



PR 2004/95 - Income tax: Kiri Park Project 2004/2005 - Post 30 September 2004 Growers

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 This document has changed over time. This is a consolidated version of the ruling which was published on *29 September 2004*



Product Ruling

Income tax: Kiri Park Project 2004/2005 – Post 30 September 2004 Growers

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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 IVA 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 Tax Office **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 and how the product fits an existing portfolio. 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 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, 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 Tax Office 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 Tax Office website at www.ato.gov.au or contact the Tax Office directly to confirm the currency of this Product Ruling or any other Product Ruling that the Tax Office 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 'Kiri Park Project 2004/2005' – Post 30 September 2004 Growers or simply as 'the Project'.

Tax law(s)

2. The tax laws dealt with in this Ruling are:
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
 - section 8-1 of the ITAA 1997;
 - section 17-5 of the ITAA 1997;
 - Division 27 of the ITAA 1997;
 - Division 35 of the ITAA 1997;
 - Division 70 of the ITAA 1997;
 - Division 328 of the ITAA 1997;
 - Part 3-1 of the ITAA 1997;
 - section 82KL of the *Income Tax Assessment Act 1936* (ITAA 1936);
 - section 44 of the ITAA 1936;
 - section 82KZL of the ITAA 1936;
 - sections 82KZME to 82KZMF of the ITAA 1936;
 - section 82KZMG of the ITAA 1936; and
 - Part IVA of the 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. Growers who elect to market their own produce (see paragraph 31 and 48) are also excluded from the class of persons to whom this Ruling applies. Also, the class of persons will not include any Growers whose Woodlots are allotted after 30 June 2005 (see paragraphs 44 and 48).

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 29 September 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 Product Ruling dated 16 July 2004 as constituted by the following documents;
- Kiri Park Project 2004/2005 Supplementary Product Disclosure Statement ('PDS') dated 2 September 2004;
- Kiri Park Project 2004/2005 Draft Supplementary Product Disclosure Statement ('PDS'), received on 17 September 2004;
- Kiri Park Project 2004 PDS dated 26 May 2004;
- Draft Constitution of the Kiri Park Project 2004/2005, received on 16 August 2004;
- Deed of Variation for Kiri Park Project 2004 dated 23 April 2004;
- Deed of Variation for Kiri Park Project 2004/2005, dated 13 August 2004;
- Draft Deed of Variation for Kiri Park Project 2004/2005 received on 17 September 2004;
- Draft **Lease and Management Agreement** between Environmental Forest Farms Management Limited ('Responsible Entity'), Powton Land Holdings Limited ('Lessor') and each Grower, received on 16 September 2004;
- Draft **Loan Agreement** and **Loan Schedule**, received on 3 September 2004;
- Draft Compliance Plan for the Kiri Park Project 2004/2005, received on 16 August 2004;
- Marketing Agreement between Environmental Forest Farms Management Limited and E.F.F. Limited received on 9 August 2004;
- Powton Land Holdings Limited Prospectus dated 3 June 2004; and
- Further correspondence from the applicant dated 6, 9, 10, 11, 12, 16, 18 August 2004 and 3, 14, 15, 16 and 17 September 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. Terms defined in the project documents are reported in capitals in this Product Ruling.

16. All Australian Securities and Investment Commission (ASIC) requirements are, or will be, complied with for the term of the agreements. The effect of these agreements is summarised as follows.

Overview

17. This arrangement is called the Kiri Park Project 2004/2005 – Post 30 September 2004 Growers.

Location	Regans Ford, Shire of Gingin, Western Australia
Type of business each participant is carrying on	Commercial growing and cultivation of <i>Paulownia fortunei</i> trees for the purpose of harvesting and selling timber
Number of hectares offered for cultivation	123
Size of each Woodlot	0.18 hectares
Number of trees established per hectare	Approximately 555 trees
The term of the Project	Approximately 10 years
Initial cost	\$10,038 plus \$600 to acquire 6 shares in Powton Land Holdings Limited
Ongoing and other costs	Rent and Management Fees Harvesting and Processing Costs Incentive fee Harvest Marketing Costs Fee Additional Insurance if required by the Grower

18. The Project is registered as a Managed Investment Scheme under the *Corporations Act 2001*. The Responsible Entity for the Project is Environmental Forest Farms Management Limited ('EFFM'). The Project will be conducted on land known as 'Kiri Park'

being Lot M 1254 of diagram 5564 contained in Certificate of Volume 1807 Folio 985.

19. There is no minimum subscription for the Project. The land for the Project is owned by Powton Land Holdings Limited. Powton Land Holdings Limited ('PLH') will lease the Woodlot to the Grower to enable the Grower to carry on a long term commercial afforestation business.

20. The land owner is in the process of identifying further suitable land for Paulownia plantations. In the event of oversubscription, the land owner may secure additional land for the Project, subject to the approval of a Forestry Expert.

21. The Lease and Management Agreement provides for an area of land called a 'Woodlot' to be let to the Grower for a term of approximately 10 years. Each Woodlot is 0.18 hectares in size and will be planted with at least 100 trees (555 per hectare) within 12 months of allotment or 31 December 2005 whichever date occurs first. The Woodlots are separately identified in a Plan of the Plantation.

22. Growers will also enter into a contract with the Responsible Entity for the management of their Woodlot. The Responsible Entity will be responsible for establishing and cultivating the trees and harvesting, processing and selling the timber. Tree thinning is expected to occur from Years 7 to 9. In Year 10 the remaining trees will be harvested and processed. Unless the Grower elects to take possession of their timber, the Responsible Entity will be responsible for arranging the marketing and sale of the timber.

23. Growers must also subscribe for a minimum of 6 shares per Woodlot in the land owning company, PLH, at \$100 per share. Growers may not hold more than 54% of the total shares on issue in PLH.

24. Upon allotment, Growers appoint the Responsible Entity as their power of attorney, enabling the Responsible Entity to act on their behalf.

Constitution

25. The Constitution establishes the Project and operates as a deed binding on all of the Growers and the Responsible Entity. The Constitution sets out the terms and conditions under which EFFM agrees to act as the Responsible Entity and manage the Project. Growers are bound by the Constitution by virtue of their participation in the Project. The Responsible Entity will maintain a register of Growers.

26. Under the terms of the Constitution, all monies received from Applications will be paid into an Application Fund. The Project Subscription Moneys from Applications will be released to the Responsible Entity upon acceptance of an Application after which Woodlots are allocated. Applicants become Growers upon allotment

of their Woodlots and a Lease and Management Agreement will be executed on their behalf.

Compliance Plan

27. EFFM has prepared a Compliance Plan as required by the Corporations Act. Its purpose is to ensure that the Responsible Entity meets its obligations and responsibilities contained in the Constitution and that the interests of Growers are protected.

Lease and Management Agreement

28. Growers participating in the arrangement will enter into a Lease with PLH as the Lessor. Growers are granted an interest in the land in the form of a Lease to use their Woodlot for the purposes of conducting their afforestation business until the final distribution of sale proceeds is made to the Grower or until the Project is terminated. Growers are specifically granted rights to harvest timber on their Woodlot for this purpose. The Lease is granted upon the terms and conditions outlined in the Lease and Management Agreement.

29. Each Grower must pay rent to PLH for each year of the Project in an amount specified in item 5 of the Schedule to the Lease and Management Agreement.

30. Each Grower will enter into a Lease and Management Agreement ('LMA') with EFFM in its capacity as Responsible Entity and Manager. The Management Agreement provides that each Grower appoints the Responsible Entity to perform services under the agreement. The Responsible Entity will supervise and manage all silvicultural activity on behalf of the Grower in accordance with good silvicultural practice and must perform services including, but not limited to the following:

- for Growers who have a Commencement Date after 30 September 2004 but on or before 31 October 2004, plant suitable Paulownia trees on the Leased Area at a rate equivalent to 100 trees per Woodlot on or before 30 September 2005;
- for Growers who have a Commencement Date after 31 October 2004 but on or before 31 December 2004, plant suitable Paulownia trees on the Leased Area at a rate equivalent to 100 trees per Woodlot on or before 31 October 2005;
- for Growers who have a Commencement Date after 31 December 2004 but on or before 30 June 2005, plant suitable Paulownia trees on the Leased Area at a rate equivalent to 100 trees per Woodlot on or before 31 December 2005;

- cultivate, tend, prune, fertilise, replant, spray and otherwise care for the Trees as and when required;
- establish and keep in good repair access laneways within the Leased Area;
- maintain the Leased Area according to good silvicultural and forestry practices;
- replace any Trees that fail to establish or that die during the first twelve months of the Project;
- harvest and process the Trees grown on the Leased Area in Years 7, 8, 9 and 10 in accordance with clause 17 of the LMA; and
- carry out any other obligation to be performed by the Responsible Entity pursuant to the terms of any agreement entered into by the Responsible Entity pursuant to clause 19 of the LMA for the sale of the Forest Produce.

Harvesting and sale

31. The Grower is entitled to the Trees to be planted and the timber produced on their Woodlots. Growers may elect, on Application, to sell their own timber produce by giving written notice to the Responsible Entity (clause 18.1 of the LMA). This Ruling does not apply to Growers who make such an election. The Responsible Entity will sell the timber harvested on behalf of the Growers who do not make such an election (defined for the purposes of this Ruling as 'Non-Electing Growers') for the highest price practicable (clause 19.3 of the LMA).

32. The Responsible Entity will Harvest and Process, or engage a suitably qualified person to Harvest and Process from Years 7 to 10, the percentage of trees as set out in the PDS, unless the Responsible Entity believes that it would be in the best interests of the Growers to defer the Harvest to a later date.

33. The timber produce of Non-Electing Growers may be pooled and the Responsible Entity is appointed to sell the harvested timber. The Responsible Entity is to ensure that the Gross Sale Proceeds are deposited into the Proceeds Fund (clause 20 of the LMA). The Gross Sale Proceeds are to be distributed in the following order of priority:

- the relevant Grower's proportional share of Harvesting and Processing Costs;
- the Incentive Fee (if any);
- any Annual Contribution then due and payable by the relevant Grower; and
- any other amounts owed to the Responsible Entity or the Lessor by the relevant Grower.

34. The remaining balance is to be paid to the Grower in accordance with each Grower's proportional share after an amount of 5.5% of the Gross Sale Proceeds has been deducted and paid to the Responsible Entity in accordance with clauses 17.3 and 20.3 of the LMA (see paragraph 39).

35. The Responsible Entity will maintain a public risk insurance policy in respect of the Plantation and if possible such additional insurance, including fire insurance as mutually agreed and paid for by the Grower (clause 21 of the LMA).

36. From 1 July 2006 onwards, the Responsible Entity may obtain the approval of a Forestry Expert to increase the annual Management Fee if the Responsible Entity calculates that the Management Fees, as stated in item 4 of the Schedule to the LMA are insufficient to cover its costs, including corporate overhead costs, insurance premiums and indexation (clause 23.3 of the LMA).

Fees

37. Fees are payable under the Lease and Management Agreement on a per Woodlot basis. The total of the Project Subscription Moneys payable on Application is \$10,038 represented as:

- land preparation fee of \$8,348 payable to the Responsible Entity for the cost of the trees and the Woodlot preparation;
- tree planting fee of \$573 payable to the Responsible Entity;
- Management Fee of \$986 payable to the Responsible Entity for the period from 1 July 2005 to 30 June 2006; and
- rent of \$131 payable to the Lessor for the period from 1 July 2005 to 30 June 2006.

38. Amounts payable in subsequent years are as follows:

- Management Fee of \$986 for managing and maintaining the Woodlot for the period from 1 July 2006 to 30 June 2007 payable in advance on or before 30 June 2006;
- Management Fee of \$986 for the period 1 July 2007 to 30 June 2008 payable in advance on or before 30 June 2007;
- thereafter annual Management Fees will be set at \$1,015 payable in advance on or before 30 June for the following income year and increased at the rate of the Consumer Price Index from 1 July 2008; and

- rent of \$131 is payable on or before 30 June 2006 for the income year ending 30 June 2007 and on or before 30 June 2007 for the income year ending 30 June 2008. Thereafter rent of \$135 is payable on or before 30 June for the following income year and is increased at the rate of the Consumer Price Index from 1 July 2008.

39. The Responsible Entity is also entitled to the following amounts that will be deducted from the Gross Sale Proceeds:

- Harvesting and Processing Costs;
- an Incentive Fee equal to 27.5% of the amount by which the actual net harvest return exceeds the Incentive Fee threshold estimated in the PDS; and
- an amount equal to 5.5% of the Gross Sale Proceeds for Harvest Marketing Costs as per clause 17.3 of the LMA.

Finance

40. Growers can fund their investment in the Project themselves, borrow from PLH or borrow from an independent lender.

41. PLH will offer three finance arrangements:

Option 1: Interest only loan

- interest only repayments;
- fixed interest rate of 12% per annum for loans of up to \$5,000 per Woodlot and 12.5% per annum for loans greater than \$5,000 per Woodlot;
- interest is payable annually in advance;
- the interest payable from the date of Application to 30 June 2006 is included in the Principal sum;
- repayments commence on 29 June 2006 and conclude on 29 June 2008; and
- repayment of 100% of the Principal outstanding on 1 June 2008 is payable no later than 29 June 2008.

Option 2: Principal and Interest loan

- principal and interest repayments;
- fixed interest rate of 12% per annum for loans of up to \$5,000 per Woodlot and 12.5% per annum for loans greater than \$5,000 per Woodlot;
- interest is payable annually in advance;
- the interest payable from the date of Application to 30 June 2006 is included in the Principal sum; and

- repayments commence on 29 June 2006 and conclude on 29 June 2010.

Option 3: Principal and Interest loan

- interest only repayments for the period from 1 July 2005 to 30 June 2006 and principal and interest repayments for the remainder of the term;
- fixed interest rate of 12% per annum for loans of up to \$5,000 per Woodlot and 12.5% per annum for loans greater than \$5,000 per Woodlot;
- interest is payable monthly in advance;
- the interest payable from the date of the Application to 30 June 2005 is included in the Principal sum;
- monthly repayments must be made by direct debit from a nominated bank account; and
- repayments commence on 1 July 2005 and conclude on 1 June 2010.

42. Finance applications are subject to a Finance Application Fee of \$300 for individuals and \$350 for companies and trusts. The Finance Application Fee is payable on application together with a deposit of \$1,003.80 per Woodlot and \$600 per Woodlot for the purchase of shares in PLH.

43. The loans are made on a full recourse basis and PLH will pursue legal recovery action against defaulting borrowers to recover any loss suffered under the agreement.

44. The PDS states that Applications subject to finance will not be accepted and allotment will not occur until finance is approved and funds are made available to the Responsible Entity. Growers will be excluded from the class of persons to whom this Ruling applies where this process is not completed by 30 June 2005.

45. Growers cannot rely on the Product Ruling if they enter into a finance agreement with PLH that materially differs from that set out in the Loan Schedule and Loan Agreements provided to the Tax Office by PLH.

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

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- 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 PLH, are involved or become involved in the provision of finance to Growers for the Project.

Ruling

Application of this Ruling

47. This Ruling applies only to Non-Electing Growers who are allotted Woodlots during the period on or after 1 October 2004 and on or before 30 June 2005.

48. This Ruling does not apply to:

- Growers who are not accepted and allotted Woodlots during the period on or after 1 October 2004 and on or before 30 June 2005 because finance has not been approved and the funds have not been made available to the Responsible Entity by this date; or
- Growers who make an election to market the timber produced from their Woodlot.

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

The Simplified Tax System ('STS')

Division 328

50. 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

51. 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.

Prepaid expenditure for Management Fees, rent and interest***Sections 82KZME and 82KZMF***

52. The following expenditure incurred by a Grower who is accepted into this Project is subject to the prepayment rules in sections 82KZME and 82KZMF:

- annual Management Fees for the term of the Project;
- annual rent for the term of the Project; and
- interest paid to PLH under finance options 1 and 2.

53. In this context, a prepayment refers to advance expenditure incurred by a Grower in return for the doing of a thing that will not be wholly done in the year in which the expenditure is incurred. Where a Grower prepays expenditure that would otherwise be a general deduction under section 8-1 of the ITAA 1997 in the expenditure year, the Grower must apportion the prepayment over the period the prepayment covers unless it is 'excluded expenditure' (see Note (iii) to the Table at paragraph 67).

54. Subsection 82KZMF(1) provides the formula for determining how much of the prepaid expenditure a Grower can deduct for each income year. In that formula, which is shown below, the 'eligible service period' 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.

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

55. Sections 82KZME and 82KZMF are discussed in greater detail at paragraphs 99 to 104.

Prepaid expenditure for 'seasonally dependent agronomic activities'**Section 82KZMG**

56. Where certain advance expenditure, and the agreement under which that expenditure is incurred, meets the requirements of section 82KZMG, the formula in subsection 82KZMF(1) will not operate to determine the timing of the deduction allowable. The requirements of section 82KZMG are set out in paragraphs 105 to 109.

57. Among other things, expenditure that complies with section 82KZMG must be for 'seasonally dependent agronomic activities' that are carried out by the manager during the Project's 'establishment period'. The 'eligible service period' relating to this expenditure must be 12 months or shorter and must end on or before the last day of the year of income after the expenditure year.

58. Under the Lease and Management Agreement, for each Woodlot, a Grower incurs \$8,921 for 'seasonally dependent agronomic activities'. This expenditure is deductible in the income year that the Grower incurs this amount.

Assessable income**Section 6-5 and section 328-105**

59. 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.

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

61. The 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)).

Trading stock**Section 70-35**

62. A Grower who is not an 'STS taxpayer' may, in some years, hold timber produce that will constitute trading stock on hand. Where, in an income year, the value of trading stock on hand at the *end* of an income year exceeds the value of trading stock on hand at the *start* of an income year a Grower must include the amount of that excess in assessable income.

63. Alternatively, where the value of trading stock on hand at the *start* of an income year exceeds the value of trading stock on hand at the *end* of an income year, a Grower may claim the amount of that excess as an allowable deduction.

PR 2004/95

Section 328-285

64. A Grower who is an ‘STS taxpayer’ may, in some years, hold timber produce that will constitute trading stock on hand. Where, for such a Grower, for an income year, the difference between the value of all their trading stock at the start and a reasonable estimate of it at the end, is less than \$5,000, they do not have to account for that difference under the ordinary trading stock rules in Division 70 (subsection 328-285(1)).

65. Alternatively, a Grower who is an ‘STS taxpayer’ may instead choose to account for trading stock in an income year under the provisions of Division 70 (subsection 328-285(2)).

Deductions for land preparation fee, tree planting fee, Management Fees, rent and interest paid to PLH

Section 8-1 and section 328-105

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

67. However, if for any reason, an amount shown or referred to in the Table is not fully paid in the year in which it is incurred by a Grower **who is an ‘STS taxpayer’** then the amount is only deductible to the extent to which it has been paid, or has been paid for the Grower. Any amount or part of an amount shown in the Table below which is not paid in the year in which it is incurred will be deductible in the year in which it is actually paid.

Fee Type	Year ended 30 June 2005	Year ended 30 June 2006	Year ended 30 June 2007
Land preparation fee (seasonally dependent agronomic activity)	\$8,348 See Notes (i) & (ii)		
Tree planting fee (seasonally dependent agronomic activity)	\$573 See Notes (i) & (ii)		
Management Fee	See Notes (i) & (iii)	See Notes (i) & (iii)	See Notes (i) & (iii)
Rent	See Notes (i) & (iii)	See Notes (i) & (iii)	See Notes (i) & (iii)
Interest paid to PLH	See Note (iv)	See Note (iv)	See Note (iv)

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 128.
- (ii) The land preparation fee and tree planting fee is expenditure for 'seasonally dependent agronomic activities' (see paragraphs 105 to 109) 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) Although the Lease and Management Agreement requires the Management Fees and the rent to be prepaid, for a Grower who acquires the minimum allocation of 1 Woodlot, the amount of the prepaid Management Fee and rent in respect to the Woodlot are each less than \$1,000. For the purposes of this Project, an amount of less than \$1,000 is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules and is deductible in full in the year in which it is incurred (where the Grower is not an 'STS taxpayer') or the year in which it is paid (where the Grower is an 'STS taxpayer').

Where a Grower acquires more than the minimum allocation in the Project, the amount of either or both of these prepaid fees may be \$1,000 or more. Where this occurs, such Growers **MUST** determine the relevant deduction for the prepaid Management Fee and prepaid rent according to the formula in subsection 82KZMF(1) (see paragraph 54).
- (iv) Interest payable to PLH under finance options 1 and 2 is subject to the prepayment provisions (see paragraphs 97 to 104). If the interest payable under finance options 1 and 2 is less than \$1,000 it is 'excluded expenditure' under the prepayment rules and it will be deductible in the 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 prepaid interest is more than \$1,000 the deduction allowable is to be determined using the formula in subsection 82KZMF(1) (see paragraph 54). Interest payable under finance option 3 is not subject to the prepayment provisions and will be deductible in the 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').

Interest

68. The deductibility or otherwise of interest incurred by Growers who finance their participation in the Project through a loan facility with a bank or financier, other than PLH is outside the scope of this Ruling. However all Growers who borrow funds in order to participate in the Project, should read the discussion of the prepayment rules in paragraphs 97 to 104 as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply where the prepayment is required under the relevant loan agreement or is at the Grower's choice.

Capital Gains Tax (CGT)

69. The shares in PLH are CGT assets (section 108-5 of the ITAA 1997) and the amount paid by a Grower to acquire those assets is an outgoing of capital and not allowable as a deduction.

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

Dividends

71. Dividends paid out of profits by PLH are included in the assessable income of shareholders under subsection 44(1) of the ITAA 1936.

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

Section 35-55 – Commissioner's discretion

72. A Grower who is an individual accepted into the Project by 30 June 2005 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 2005 to 30 June 2011**. This conditional exercise of the discretion will allow these losses to be offset against the Growers other assessable income in the income years in which the losses arise.

Section 82KL and Part IVA

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

- section 82KL does not apply to deny the deductions otherwise allowable; and
- the relevant provisions in Part IVA will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

Explanation

Is the Grower carrying on a business?

74. For the amounts set out at paragraph 66 to constitute allowable deductions the Grower's afforestation activities as a participant in the Kiri Park Project 2004/2005 must amount to the carrying on of a business of primary production.

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

76. For schemes such as that of the Kiri Park Project 2004/2005, 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.

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

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

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

79. Under the Lease and Management Agreement each individual Grower will have rights over a specific and identifiable area of 0.18 hectares of land. The Lease provides the Grower with an ongoing interest in the specific trees on the Leased Area for the term of the Project. Under the Lease the Grower must use the land in question for the purpose of carrying out afforestation activities, and for no other purpose. The Lease allows the Responsible Entity to come onto the land to carry out its obligations under the Lease and Management Agreement.

80. Under the Lease and Management Agreement the Responsible Entity is engaged by the Grower to establish and maintain a Woodlot on the Grower's identifiable area of land during the term of the Project. The Responsible Entity has provided evidence that it holds the appropriate professional skills and credentials to provide the management services to establish and maintain the Woodlot on the Grower's behalf.

81. The Responsible Entity is also engaged to harvest and sell, on the Grower's behalf, the timber produce grown on the Grower's Woodlot.

82. 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 of the indicators.

83. 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 produce 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.

84. The pooling of timber produce from trees grown on the Grower's Woodlot with the timber produce of other Growers is consistent with general afforestation practices. Each Grower's proportionate share of the sale proceeds of the pooled timber produce will reflect the proportion of the trees contributed from their Woodlot.

85. The Responsible Entity'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 Woodlot is relatively small, they are of a size and scale to allow them to be commercially viable (see Taxation Ruling IT 360).

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

87. 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 Kiri Park Project 2004/2005 will constitute the carrying on of a business.

The Simplified Tax System

Division 328

88. 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.

89. 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 land preparation fee, tree planting fee, Management Fees and rent

Section 8-1

90. Consideration of whether the land preparation fee, tree planting fee, Management Fees and rent are deductible under section 8-1 begins with the first limb of the section. This view proceeds on the following basis:

- the outgoing in question must have a sufficient connection with the operations or activities that directly gain or produce the taxpayer's assessable income;
- the outgoings are not deductible under the second limb if they are incurred when the business has not commenced; and
- where all that happens in a year of income is that a taxpayer is contractually committed to a venture that may not turn out to be a business, there can be doubt about whether the relevant business has commenced, and hence, whether the second limb applies. However, that does not preclude the application of the first limb in determining whether the outgoing in question has a sufficient connection with activities to produce assessable income.

91. The fees 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 timber produce) is to be gained from this business. They will thus be deductible under the first

limb of section 8-1. Further, no 'non-income producing' purpose in incurring the fees is identifiable from the arrangement. The fees appear to be reasonable. There is no capital component of the fees. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

Deductibility of interest

Section 8-1

(i) Growers who use PLH as the finance provider

92. Some Growers may finance their participation in the Project through a loan facility with PLH. Whether the resulting interest costs are deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of rent and Management Fees.

93. The interest incurred for the year ended 30 June 2005 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 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.

94. As with the Management Fees and rent, in the absence of any application of the prepayment provisions, the timing of deductions for interest will again depend upon whether a Grower is an 'STS taxpayer' or is not an 'STS taxpayer'. If the Grower is not an 'STS taxpayer', interest is deductible in the year in which it is incurred. If the Grower is an 'STS taxpayer' interest is not deductible until it has been both incurred and paid, or is paid for the Grower. If interest that is properly incurred in an income year remains unpaid at the end of that income year, the unpaid amount is deductible in the income year in which it is actually paid, or is paid for the Grower.

95. See paragraphs 115 to 118 for the application of the prepayment provisions in relation to the prepaid interest.

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

96. The deductibility of interest incurred by a Grower who finances their participation in the Project through a loan facility with a bank or financier other than PLH 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***

97. 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.

98. For this Project, only section 82KZL (an interpretive provision) and sections 82KZME, 82KZMF and 82KZMG are relevant. Subject to section 82KZMG, if the requirements of sections 82KZME and 82KZMF are met, taxpayers determine deductions for prepaid expenditure under section 82KZMF using the formula in subsection 82KZMF(1). These provisions also apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes them from the operation of section 82KZMF.

Sections 82KZME and 82KZMF

99. Where the requirements of subsections 82KZME(2) and (3) are met, the formula in subsection 82KZMF(1) (see below) will apply to apportion expenditure that is otherwise deductible under section 8-1 of the ITAA 1997. The requirements of subsection 82KZME(2) will be met if expenditure is incurred by a taxpayer in return for the doing of a thing that is not to be wholly done within the year the expenditure is made. The year in which such expenditure is incurred is called the 'expenditure year' (subsection 82KZME(1)).

100. The requirements of subsection 82KZME(3) will be met where the agreement (or arrangement) has the following characteristics:

- the taxpayer's allowable deductions under the agreement for the 'expenditure year' exceed any assessable income attributable to the agreement for that year;
- the taxpayer does not have effective day to day control over the operation of the agreement. That is, the significant aspects of the arrangement are managed by someone other than the taxpayer; and
- either:
 - a) there is more than one participant in the agreement in the same capacity as the taxpayer; or

- b) the person who promotes, arranges or manages the agreement (or an associate of that person) promotes similar agreements for other taxpayers.

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

102. There are a number of exceptions to these rules, but for Growers participating in this Project, only the 'excluded expenditure' exception in subsection 82KZME(7) is relevant. 'Excluded expenditure' is defined in subsection 82KZL(1). However, for the purposes of Growers in this Project, 'excluded expenditure' is prepaid expenditure incurred under the arrangement that is less than \$1,000. Such expenditure is immediately deductible.

103. Where the requirements of section 82KZME are met, section 82KZMF applies to apportion relevant prepaid expenditure. Section 82KZMF uses the formula below, to apportion prepaid expenditure and allow a deduction over the period that the benefits are provided.

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

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

Section 82KZMG

105. 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).

106. 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.

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

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

108. 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. The term 'seasonally dependent agronomic activities' is explained in Taxation Determination TD 2003/12.

109. 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

Land preparation fee and tree planting fee

110. Under the Lease and Management Agreement, a Grower incurs a land preparation fee and tree planting fee consisting of expenditure of \$8,921 for 'seasonally dependent agronomic activities'.

111. As the requirements of section 82KZMG have been met, a deduction is allowable in the income year ended 30 June 2005 for the expenditure incurred under the Lease and Management Agreement for 'seasonally dependent agronomic activities'.

Management Fees and rent

112. The expenditure incurred by a Grower in the Project for the Management Fees and rent meet the requirements of subsections 82KZME(1) and (2) and is incurred under an 'agreement' as described in subsection 82KZME(3). Therefore, unless one of the exceptions to section 82KZME applies, the amount and timing of tax deductions for those fees are determined under section 82KZMF.

113. The prepaid Management Fee and the prepaid rent, being amounts each of less than \$1,000 in each expenditure year, constitute 'excluded expenditure' as defined in subsection 82KZL(1). Under Exception 3 (subsection 82KZME(7)) 'excluded expenditure' is specifically excluded from the operation of section 82KZMF. A Grower who is an 'STS taxpayer' can, therefore, claim an immediate deduction for the Management Fee and the rent in the income year in which they are paid. A Grower who is not an 'STS taxpayer' can claim an immediate deduction for each of the relevant fees in the income year in which they are incurred.

114. However, where a Grower acquires more than the minimum allocation in the Project, the amount of either or both of these prepaid fees may be \$1,000 or more. Where this occurs, such Growers MUST determine the relevant deduction for the prepaid Management Fee and prepaid rent according to the formula in subsection 82KZMF(1). Section 82KZMF will apportion the deduction over the period that the services, for which the prepayment is made, are provided.

Interest paid to PLH

115. As the prepaid interest payable under finance options 1 and 2 meet the requirements of subsections 82KZME(1) and (2) and are incurred under an 'agreement' as described in subsection 82KZME(3), the prepayment provisions (see paragraphs 97 to 104) will apply to these prepayments.

116. Where the prepaid interest is an amount of less than \$1,000 in each expenditure year, it will constitute 'excluded expenditure' as defined in subsection 82KZL(1). Under Exception 3 (subsection 82KZME(7)) 'excluded expenditure' is specifically excluded from the operation of section 82KZMF. A Grower who is an 'STS taxpayer' can, therefore, claim an immediate deduction for the interest in the income year in which it is paid. A Grower who is not an 'STS taxpayer' can claim an immediate deduction for the interest in the income year in which it is incurred.

117. However, where the quantum of the prepaid interest is \$1,000 or more, the deduction allowable for those amounts will be subject to apportionment according to the formula in subsection 82KZMF(1).

118. The interest payable under finance option 3 does not meet the requirements of subsection 82KZME(2). Therefore the prepayment provisions do not apply and interest payable under this finance option will be deductible in the year in which it is incurred for Growers who are not 'STS taxpayers'. If the Grower is an 'STS taxpayer', interest is not deductible until it has been both incurred and paid, or is paid for the Grower. If interest that is properly incurred in an income year remains unpaid at the end of that income year, the unpaid amount is deductible in the income year in which it is actually paid, or is paid for the Grower.

*Growers who **choose** to pay fees for a period in excess of that required by the Project's agreements*

119. Other than the prepayments referred to in paragraphs 110 to 118, a Grower participating in the Project may **choose** to prepay fees/interest for a period beyond the 'expenditure year'. Where this occurs, section 82KZMF will apply to apportion the expenditure and allow a deduction over the period in which the prepaid benefits are provided.

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

121. However as noted above, prepaid fees of less than \$1,000 incurred in an expenditure year will be 'excluded expenditure' and will not be subject to apportionment under section 82KZMF.

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

Section 35-55 – exercise of Commissioner's discretion

122. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for the income years **30 June 2005** to **30 June 2011** the Commissioner has applied the principles set out in Taxation Ruling TR 2001/14, *Income tax: Division 35 – non-commercial business losses*. Accordingly, based on the evidence supplied, the Commissioner has determined that for those income years ended 30 June 2005 up to and including 30 June 2011:

- 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.

123. 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

124. 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

125. 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).

126. The Kiri Park Project 2004/2005 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 66 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.

127. 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 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.

Examples

Example 1 – entitlement to GST input tax credits

128. 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).

Example 2 – apportionment of fees where there is a contractual 'eligible service period' and the fees include expenditure that is 'excluded expenditure'

129. On 1 June 2004 Kevin applies for an interest into the Western Bluegum Project, a Product Disclosure Statement based afforestation project of 12 years. Kevin is accepted into the project and executes a lease and management agreement with the Responsible Entity for the

provision of management services and the lease of his Woodlot. The terms of the lease and management agreement require Kevin to prepay the management fees and the lease fee on or before the 30 June each year for the lease of his 1 hectare Woodlot and the provision of management services between the 1 July and 30 June in the following income year. On 15 June 2004 Kevin pays the Year 1 lease fee of \$400 and the Year 1 management fee of \$8,600. The Year 1 management fee is made up of \$7,500 for 'seasonally dependent agronomic activities' undertaken by the manager during the 'establishment period' and \$1,100 for other management services.

Kevin, who is not an 'STS taxpayer' is not registered, nor required to be registered for GST.

He calculates his tax deduction for management fees and the lease fee for the **2004 income year** as follows:

Management fee

Even though he paid the \$8,600 in the 2004 income year, Kevin is only able to claim a deduction of \$7,500 for the 'seasonally dependent agronomic expenditure' in that income year. Because there are no 'days of eligible service period' in the 2004 income year, Kevin is unable to claim any part of the management fees paid to the manager for other management services, as a tax deduction in his tax return for the year ended 30 June 2004.

Lease fee

Because the \$400 lease fee is less than \$1,000 it is 'excluded expenditure' and can be claimed in full as a tax deduction in Kevin's tax return for the year ended 30 June 2004.

In the **2005 income year** Kevin can claim a tax deduction for that part of his first year's management fees that was not deductible in the 2004 income year. The tax deduction is calculated as follows:

$$\$1,100 \times \frac{365}{365}$$

= **\$1,100** (this represents the whole of that part of the first year's management fee prepaid in the 2004 income year for management services that are not 'seasonally dependent agronomic activities' undertaken by the manager in the 'establishment period'. Although this amount was incurred in the 2004 income year it is not deductible until the 2005 income year).

For the term of the Project Kevin continues to calculate his tax deduction for prepaid fees using this method.

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Commissioner of Taxation

29 September 2004

<i>Previous draft:</i>	- ITAA 1936 82KZMA
Not previously issued in draft form	- ITAA 1936 82KZMB
	- ITAA 1936 82KZMC
	- ITAA 1936 82KZMD
<i>Related Rulings/Determinations:</i>	- ITAA 1936 82KZME
PR 1999/95; TR 92/1; TR 92/20;	- ITAA 1936 82KZME(1)
TR 97/11; TR 97/16; TR 98/22;	- ITAA 1936 82KZME(2)
TR 2000/8; TR 2001/14; TD 93/34;	- ITAA 1936 82KZME(3)
TD 2003/12; IT 360	- ITAA 1936 82KZME(4)
	- ITAA 1936 82KZME(7)
<i>Subject references:</i>	- ITAA 1936 82KZMF
- advance deductions and	- ITAA 1936 82KZMF(1)
expenses for certain afforestation	- ITAA 1936 82KZMG
expenditure	- ITAA 1936 82KZMG(1)
- afforestation agreement	- ITAA 1936 82KZMG(2)
- carrying on a business	- ITAA 1936 82KZMG(3)
- commencement of business	- ITAA 1936 82KZMG(4)
- fee expenses	- ITAA 1936 82KZMG(5)
- interest expenses	- ITAA 1936 Pt IVA
- management fees	- ITAA 1936 177A
- non-commercial losses	- ITAA 1936 177C
- producing assessable income	- ITAA 1936 177D
- product rulings	- ITAA 1936 177D(b)
- public rulings	- ITAA 1997 6-5
- seasonally dependent agronomic	- ITAA 1997 8-1
activity	- ITAA 1997 17-5
- tax avoidance	- ITAA 1997 Div 27
- tax benefits under tax avoidance	- ITAA 1997 Div 35
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- tax shelters	- ITAA 1997 35-10(2)
- tax shelters project	- ITAA 1997 35-55
- taxation administration	- ITAA 1997 35-55(1)(b)
	- ITAA 1997 Div 70
	- ITAA 1997 70-35
<i>Legislative references:</i>	- ITAA 1997 Pt 3-1
- ITAA 1936 44	- ITAA 1997 108-5
- ITAA 1936 44(1)	- ITAA 1997 110-25(2)
- ITAA 1936 82KL	- ITAA 1997 Div 328
- ITAA 1936 Pt III Div 3 Subdiv H	- ITAA 1997 328-105
- ITAA 1936 82KZL	- ITAA 1997 328-105(1)(a)
- ITAA 1936 82KZL(1)	- ITAA 1997 328-285
- ITAA 1936 82KZM	- ITAA 1997 328-285(1)

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- ITAA 1997 328-285(2)
- 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

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