest accrued on those fees.

Harvesting and sale of pooled of 'Timber'

43. The Constitution (clause 8) sets out the principles applying circumstances relating to the pooling of Growers' 'Timber' and distribution 'Harvest Income' from the 'Harvest Trust Account'. Distributions from the 'Harvest Trust Account' will be on a pro rata basis according to the ratio that the Grower's 'Plantation Allotment' bears to all 'Plantation Allotments' leased to all Growers in the Project. This Product Ruling only applies where the following principles apply to those pooling and distribution arrangements:

- only Growers who have contributed 'Timber' to the pool making up the 'Harvest Trust Account' are entitled to benefit from distributions from the 'Harvest Trust Account'; and
- 'Timber' can only be pooled with the 'Timber' of Growers accepted to participate in the Project.

Finance

44. Growers can fund their involvement in the Project by borrowing from Australian Plantation Finance Pty Ltd (the 'Financier') a lender associated with ACBW, or borrow from an independent lender.

45. Growers are able to borrow from the Financier an amount equal to their full application fee less a minimum deposit of 20%. The loan is payable (monthly in arrears) over 5 years, consisting of both principal and interest components at a rate of 9.9%. The Grower will pay a loan application fee of \$250 to the Financier prior to receiving the Principal Sum from the Financier. The Financier shall only provide the Principal Sum to Growers who subscribe for a minimum subscription amount of \$10,000. Overdue repayments will incur additional interest 4% above the interest rate specified in the Schedules. The Financier provides the loan on a full recourse basis and recovery action will be taken in respect of any default by the borrower.

46. The security for the loan is provided by the assignment to the Financier, over the term of the loan, of the Grower's rights and interest in the Project.

47. This Product Ruling does not cover financing arrangements, other than those set out above in paragraphs 44 and 45. While, for individual cases, the Financier reserves the right to alter the loan terms shown in paragraph 45, such loans are not covered by this Product Ruling. Growers who enter into finance agreements not covered by this Product Ruling may request a private ruling on the deductibility or otherwise of interest incurred under the agreement.

48. Growers cannot rely on any part of this Product Ruling if the Initial Plantation Management Fee otherwise remains unpaid by 30 June of the income year in which the Grower is accepted to participate in the Project. A Grower cannot rely on this Ruling if ACBW accepts their application subject to finance approval by any lending institution, including the Financier, and written evidence of that approval has not been given to ACBW by 30 June of the income year in which the Grower is accepted to participate in the Project.

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

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

Ruling

Application of this Ruling

50. This Ruling applies only to Growers who are accepted to participate in the Project on or after the date of this Product Ruling and on or before 30 June 2005 and who have executed a Plantation Management Agreement on or before that date. The Grower's participation in the Project must constitute the carrying on of a business of primary production.

51. This Ruling does **not** apply to Growers who:
- are excluded from the Ruling as described in the Class of Persons or the Arrangement sections of this Product Ruling; or
 - are accepted to participate in the Project on or after 1 July 2005.

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.

The Simplified Tax System ('STS')

Division 328

53. To be an 'STS taxpayer' a Grower must be eligible to be an 'STS taxpayer' and must have elected to be an 'STS taxpayer'. Changes to the STS rules apply from 1 July 2005. From that date, STS taxpayers may use the accruals accounting method. For a Grower participating in the Project, the recognition of income and the timing of tax deductions under the STS where the Grower uses the cash accounting method is different.

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. Other than Growers referred to in paragraph 57, a Grower recognises ordinary income from carrying on their business of afforestation in the year in which the income is derived.

57. A Grower who is an 'STS taxpayer' (for the 2003-04 and 2004-05 income years) or an 'STS taxpayer' using the cash accounting method (for the 2005-06 and later income years)

recognises ordinary income from carrying on their business of afforestation in the year in which the income is received.

Deductions for fees payable for Plantation Establishment Services, the Initial Maintenance Services, the Annual Management Services, Rent, and for interest

Section 8-1 and section 328-105

58. [Deleted]

59. [Deleted]

60. A Grower may claim, on a per Unit basis, tax deductions for the following revenue expenses.

2004 Growers

Fee Type	Year ended 30 June 2004	Year ended 30 June 2005	Year ended 30 June 2006
Plantation Establishment Services Fee	\$5335 See Notes (i) & (ii)	nil	nil
Initial Maintenance Services Fee	\$110 See Notes (i) & (ii)	nil	nil
Annual management fee	nil	nil	\$220 See Notes (i) (iii) & (vii)
Initial Rent	Must be calculated See Notes (i) & (iv)	nil	nil
Annual Rent	nil	nil	\$55 See Notes (i) (v) & (vii)
Interest payable to APF Pty Ltd under Loan Agreements	As incurred (Non-STs taxpayers); or As paid (STs taxpayers) See Notes (vi) (vii) & (viii)	As incurred (Non-STs taxpayers); or As paid (STs taxpayers) See Notes (vi) (vii) & (viii)	As incurred (Non-STs taxpayers & STs taxpayers using accruals accounting method); or As paid (STs taxpayers using cash accounting method) See Notes (vi) (vii) & (viii)
Loan application fee	Must be calculated – See Note (ix)	Must be calculated – See Note (ix)	Must be calculated – See Note (ix)

PR 2004/62**2005 Growers**

Fee Type	Year ended 30 June 2005	Year ended 30 June 2006	Year ended 30 June 2007
Plantation Establishment Services Fee	\$5335 See Notes (i) & (ii)	nil	nil
Initial Maintenance Services Fee	\$110 See Notes (i) & (ii)	nil	nil
Annual management fee	nil	nil	\$220 See Notes (i) (iii) & (vii)
Initial Rent	Must be calculated See Notes (i) & (iv)	nil	nil
Annual Rent	nil	nil	\$55 See Notes (i) (v) & (vii)
Interest payable to APF Pty Ltd under Loan Agreements	As incurred (Non-STS taxpayers); or As paid (STS taxpayers) See Notes (vi) (vii) & (viii)	As incurred (Non-STS taxpayers & STS taxpayers using accruals accounting method); or As paid (STS taxpayers using cash accounting method) See Notes (vi) (vii) & (viii)	As incurred (Non-STS taxpayers & STS taxpayers using accruals accounting method); or As paid (STS taxpayers using cash accounting method) See Notes (vi) (vii) & (viii)
Loan application fee	Must be calculated – See Note (ix)	Must be calculated – See Note (ix)	Must be calculated – See Note (ix)

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 the Example at paragraph 108;
- (ii) The fee for Plantation Establishment Services and the Initial Maintenance Fee is expenditure for 'seasonally dependent agronomic activities' (see paragraphs 88 to

- 101) and is deductible 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'**);
- (iii) The annual management fee is deductible in the income year in which it is incurred (where the Grower is **not an 'STS taxpayer'** or an **'STS taxpayer' using the accruals accounting method**) or the year in which it is paid (where the Grower is an **'STS taxpayer' using the cash accounting method**).
- (iv) The Initial Rent of \$55 per Unit is subject to the prepayment rules in sections 82KZME and 82KZME. It is incurred on the Commencement Date and is payable for the period from 1 July 2004 until 30 June 2005 (for 2004 Growers) or 1 July 2005 to 30 June 2006 (for 2005 Growers). The total Rent payable by Growers will depend upon the number of Units held. Where the total Rent payable by a Grower is less than \$1,000 the Rent will be deductible 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'**). Where the total Rent is \$1,000 or more the application of the formula in subsection 82KZMF(1) will result in the deduction being wholly allowable in the income year ended 30 June 2005 (for 2004 Growers) or 30 June 2006 (for 2005 Growers) (see paragraphs 93 to 96 below);
- (v) The annual Rent of \$55 per Unit first payable on 1 August 2005 (for 2004 Growers) and 1 August 2006 (for 2005 Growers) is deductible in the income year in which it is incurred (where the Grower is **not an 'STS taxpayer'** or an **'STS taxpayer' using the accruals accounting method**) or in the year in which it is paid (where the Grower is an **'STS taxpayer' using cash accounting method**).
- (vi) Growers who enter into a Loan Agreement with APF Pty Ltd will incur interest monthly in arrears, as set out in the Agreements. For the 2003-04 and 2004-05 income years, such interest is deductible in the income year in which it is incurred (where the Grower is **not an 'STS taxpayer'**) or in the income year it is paid (where the Grower is an **'STS taxpayer'**). For the 2005-06 and 2006-07 income years, the interest is deductible in the income year in which it is incurred (where the Grower is **not an 'STS taxpayer'** or an **'STS taxpayer' using the accruals accounting method**) or in the income year in which it is paid (where the Grower is an **'STS taxpayer' using the cash accounting method**).
- (vii) This Ruling does not apply to Growers who choose to prepay fees under the Plantation Management

Agreement or Plantation Lease (except for the Initial Rent), or prepay interest under a Loan Agreement with APF Pty Ltd. 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;

- (viii) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than APF Pty Ltd, or loans with APF Pty Ltd with terms that differ from those shown in paragraph 45, are outside the scope of this Ruling. Growers who borrow from lenders other than APF Pty Ltd, or enter into individual financing arrangements with APF Pty Ltd may request a private ruling on the deductibility of the interest incurred; and
- (ix) The 'Loan Application Fee' payable to APF Pty Ltd is a borrowing expense and is deductible under section 25-25. It is incurred for borrowing moneys that are used or are to be used during that income year solely for income producing purposes. The deduction is spread over the period of the loan or 5 years, whichever is the shorter. The deductibility or otherwise of borrowing costs arising from loan agreements entered into with financiers other than APF Pty Ltd is outside the scope of this Ruling.

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

Section 35-55 – Commissioner's discretion

61. A Grower who is an individual accepted into the Project as a '2004 Grower' or a '2005 Grower' 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 2013** (for '2004 Growers') or **30 June 2005 to 30 June 2014** (for '2005 Growers') or the income year in which the 'Trees' are 'Harvested', whichever occurs earlier. 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.

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

62. For a Grower who participates in the Project and incurs expenditure as required by the Plantation Management Agreement, the Plantation Lease Agreement and any Loan Agreement (as applicable) the following provisions of the ITAA 1936 have application as indicated:

- expenditure for the Establishment Services fee, the Initial Maintenance fee, the annual Rent, and interest on loans with APF Pty Ltd does not fall within the scope of sections 82KZME to 82KZMF;
- expenditure on the Initial Rent is within the scope of sections 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?

63. For the amounts set out in the Tables above to constitute allowable deductions the Grower's afforestation activities as a participant in the Australian Cricket Bat Willow Project – Product Disclosure Statement 2004 must amount to the carrying on of a business of primary production.

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

65. For schemes such as that of the Australian Cricket Bat Willow Project – Product Disclosure Statement 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.

66. 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 'Timber' from those 'Trees';
- the afforestation activities are carried out on the Grower's behalf;
- the afforestation activities of the Grower are typical of those associated with an afforestation business; and
- the weight and influence of general indicators point to the carrying on of a business.

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

68. Under the Plantation Lease each individual Grower will have rights over a specific and identifiable area of at least 150m² of land. The Plantation Lease provides the Grower with an ongoing interest in the specific 'Trees' on the leased area for the term of the Project. Under the Plantation Lease the Grower must use the land in question for the purpose of carrying out afforestation activities and for no other purpose. The Plantation Lease allows the Manager to come onto the land to carry out its obligations under the Management Agreement.

69. Under the Plantation Management Agreement the Manager is engaged by the Grower to establish and maintain the Grower's identifiable 'Plantation Allotment' during the 'Term' of the Project. The Manager has provided evidence that it holds the appropriate professional skills and credentials to establish and maintain the 'Plantation Allotment' on the Grower's behalf.

70. The Manager is also engaged to harvest and sell, on the Grower's behalf, the 'Timber' grown on the Grower's Plantation Allotment.

71. 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.

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

73. The pooling of 'Timber' from 'Trees' grown on the Grower's 'Plantation Allotment' with the 'Timber' of other Growers in the Project is consistent with general afforestation practices. Each Grower's proportionate share of the sale proceeds of the pooled 'Timber' will reflect the proportion of the 'Trees' contributed from their 'Plantation Allotment'.

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

75. The Grower's degree of control over the Manager as evidenced by the Constitution, 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 'Plantation Allotment' and the activities carried out on the Grower's behalf. Growers are able to terminate arrangements with the Manager in certain instances, such as cases of default or neglect.

76. 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 Australian Cricket Bat Willow Project – Product Disclosure Statement 2004 will constitute the carrying on of a business.

The Simplified Tax System

Division 328

77. 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.

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

Deductibility of the Initial Plantation Management fee

Section 8-1

79. Consideration of whether the fee for Plantation Establishment Services and the Initial Maintenance Fee and Rent are deductible under section 8-1 begins with the first limb of the section. This view proceeds on the following basis:

- the outgoing in question must have a sufficient connection with the operations or activities that directly gain or produce the taxpayer's assessable income;
- the outgoings are not deductible under the second limb if they are incurred when the business has not commenced; and

- where all that happens in a year of income is that a taxpayer is contractually committed to a venture that may not turn out to be a business, there can be doubt about whether the relevant business has commenced, and hence, whether the second limb applies. However, that does not preclude the application of the first limb in determining whether the outgoing in question has a sufficient connection with activities to produce assessable income.

80. The fee for Plantation Establishment Services, the Initial Maintenance Fee and the Rent payable under the Plantation Management Agreement is associated with the Grower's afforestation activities. It 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 'Timber') is to be gained from this business. It will thus be deductible under the first limb of section 8-1. Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. The fee appears to be reasonable. The fee for Initial Plantation Management Fee does not include a capital component. 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 pay fees under a Loan Agreement with APF Pty Ltd

81. Some Growers may finance their participation in the Project through a Loan Agreement with APF Pty Ltd. Whether the resulting interest costs are deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of the fees payable under the Plantation Management Agreement.

82. The interest incurred will be in respect of a loan to finance the Grower's business operations – the cultivation and growing of trees – 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 in the income year in which it is incurred (where the Grower is not an 'STS taxpayer' or an 'STS taxpayer' using the accruals accounting method) or the income year in which it is paid (where the Grower is an 'STS taxpayer' using the cash accounting method).

(ii) Growers who enter into finance arrangements with other finance providers

83. The deductibility of interest incurred by Growers who finance their participation in the Project through a finance facility with a bank or financier other than APF Pty Ltd, or finance their participation with a loan with APF Pty Ltd other than under the terms described in paragraph 45, are 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

84. 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

85. 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.

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

86. In the formula 'eligible service period' (defined in subsection 82KZL(1)) means, the period during which the thing under the agreement is to be done. The eligible service period begins on the day on which the thing under the agreement commences to be done or on the day on which the expenditure is incurred, whichever is the later, and ends on the last day on which the thing under the agreement ceases to be done, up to a maximum of 10 years. 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.

87. 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

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

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

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

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

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

91. 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.

92. Subsection 82KZMG(5) defines the 'establishment period to commence at the time that the first 'seasonally dependent agronomic activity' is performed in relation to a specific planting of trees and to conclude with the planting of trees. Where it is necessary to apply a fertiliser or herbicide to the trees at the same time as planting then those activities fall within the establishment period. Planting of trees refers to the main planting of the particular plantation and expressly excludes specific planting to replace existing seedlings that have not survived.

Application of the prepayment provisions to this Project***Sections 82KZME and 82KZMF***

93. On the Commencement Date a Grower who is accepted to participate in the Project will incur Initial Rent of \$55 per Unit. The Rent is payable for the period commencing on the 1 July 2004 until 30 June 2005 (for 2004 Growers) or 1 July 2005 to 30 June 2006 (for 2005 Growers). The Initial Rent 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).

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

95. 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 85).

96. For example, if a Grower who is accepted into the Project on or before the 30 June 2004 incurs Initial Rent of \$1,000 or more in the income year ended 30 June 2004 the 'eligible service period' will be 1 July 2004 to 30 June 2005. Accordingly, applying the formula in subsection 82KZMF(1) will mean that no part of the Initial Rent will be deductible in the income year 2004 and the whole amount incurred will be deductible in the income year ended 30 June 2005.

97. Where a Grower pays the annual management fee, the annual Rent or the interest under the loan facility with APF Pty Ltd, as required under the relevant Agreement, section 82KZME and 82KZMF will have no application. A Grower who is an 'STS taxpayer' using the cash accounting method 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' or an 'STS taxpayer' using the accruals accounting method can claim an immediate deduction for each of the relevant amounts in the income year in which the fee is incurred.

98. However, sections 82KZME and 82KZMF may have further relevance to a Grower if the Grower were to choose to prepay all or some of the annual fees or the interest under a loan with APF Pty Ltd or chose to prepay interest under a loan agreement with lenders other than APF Pty Ltd.

99. As noted in the Ruling section above, Growers who prepay fees or interest (other than the Initial Rent) 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

100. Under the Plantation Management Agreement, a Grower incurs a fee for Plantation Establishment Services and an Initial Maintenance Fee of \$5,445 per Unit for 'seasonally dependent agronomic activities'. (**Note:** Seasonally dependent agronomic activities are explained in Taxation Determination TD 2003/12.)

101. As this expenditure will meet the requirements of section 82KZMG, a Grower who is not an 'STS taxpayer' can claim an immediate deduction for the Initial Plantation Management Fee in the income year in which the amount is incurred. A Grower who is an 'STS taxpayer' can claim an immediate deduction for the fee for Plantation Establishment Services and the Initial Maintenance Fee in the income year in which the fee is paid, or paid on behalf of the Grower.

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

102. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for the income years discussed in paragraph 61, 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 discussed in paragraph 61:

- 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 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.

103. 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

104. 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

105. 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).

106. The Australian Cricket Bat Willow Project – Product Disclosure Statement 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 paragraph 60 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.

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

Example

Entitlement to GST input tax credits

108. 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

19 May 2004

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*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.

Other Rulings/Determinations

TR 2001/14; 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 82KL
- ITAA 1936 82KZL
- ITAA 1936 82KZME
- ITAA 1936 82KZME(1)
- 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 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 328
- ITAA 1997 328-105
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- TAA 1953 Pt IVAAA
- Copyright Act 1968
- Corporations Act 2001
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Case references:

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

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