



PR 2005/74 - Income tax: 2005 Timbercorp Citrus Project - Early Growers (to 15 June 2005)

 This cover sheet is provided for information only. It does not form part of *PR 2005/74 - Income tax: 2005 Timbercorp Citrus Project - Early Growers (to 15 June 2005)*

 This document has changed over time. This is a consolidated version of the ruling which was published on *11 May 2005*



Product Ruling

Income tax: 2005 Timbercorp Citrus Project – Early Growers (to 15 June 2005)

Contents	Para
What this Product Ruling is about	1
Date of effect	11
Withdrawal	13
Arrangement	14
Ruling	65
Explanation	85
Example	115
Detailed contents list	116

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.

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.

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 referred to as the '2005 Timbercorp Citrus Project' 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;
- section 25-25 of the ITAA 1997;
- Division 27 of the ITAA 1997;
- Division 35 of the ITAA 1997;
- Division 40 of the ITAA 1997;
- Subdivision 61-J of the ITAA 1997
- Division 328 of the ITAA 1997;
- section 82KL of the *Income Tax Assessment Act 1936* (ITAA 1936);
- sections 82KZME and 82KZMF 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 'Participant 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 'Participant Growers'.

8. The class of persons to whom this Ruling applies does not include:

- Participant Growers 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;
- Participant Growers who are accepted to participate in the Project after 15 June 2005;
- Participant Growers who are allocated less than the minimum number of 'Citruslots' set out in the Table at paragraph 17;
- Participant Growers who participate in the Project through offers made other than through the Product Disclosure Statement;
- Participant Growers who finance their participation in the Project through loans with Timbercorp Finance Pty Ltd other than those described at paragraphs 57 to 60 of this Product Ruling;
- Participant Growers who elect to market their own produce; and
- Timbercorp Securities Limited and its associates.

Qualifications

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 The Ruling will be withdrawn or modified.

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

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

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

Date of effect

11. This Ruling applies prospectively from 11 May 2005, the date this Ruling is made. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

12. If a taxpayer has a more favourable private ruling (which is legally binding), the taxpayer can rely on the private ruling if the income year to which the private ruling relates has ended, or has commenced but not yet ended. However, if the arrangement covered by the private ruling has not commenced and the income year to which it relates has not yet commenced, this Ruling applies to the taxpayer to the extent of the inconsistency only (see Taxation Determination TD 93/34).

Withdrawal

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

Arrangement

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

- Application for a Product Ruling dated 11 March 2005 and additional correspondence dated 15 April 2005;
- Draft Product Disclosure Statement for the 2005 Timbercorp Citrus Project ('PDS'), received 11 March 2005, prepared for Timbercorp Securities Limited ('TSL'), ('the Responsible Entity');
- Draft **Constitution** of the 2005 Timbercorp Citrus Project, undated, received 11 March 2005;
- Draft Parent Lease – Solora Estate between Timbercorp Limited, TSL and OIM#2 Pty Ltd, received 11 March 2005;
- Draft Sub-Lease – Solora Estate between Timbercorp Limited, TSL and OIM#2 Pty Ltd, received 11 March 2005;
- Draft Deed of Variation to Parent Lease – Kangara Estate between Timbercorp Limited, TSL and Orchard Investments Management Limited, received 11 March 2005;
- Draft Deed of Variation to Sub-Lease – Kangara Estate between Timbercorp Limited, TSL and Orchard Investments Management Limited, received 11 March 2005;
- Draft **Licence Agreement for Solora Estate – 2005 Timbercorp Citrus Project** between TSL, each Participant Grower, OIM#2 Pty Ltd and Timbercorp Limited, received 15 April 2005;
- Draft **Licence Agreement for Kangara Undeveloped Land - 2005 Timbercorp Citrus Project** between TSL, each Participant Grower, Orchard Management Investments Ltd and Timbercorp Limited, received 15 April 2005;
- Draft Management Plan, received 11 March 2005;
- Draft **Citruslot Management Agreement** between each Participant Grower and TSL undated, received 11 March 2005;
- Draft Management Agreement between TSL and Citruscorp Management Pty Ltd ('Citruscorp'), received 11 March 2005;

- Draft Citrus Management Agreement for the 2005 Timbercorp Citrus Project between Citruscorp, TSL, Timbercorp Limited, Chiquita Brands South Pacific Limited and Kangara Foods Pty Ltd, received 11 March 2005;
- Draft Compliance Plan of the 2005 Timbercorp Citrus Project, undated, received 11 March 2004;
- Draft Custody Agreement between TSL and the Trust Company of Australia Limited ('the Custodian'), received 11 March 2005; and
- **Draft Finance Package**, which includes the **Loan Application Form** and Loan Explanation and Loan Terms, undated, received 11 March 2005.

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 Participant 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 Participant Grower, or any associate of a Participant Grower, will be a party to, which are a part of the arrangement. The effect of these agreements is summarised as follows.

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

Overview

17. The main features of the 2005 Timbercorp Citrus Project are:

Location	Kangara and Solora estates near Renmark South Australia
Type of business to be carried on by each participant	Commercial growing and cultivation of Citrus varieties (Navels, Mandarins, Valencia, Lemons, Grapefruit, Tangelo, Limes and Blood Orange) for the purpose of harvesting and selling the product.
Number of hectares offered for cultivation	Approximately 509 hectares with no capacity for oversubscription.
Size of each interest	0.25 hectares

Minimum allocation for non-joint venture participant Growers	<ul style="list-style-type: none"> • Individual Participant Growers – 6 ‘Citruslots’. • Non-individual Participant Growers – 2 ‘Citruslots’ but TSL reserves the right to accept applications for less than 2 ‘Citruslots’.
Minimum allocation for joint venture Participant Growers	<ul style="list-style-type: none"> • Joint ventures between individual Participant Growers – 12 ‘Citruslots’. • Joint ventures between non-individual Participant Growers – 2 ‘Citruslots’ but TSL reserves the right to accept applications for less than 2 ‘Citruslots’.
Minimum subscription	None
Citrus trees per hectare	Approximately 602
Term of the Project	Approximately 22 years
Initial cost per ‘Citruslot’	\$7,000
Ongoing annual costs	Management and Licence fees
Other costs	Incentive fees

18. The Project will be registered as a managed investment scheme under the *Corporations Act 2001*. TSL has been issued with an Australian Financial Service Licence and will be the Responsible Entity for the Project.

19. An offer to participate in the Project will be made through a Product Disclosure Statement (‘PDS’). The offer under the PDS is for 509 hectares in the Project, with no capacity for oversubscription. Individual participants will be invited to subscribe for at least six ‘Citruslots’ comprising of 0.25 hectares per ‘Citruslot’ and non-individual participants at least two ‘Citruslots’.

20. As an alternative to participation by a Participant Grower as a single entity, the terms of the Constitution, the Citruslot Management Agreement, and the Licence Agreements provide that two Participant Growers may participate in the project in a ‘Joint Venture’.

21. ‘Applications’ to participate in the Project must be made on the application form shown in the PDS. There is no minimum amount that must be raised under the PDS. A Custodian will be appointed under the Custody Agreement to protect the interests of the Participant Growers in their dealings with TSL.

22. Under a power of Attorney contained on the Application Form, Applicants irrevocably appoint TSL to enter into the Licence Agreements and the Citruslot Management Agreement on their behalf. They will also be bound by the Constitution on acceptance into the Project.

23. Participant Growers accepted into the Project on or before 15 June 2005 will be 'Early Growers'. **This Ruling only applies in respect of 'Early Growers' who are accepted into the Project from the date this Product Ruling issued to 15 June 2005. Note that a separate Product Ruling PR 2005/75 has issued for Growers who are accepted into the Project from 1 July 2005 to 30 September 2005.**

24. The Project land is located on properties known as the Solora Estate, on the main road between the townships of Berri and Loxton in South Australia, and the Kangara Undeveloped Land, situated on Murtho Rd and Beherendt Rd, 10km north of Paringa near Renmark in South Australia. TSL will enter into a 'Sub-Lease' with Timbercorp Limited who will enter into a Parent-Lease with each Land Owner for the 'Land' and the 'Water Licences'.

25. TSL will grant individual Participant Growers a 'Licence' to use and occupy six or more identifiable 'Citruslots' of 0.25 hectares each. Non-individual Participant Growers will be granted two or more identifiable 'Citruslots'. Joint ventures between individual Participant Growers will be granted a 'Licence' to use and occupy 12 or more identifiable 'Citruslots' and joint ventures between non-individual Participant Growers will be granted two or more identifiable 'Citruslots'. For non-individual Participant Growers TSL reserves the right to accept 'Applications' of less than two 'Citruslots'.

26. A Participant Grower will also enter into a Citruslot Management Agreement with TSL to cultivate and maintain the 'Citrus Trees' and be responsible for harvesting, procuring the processing of the 'Citrus', and selling the Participant Grower's 'Product'.

Constitution

27. The Constitution establishes the Project and operates as a deed binding all of the Participant Growers and TSL (clause 8.6). The Constitution sets out the terms and conditions under which TSL agrees to act as Responsible Entity and thereby manage the Project.

28. Under clause 4, TSL holds the 'Application Money' on bare trust. TSL accounts for the 'Application Money' in a special trust account and deposits the money into a bank account solely for 'Application Money' for this Project. Once TSL is satisfied that all documents have been executed and any finance has been approved for an 'Applicant', the 'Application Money' is released and applied against the fees due to TSL (clause 9.3).

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

- invitations and offers under the PDS (clause 2);
- appointment of TSL as the Participant Grower's irrevocable agent, representative and attorney (clause 3);

- how the Responsible Entity is to hold property of the Participant Grower (clause 5);
- procedures relating to 'Applications' (clause 6);
- the discretion of TSL to refuse an 'Application' (clause 7);
- the effect of an 'Applicant's' 'Application' being accepted by TSL (clause 8);
- preparation and execution of the Licence Agreements, and Citruslot Management Agreement by TSL and release of the 'Application Moneys' (clause 9);
- preparation and issuing of 'Citruslot Statements' to Participant Growers and the setting up and maintenance of a 'Register' of Participant Growers (clause 10);
- TSL's powers (clause 11);
- the keeping of a separate 'Agency Account' for the holding of 'Proceeds and any other money', apart from 'Application Money' and interest thereon, that TSL may hold for the Participant Grower (clause 12);
- procedures relating to processing and the sale of 'Product' and distributions from the 'Agency Account' of 'Proceeds' and pooling of amounts (clause 13);
- the right of TSL to be paid fees and other expenses (clause 14);
- the authority to use money in the 'Agency Account' and powers of investment of the money standing in the 'Agency Account' (clauses 15 and 16);
- the payment by each Participant Grower of annual and extraordinary expenses of the 'Project' (clause 17);
- the status, the retention by TSL, and termination by TSL or the Participant Grower, of the Citruslot Management Agreement, or the Licences (clause 18). This includes the right of Participant Grower to obtain a copy of the above agreements by written request to TSL (clause 18.2);
- the right of the Participant Grower to inspect certain documents related to their participation in the Project and to offer and give opinions to TSL (clause 19.1);
- the assignment and transmission of 'Citruslots' (clause 20) and restrictions on such assignments and transmissions (clause 21);
- procedures for calling a meeting of Participant Growers (clause 22);

- resolution of complaints made by the Participant Grower in relation to the Project or TSL (clause 25); and
- termination of the Project (clause 26).

30. Although Clause 6.4 of the Constitution provides that Participant Growers may pay the 'Application Moneys' by instalments, **this Product Ruling does not apply to any Participant Grower who enters into an arrangement to pay their 'Application Moneys' by instalments.**

Joint Venture

31. Under clause 29 of the Constitution, where two Participant Growers enter a 'Joint Venture' the 'First Joint Venturer' and the 'Second Joint Venturer' will constitute a joint venture for the purposes of carrying on the 'Joint Venture Operations' in respect of the 'Joint Venture Assets'. The interest of the 'Joint Venturers' in the 'Joint Venturer' and the 'Joint Venturer Assets' and any losses realised will be as tenants in common in their 'Prescribed Portions'.

32. Clause 29.5 of the Constitution sets out certain obligations and rights of the Joint Venturers.

33. The '**First Joint Venturer**' will be solely responsible for paying the following fees and other amounts:

- the management fee payable under the Citruslot Management Agreement for the year ended 30 June 2005;
- 52.5% of the management fee payable under the Citruslot Management Agreement in respect of management services provided in all 'Financial Years' commencing on and from the 2008 'Financial Year';
- 52.5% of the deferred management fees payable under clauses 11.1(b)(ii) and 11.1(c)(ii) of the Citruslot Management Agreement and of the costs payable under clause 11.3(c) of the Citruslot Management Agreement; and
- 52.5% of the Licence Fees payable under the Licence Agreements in respect of all licence rights granted in all Financial Years, commencing on and from the 2008 Financial Year.

34. The '**Second Joint Venturer**' will be solely responsible for paying the following fees and other amounts:

- the set dollar management fees and licence fees payable under the Citruslot Management Agreement and the Licence Agreements for the years ended 30 June 2006 and 2007;

- 47.5% of the management fee payable under the Citruslot Management Agreement in respect of management services provided in all 'Financial Years' commencing on and from the 2008 'Financial Year';
- 47.5% of the deferred management fees payable under clauses 11.1(b)(ii) and 11.1(c)(ii) of the Citruslot Management Agreement and of the costs payable under clause 11.3(c) of the Citruslot Management Agreement; and
- 47.5% of the Licence Fees payable under the Licence Agreements in respect of all licence rights granted in all Financial Years, commencing on and from the 2008 Financial Year.

35. Each 'Joint Venturer' is liable for its 'Prescribed Proportion' of any incentive fees (clauses 29.5(e)) and each will be entitled to these proportions of the 'Joint Venture's' 'Citrus', 'Crop' and 'Product', and the 'Joint Venture Proceeds' (clause 29.6). For Joint Venturers who are Early Growers the 'Prescribed Proportion' for First Joint Venturers is 52.5% and for Second Joint Venturers it is 47.5%.

Compliance Plan

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

Parent Lease

37. The 'Land' and 'Water Licences' for the Solora Estate are owned by OIM#2 Pty Ltd (the Lessor) and the 'Land' and the 'Water Licences' for the Kangara Undeveloped Land are owned by Orchard Managed Investments Ltd (the Lessor). They will be leased to Timbercorp Limited under the 'Parent Lease'. The 'Parent Lease' sets out the terms and conditions under which the Lessors will lease the 'Land' and 'Water Licences' to Timbercorp Limited.

Sub-lease

38. Timbercorp Limited will grant a sub-lease of the 'Land' and 'Water Licences' for the Solora Estate and Kangara Undeveloped Land to TSL.

39. The 'Land' on which the Project is to be established are on the following properties:

- Solora Estate – on which approximately 309 hectares of the existing Orchard has been established; and

- Kangara Undeveloped Land – on which approximately 200 hectares of the Orchard will be established.

Licence Agreements

40. Each Participant Grower will enter into two Licence Agreements with TSL. Under the Licence Agreement for Solora Estate, each Participant Grower will be granted a licence by TSL to use the relevant existing 'Citruslots' and under the Licence Agreement for Kangara Undeveloped Land, each Participant Grower will be granted a licence by TSL to use the relevant new 'Citruslots'.

41. Under both Licence agreements Citruslots are allotted to the Participant Grower for the sole purpose of growing, cultivating and harvesting 'Citrus' for commercial gain (clause 3.1).

42. Under the Licence Agreement for the Solora Estate, TSL warrants and represents to the Participant Grower that in respect of 'Existing Citruslots', to its knowledge, all establishment and capital works have been carried out (clause 2.1).

43. Under the Licence Agreement for the Kangara Undeveloped Land, TSL must procure the Land Owner or Timbercorp to prepare the land, install appropriate irrigation, carry out drainage work and undertake other capital works for each 'New Citruslot' on or about 30 September 2005 (clause 2.1), and complete planting of the Citrus Trees on or about 31 December 2005.

44. Both Licence Agreements set out:

- the water requirements for which water licences will be purchased and maintained by each Land Owner (clause 3.2);
- the Term (clause 4.1);
- the fees payable by Participant Growers' (clause 7);
- provisions dealing with damage to or reduction in the viability of the Participant Growers' 'Citruslots' (clauses 10.3 and 10.4);
- the obligations and rights of the Participant Grower (clauses 4.2 and 8), TSL (clause 5), each 'Land Owner' (clause 9.1) and Timbercorp Limited (clause 9.2); and
- provisions relating to early termination by the Grower or TSL and the effects of such termination (clause 10).

45. Each Licence Agreement is conditional on the 'Participant Grower entering into both Licence Agreements with TSL, the Citruslot Management Agreement with TSL and the 'Sub-Lease' being entered into by TSL, Timbercorp Ltd and the Land Owners (clause 6.1).

Citruslot Management Agreement

46. Participant Growers engage TSL as an independent contractor to manage the Project, conduct the 'Project Operations' on behalf of the Participant Grower and perform the 'Orchard Services' in accordance with the 'Management Plan' and good horticultural and environmental practices during the 'Term' of the Project.

47. TSL will carry out the following 'Orchard Services' in the period ending 30 June 2005:

- Infrastructure Management Services, carried out from the 'Commencement Date' until 30 June 2005 on the 'Existing Orchard' of the Participant Growers' 'Citruslot' (clause 5.2(a) to (f)(iii));
- Administrative and other Management Services, commencing from the Commencement Date until 30 June 2005 (clause 5.2(g) to (m)); and
- Existing Orchard – Citrus Tree Management Services, commencing from the Commencement Date until 30 June 2005 (clause 5.2(n) to (bb)(iii)).

48. During each subsequent 'Financial Year' of the Project TSL will provide the services on the Participant Growers' 'Citruslots', listed in clause 5.2A, test the maturity of the 'Citrus' and, where they are ready for harvesting, harvest the mature 'Citrus Trees' and deliver the harvested 'Citrus' to delivery point(s) for processing and sale (clause 6).

49. Under clause 7, as agent for the Participant Grower, TSL will process the 'Citrus' and market and sell their share of the 'Product' for as high a price as it can reasonably achieve. Participant Growers are entitled to receive a proportion of the proceeds of sale of all of the 'Product' or 'Crop' according to their 'Participating Interest' in the Project (clause 7.3(a)).

Management Agreement

50. Under the Management Agreement, TSL engages Citruscorp Management Pty Ltd as Project Manager, to manage and administer the Project, to manage, direct and conduct the 'Project Operations' on behalf of the Participant Growers and to perform the 'Orchard Services'.

Citrus Management Agreement

51. Under the Citrus Management Agreement, Citruscorp Management Pty Ltd engages Chiquita Brands South Pacific Ltd (Chiquita) as an independent contractor to carry out the 'Services' including the 'Orchard Services' (clause 4), 'Processing Services' (clause 4) and 'Marketing Services' (clause 5). Chiquita must carry out the provision of these services in accordance with a 'Management

Plan'. A draft 'Management Plan' prepared by Chiquita for the 'Financial Year' ending 30 June 2005 forms part of the application for this Product Ruling.

52. Subject to compliance with the Management Plan, Chiquita Brands South Pacific Limited will have complete discretion and may delegate by appointing Kangara Foods Pty Ltd or other suitably qualified skilled agents and sub-contractors to perform their obligations.

Pooling of amounts and distribution of 'Proceeds'

53. Both the Constitution (clause 13) and the Citruslot Management Agreement (clause 7.3) set out provisions relating to the pooling of amounts from the sale of the Participant Growers 'Product' or 'Crop' and the distribution of 'Proceeds' from that sale or from insurance proceeds. This Product Ruling only applies where the following principles apply to those pooling and distribution arrangements:

- only Participant Growers who have contributed 'Citrus', 'Product' or insurance proceeds to the pool making up the 'Proceeds' are entitled to benefit from distributions from those 'Proceeds'; and
- any pools of 'Citrus', 'Product' or other 'Proceeds' must consist only of 'Citrus', 'Product' or other 'Proceeds' contributed by Participant Growers in the 2005 Timbercorp Citrus Project.

Fees

54. Participant Growers will pay the annual fees and charges per 'Citruslot', set out in clause 11 of the Citruslot Management Agreement and Licence fees, as set out in clause 7 of each of the Licence Agreements. 'Early Growers' who are not in a 'Joint Venture' will pay the following fees on a per 'Citruslot' basis:

- a management fee of **\$7,000.00** for the period from the 'Commencement Date' until 30 June 2005, payable on or before the 'Commencement Date';
- a management fee of **\$3,000.00** for the period 1 July 2005 to 30 June 2006, payable on 31 October 2005 plus a **deferred amount of 2.2%** of the 'Gross Proceeds' from the sale of the 'Citrus' and 'Product' in each 'Financial Year', of the Project that 'Proceeds' are paid (see paragraph 55);

- a management fee of **\$3,000.00** for the period 1 July 2006 to 30 June 2007, payable on 31 October 2006 plus a **deferred amount of 2.2%** of the 'Gross Proceeds' from the sale of the 'Citrus' and 'Product' in each 'Financial Year', of the Project that 'Proceeds' are paid (see paragraph 55);
- a management fee in each 'Financial Year' after the 'Financial Year' ending 30 June 2007 which is the **estimated operating costs** (see paragraph 56) payable on 31 October each year plus 2.2% of the 'Gross Proceeds' from the sale of the 'Citrus' and 'Product' in each 'Financial Year', of the Project that 'Proceeds' are paid (see paragraph 55);
- an incentive fee of 27.5% of so much of the annual 'Net Proceeds' in a 'Financial Year' as exceeds the 'Incentive Fee Threshold' ('Incentive Fee');
- a Licence Fee of **\$770.00** for the 'Financial Years' ending 30 June 2006 to 2008, payable on 31 October 2005, 2006 and 2007 respectively;
- a Licence Fee of **\$1,500.00** for the 'Financial Years' ending 30 June 2009 and 2010, payable on 31 October 2008 and 2009 respectively;
- a Licence Fee of **\$1,800.00** for the 'Financial Year' ending 30 June 2011, payable on 31 October 2010; and
- for subsequent 'Financial Years', the annual Licence Fee will be the annual Licence Fee on the immediately preceding 31 October, 'Indexed', payable on 31 October each year.

55. As noted above, the annual fee in the 2006 and 2007 'Financial Years' consists of a set dollar amount plus a deferred amount paid out of any 'Proceeds' payable to the Participant Grower. The deferred amount is calculated as a percentage of the Participant Grower's 'Gross Proceeds' and becomes payable at any time 'Proceeds' are paid over the term of the Project.

56. As noted above, from the 2008 'Financial Year', the annual fee will consist of an amount for the estimated costs of operating the 'Citruslot'. The estimated costs of operating the 'Citruslot' for a 'Financial Year' will include an adjustment for the difference between the actual costs and the estimated costs of managing the 'Citruslot' during the preceding 'Financial Year'.

Finance

57. Participant Growers can fund their involvement in the Project by borrowing from independent sources or from Timbercorp Finance Pty Ltd ('the Financier'), a lender associated with the Responsible Entity.

58. The Financier will offer two optional 'Loan Terms' on a commercial basis and approve 'Loan Amounts' of up to 90% of the 'Application Money'. The Financier will provide Participant Growers with loans on a full recourse basis and will pursue legal action against any defaulting borrowers. Details of the loans that will be offered to Participant Growers by the Financier are set out in the 'Loan Application Form' and 'Loan Explanation and Loan Terms'.

59. Common features contained in each of these optional 'Loan Terms' are that:

- on 'Application' the Participant Grower will be required to pay the deposit, being the balance still to be paid for their 'Citruslots after deducting the 'Loan Amount';
- the Participant Grower is entitled to repay the whole or any part of the 'Total Amount Owing' without penalty for early repayment;
- in the event that any amount is overdue, the Financier may charge interest at the 'Higher Interest Rate';
- during the 'Loan Term' the Participant Grower will assign and transfer over to the Financier by way of fixed charge, all its rights, title and interest at any time in the Project including 'Citruslots' and the Project Agreements;
- during the 'Loan Term' the Participant Grower must maintain fire insurance over the 'Citruslots' on a full replacement basis; and
- a Loan Application Fee of \$250 is payable, plus stamp duty, if any, on the 'Loan Amount'.

60. The terms specific to each optional 'Loan Term' offered by the Financier are summarised below:

Type A – Loans with equal monthly Instalments

- 3 year term with an interest rate of 9.0%p.a;
- 4 year term with an interest rate of 9.95%p.a;
- 5 year term with an interest rate of 10.50%p.a; or
- 7 year term with an interest rate of 10.95%p.a.

Type B – Loans with an ‘Interest Only Period’, then a ‘Principal and Interest Period’

The ‘Interest Only Period’ and ‘Principal and Interest Period’ from the following ranges can be a **maximum of 8 years** combined:

- the ‘Interest Only Period’ can be for a period from 1 to 3 years;
- the ‘Principal and Interest Period’ can be for a period from 3 to 5 years;
- during the ‘Interest Only Period’ the monthly ‘Instalments’ will be sufficient to pay the accrual of interest only; and
- during the ‘Principal and Interest Period’ the monthly ‘Instalments’ will be sufficient to repay the loan in full by the end of the ‘Loan Term’.

61. Subject to circumstances where a Participant Grower defaults, the ‘Applicable Lower Interest Rate’ under Type B loans is 11.50%, which represents the maximum rate charged by the Financier, however it is subject to negotiation, after which it will be fixed for the term of the loan.

62. Participant Growers cannot rely on this Product Ruling if they enter into a finance agreement with the Financier that materially differs from that set out in the ‘Loan Application Form’ and ‘Loan Explanation and Loan Terms’ provided to the Tax Office by TSL with the application for this Product Ruling.

63. Participant Growers also cannot rely on this Product Ruling if ‘Application Moneys’ otherwise remain unpaid by 15 June 2005. Where an application is accepted subject to finance approval by any lending institution, Participant Growers cannot rely on this Ruling if written evidence of that approval has not been given to the Responsible Entity by 15 June 2005.

64. This Ruling does not apply if the finance arrangement entered into by the Participant 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 Timbercorp Finance Pty Ltd, are involved or become involved in the provision of finance to Participant Growers for the Project.

Ruling

Application of this Ruling

65. Subject to paragraph 8, this Ruling applies only to Participant Growers who are accepted to participate in the Project and who have executed a Citruslot Management Agreement and the two Licence Agreements, on or before 15 June 2005.

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

The Simplified Tax System ('STS')

Division 328

67. To be an 'STS taxpayer' a Participant Grower must be eligible to be an 'STS taxpayer' and must have elected to be an 'STS taxpayer'. For a Participant Grower in the Project, the recognition of income and the timing of tax deductions is different under the STS where the Participant Grower uses the cash accounting method.

Qualification

68. This Product Ruling assumes that a Participant Grower who is an 'STS taxpayer' is so for the income year in which their participation in the Project commences. A Participant 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.

25% Entrepreneurs tax offset***Subdivision 61-J***

69. For the first income year starting on or after 1 July 2005, Subdivision 61-J of the ITAA 1997 provides for a tax offset of up to 25% of income tax liability related to the business income of a business in the STS with annual group turnover of less than \$75,000. Entitlement to the offset varies depending on the type of entity and is therefore outside the scope of this Ruling.

Assessable income***Section 6-5***

70. That part of the gross sales proceeds from the Project attributable to the Participant Growers produce, less any GST payable on those proceeds (section 17-5), will be assessable income of the Grower under section 6-5.

71. Other than Participant Growers referred to in paragraph 72, for the 2005-06 income year and later years, a Grower will be assessable on ordinary income from carrying on their business of horticulture in the income year in which that income is derived.

72. For the 2005-06 income year and later years, a Participant Grower who is an 'STS taxpayer' using the cash accounting method will be assessable on ordinary income from carrying on their business of horticulture in the income year in which that income is received.

Deductions for Management Fees, Licence Fees, interest and borrowing costs***Section 8-1 and section 328-105***

73. A Participant Grower who is accepted into the Project on or before 15 June 2005 may claim deductions, on a per 'Citruslot' basis, for the following expenditure.

74. However, if for any reason, an amount shown or referred to in the Table below is not fully paid in the year in which it is incurred by a Participant Grower who is an 'STS taxpayer' (for the 2005 income year) or an 'STS taxpayer' using the cash accounting method (for the 2006 and 2007 income years), then the amount is only deductible to the extent to which it has been paid by, or has been paid for the Participant Grower. For these Participant Growers, 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.

PR 2005/74

Fee Type	Year ended 30 June 2005	Year ended 30 June 2006	Year ended 30 June 2007
Management Fee	\$7,000 See Notes (i), (ii) & (v)	\$3,000 plus 2.2% of any 'Gross Proceeds' See Notes (i), (iii), (iv) & (v)	\$3,000 plus 2.2% of any 'Gross Proceeds' See Notes (i), (iii), (iv) & (v)
Licence Fees	nil	\$770 See Notes (i), (iii), (iv) & (v)	\$770 See Notes (i), (iii), (iv) & (v)
Interest on loans with Timbercorp Finance Pty Ltd	As incurred (Non-STS taxpayers) or as paid (STS taxpayers) See Notes (ii) & (v)	As incurred (Non-STS taxpayers & STS taxpayers using accruals accounting) Or as paid (STS taxpayers using cash accounting) See Notes (iii), (iv), (v) & (vi)	As incurred (Non-STS taxpayers & STS taxpayers using accruals accounting) Or as paid (STS taxpayers using cash accounting) See Notes (iii), (iv), (v) & (vi)
'Loan Application Fee' for loans with Timbercorp Finance Pty Ltd	Must be calculated – See Note (vii)	Must be calculated – See Note (vii)	Must be calculated – See Note (vii)

Notes:

- (i) If the Participant 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 115.
- (ii) For the 2004-05 income year, where a Grower pays the management fee' shown in the Citruslot Management Agreement and any interest under a loan agreement with Timbercorp Finance Pty Ltd those amounts are deductible under section 8-1 in full in the year that they are incurred (where the Grower **is not an 'STS taxpayer'**) or, under paragraph 328-105(1)(b) in the year in which they are paid (where the Grower **is an 'STS taxpayer'**).

- (iii) For the 2005-06 income year and later years where a Participant Grower pays the management fee, the Licence Fee, and any interest in the relevant income years set out in the Citruslot Management Agreement, the Licence Agreements, and any loan agreement with Timbercorp Finance Pty Ltd, those amounts are deductible in full in the year that they are incurred where the Participant Grower **is not an 'STS taxpayer'** or where the Participant Grower **is an 'STS taxpayer' using the accruals accounting method.**
- (iv) For the 2005-06 income year and later years where a Participant Grower pays the management fee, the Licence Fee, and any interest in the relevant income years set out in the Citruslot Management Agreement, the Licence Agreements, and any loan agreement with Timbercorp Finance Pty Ltd, those amounts are deductible in full in the year that they are paid where the Participant Grower **is an 'STS taxpayer' using the cash accounting method.**
- (v) This Ruling does not apply to Participant Growers who choose to prepay management fees or Licence Fees or who choose, or who are required to prepay interest under a loan agreement. 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 and 82KZMF of the ITAA 1936. Any Participant Grower who prepays such amounts may request a private ruling on the taxation consequences of their participation in the Project.
- (vi) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Timbercorp Finance Pty Ltd, the internal financier, is outside the scope of this Ruling. Growers who borrow from lenders other than Timbercorp Finance Pty Ltd may request a private ruling on the deductibility of the interest incurred.
- (vii) The Loan Application Fee payable to Timbercorp Finance Pty Ltd is a borrowing expense and is deductible under subsection 25-25(1). 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 Timbercorp Finance Pty Ltd is outside the scope of this Ruling.

Growers in a Joint Venture

75. If the Joint Venturer 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 115.

76. For 2004-05 income year *First Joint Venturers* who are **not** 'STS taxpayers' may claim deductions under section 8-1 for the following expenditures as set out in the table and Notes in paragraph 74:

- \$7,000 for management fees; and
- any interest incurred on funds borrowed from Timbercorp Finance Pty Ltd.

77. For 2005-06 and 2006-07 income years Joint Venturers who are **not** 'STS taxpayers' or who are STS taxpayers using the accruals accounting method may claim deductions under section 8-1 for the following expenditures as set out in the table and Notes in paragraph 74:

First Joint Venturers

- for the years ending 30 June 2006 and 2007 52.5% of the amount incurred for any deferred management fees; and
- for the years ending 30 June 2006 and 2007, any interest incurred on funds borrowed from Timbercorp Finance Pty Ltd.

Second Joint Venturers

- for the year ending 30 June 2006 and 2007, fixed management fees of \$3,000, Licence Fees of \$770, and 47.5% of the amount incurred for deferred management fees; and
- for the years ending 30 June 2006 and 2007, any interest incurred on funds borrowed from Timbercorp Finance Pty Ltd.

78. For Joint Venturers who are 'STS taxpayers' (for the 2005 income year) or are 'STS taxpayers' using the cash accounting method (for the 2006 and 2007 income years) the deductions referred to in paragraphs 76 and 77 are deductible in the income year in which they are paid by, or paid for the Joint Venturer.

79. Joint Venturers can also claim under subsection 25-25(1) the Loan Application Fee payable to Timbercorp Finance Pty Ltd (see Note (vii) above). Each Joint Venturer can also claim deductions for its proportional share of the horticultural plant write-off as explained in paragraphs 80 to 82.

Deductions for capital expenditure***Division 40***

80. Each Participant Grower will also be entitled to tax deductions relating to the 'Citrus Trees' planted on the 'Citruslot'. If the Participant 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 at paragraph 115.

81. A 'Citrus Tree' is considered to be a 'horticultural plant' as defined in subsection 40-520(2). A Participant Grower holds a licence to cultivate 'Citrus Trees' on a designated area of land called a 'Citruslot' for the growing of 'Citrus' varieties for commercial gain. As a Participant Grower holds the 'Citruslot' under a licence one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. TSL will notify Participant Growers when their 'Citrus Trees' enter their first commercial season and the amount that may be claimed.

82. The deduction is determined using the formula in section 40-545. The establishment expenditure that can be written-off by a Participant Grower is limited to the capital expenditure incurred that is attributable to the establishment of the 'Citrus Trees'. The deduction is allowable when the 'Citrus Trees' enter their first commercial season (section 40-530, item 2). TR 2000/18 lists at Table A the write-off rates of the varieties of 'Citrus Trees'. Those planted or proposed to be planted are shown in the table below:

Variety	Write-off rate
Navels	7%
Valencia	7%
Grapefruit	7%
Lemons	13%
Mandarins	13%
Limes	13%

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

83. The Commissioner does not rule on the application of the non-commercial loss provisions to the Project.

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

84. For a Participant Grower in the Arrangement described above and incurs expenditure as required by the Citruslot Management Agreement, the Licence Agreements and any loan agreement with the Financier, the following provisions of the ITAA 1936 have application as indicated:

- expenditure by a Participant Grower in the Project does not fall within the scope of sections 82KZME and 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 Participant Grower carrying on a business?

85. For the amounts set out in the tables above to constitute allowable deductions the Participant Grower's activities of cultivating 'Citrus Trees' and harvesting the 'Citrus' for sale as a participant in the 2005 Timbercorp Citrus Project must amount to the carrying on of a business of primary production.

86. Where there is a business, or a future business, the 'Gross Proceeds' from the sale of 'Citrus' 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.

87. For schemes such as the 2005 Timbercorp Citrus Project, Taxation Ruling TR 2000/8 sets out in paragraph 89 the circumstances in which the Participant Growers 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 CR 202; 84 ATC 4929; (1984) 16 ATR 55.

88. Generally, a Participant Grower will be carrying on a business of cultivating 'Citrus Trees' and harvesting the 'Citrus' for sale, and hence primary production, if:

- the Participant Grower has an identifiable interest in the land (by lease) or rights over the land (by licence) on which the Participant Growers 'Citrus Trees' are established;

- the Participant Grower has a right to harvest and sell the 'Citrus';
- the cultivating of the 'Citrus Trees' and harvesting the 'Citrus' are carried out on the Participant Grower's behalf;
- the activities of the Participant Grower are typical of those associated with a business of cultivating 'Citrus Trees' and harvesting the 'Citrus' for sale; and
- the weight and influence of general indicators point to the carrying on of a business.

89. In this Project, each Participant Grower enters into a Citruslot Management Agreement and the Licence Agreements for both the existing and new orchards.

90. Under the Licence Agreements, each Participant Grower will have rights over a specific and identifiable area of 0.25 hectares or more of land. The Licence Agreements provide the Participant Grower with an ongoing interest in the specific trees on the licensed area for the term of the Project. Under the Licence Agreements, the Participant Grower must use the land in question for the purpose of carrying out activities of cultivating 'Citrus Trees' and harvesting the 'Citrus' for sale, and for no other purpose. The Licence Agreements allow TSL to come onto the land to carry out its obligations under the Citruslot Management Agreement.

91. Under the 'Citruslot Management Agreement' TSL is engaged by the Participant Grower to maintain a 'Citruslot' on the Grower's identifiable area of land during the term of the Project. TSL has provided evidence that it holds the appropriate professional skills and credentials to provide the management services to maintain the 'Citruslot' on the Participant Grower's behalf.

92. TSL is also engaged to harvest and sell, on the Participant Grower's behalf, the 'Citrus' grown on the Participant Grower's 'Citrus Trees'.

93. 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.

94. The activities that will be regularly carried out during the term of the Project demonstrate a significant commercial purpose. Based on reasonable projections, a Participant Grower in the Project will derive assessable income from the sale of the 'Citrus' 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.

95. The pooling of 'Citrus' from 'Citrus Trees' grown on the Participant Growers' 'Citruslot' with the 'Citrus' of other Participant Growers is consistent with general horticultural practices. Each Participant Grower's proportionate share of the sale proceeds of the pooled 'Citrus' will reflect the proportion of the 'Citrus' contributed from their 'Citruslot'.

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

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

98. The horticulture activities, and hence the fees associated with their procurement, are consistent with an intention to commence regular activities that have an 'air of permanence' about them. For the purposes of this Ruling, the Participant Grower's horticulture activities in the 2005 Citrus Timbercorp Project will constitute the carrying on of a business.

The Simplified Tax System

Division 328

99. Subdivision 328-F sets out the eligibility requirements that a Participant Grower must satisfy in order to enter the STS and Subdivision 328-G sets out the rules for entering and leaving the STS.

100. The question of whether a Participant Grower is eligible to be an 'STS taxpayer' is outside the scope of this Product Ruling (but refer to Taxation Ruling TR 2002/6 and Taxation Ruling TR 2002/11). Therefore, any Participant 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 Management Fees and Licence Fees

Section 8-1

101. Consideration of whether the initial management fees and Licence Fees are deductible under section 8-1 begins with the first limb of the section. This view proceeds on the following basis:

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

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

102. The management fee and the Licence Fees associated with the activities of cultivating 'Citrus Trees' and harvesting 'Citrus' for sale will relate to the gaining of income from the Participant Grower's business of horticulture, and hence have a sufficient connection to the operations by which income (from harvesting 'Citrus' for sale) is to be gained from this business. They will thus be deductible under the first limb of section 8-1. Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. The fee appears to be reasonable. There is no capital component of the management fee. The tests of deductibility under the first limb of section 8-1 are met and the exclusions do not apply.

Interest deductibility

Section 8-1

(i) Participant Growers who use Timbercorp Finance Pty Ltd as the finance provider

103. Some Participant Growers may finance their participation in the Project through a loan facility with Timbercorp Finance 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 management fees and Licence Fees.

104. 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 'Citrus Trees' and the licences to use the land on which the trees will have been planted –that will continue to be directly connected with the gaining of 'business income' from the Project. Such interest will, therefore, have a sufficient connection with the gaining of assessable income to be deductible under section 8-1.

(ii) Participant Growers who DO NOT use Timbercorp Finance Pty Ltd as the finance provider

105. The deductibility of interest incurred by Participant Growers who finance their participation in the Project through a loan facility with a bank or financier other than Timbercorp Finance Pty Ltd is outside the scope of this Ruling. Product Rulings only deal with arrangements where all details and documentation have been provided to, and examined by the Tax Office.

Prepayment provisions

Sections 82KZL to 82KZMF

106. 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.

Application of the prepayment provisions to this Project

107. Under the Arrangement to which this Product Ruling applies management fees and Licence Fees are incurred annually and interest payable to Timbercorp Finance Pty Ltd is incurred monthly in arrears. Accordingly, the prepayment provisions in sections 82KZME and 82KZMF have no application to this Arrangement.

108. A Participant Grower who is an 'STS taxpayer' (for the year ending 30 June 2005) or is an 'STS taxpayer using the cash accounting method (for the years ending 30 June 2006 and 30 June 2007) can, therefore, claim a deduction for each of the relevant amounts in the income year in which the amount is paid, or paid on their behalf. All other Participant Growers can claim a deduction for each of the relevant amounts in the income year in which the fee is incurred.

109. However, sections 82KZME and 82KZMF may have relevance if a Participant Grower in this Project prepays all or some of the expenditure payable under the Citruslot Management Agreement and/or the Licence Agreements or prepays interest under a loan agreement (including loan agreements with lenders other than Timbercorp Finance Pty Ltd). 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.

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

Section 82KL – recouped expenditure

111. 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

112. 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).

113. The 2005 Timbercorp Citrus Project will be a ‘scheme’. A Participant Grower will obtain a ‘tax benefit’ from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 73 to 82 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.

114. Participant 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 ‘Citrus’. There are no facts that would suggest that Participant 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

115. 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

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

	Paragraph
What this Product Ruling is about	1
Tax law(s)	2
Goods and Services Tax	3
Changes in the Law	4
Note to promoters and advisers	6
Class of persons	7
Qualifications	9
Date of effect	11
Withdrawal	13
Arrangement	14

Overview	17
Constitution	27
Joint Venture	31
Compliance Plan	36
Parent Lease	37
Sub-lease	38
Licence Agreements	40
Citruslot Management Agreement	46
Management Agreement	50
Citrus Management Agreement	51
Pooling of amounts and distribution of 'Proceeds'	53
Fees	54
Finance	57
Ruling	65
Application of this Ruling	65
The Simplified Tax System ('STS')	67
<i>Division 328</i>	67
Qualification	68
25% Entrepreneurs tax offset	69
<i>Subdivision 61-J</i>	69
Assessable income	70
<i>Section 6-5</i>	70
Deductions for Management Fees, Licence Fees, interest and borrowing costs	73
<i>Section 8-1 and section 328-105</i>	73
Growers in a Joint Venture	75
Deductions for capital expenditure	80
<i>Division 40</i>	80
Division 35 – deferral of losses from non-commercial business activities	83
<i>Section 35-55 – exercise of Commissioner's discretion</i>	83
Sections 82KZME, 82KZMF and 82KL and Part IVA	84
Explanation	85
Is the Participant Grower carrying on a business?	85
The Simplified Tax System	99
<i>Division 328</i>	99

Deductibility of Management Fees and Licence Fees	101
<i>Section 8-1</i>	101
Interest deductibility	103
<i>Section 8-1</i>	103
<i>(i) Participant Growers who use Timbercorp Finance Pty Ltd as the finance provider</i>	103
<i>(ii) Participant Growers who DO NOT use Timbercorp Finance Pty Ltd as the finance provider</i>	105
Prepayment provisions	106
<i>Sections 82KZL to 82KZMF</i>	106
<i>Application of the prepayment provisions to this Project</i>	107
Section 82KL – recouped expenditure	111
Part IVA – general tax avoidance provisions	112
Example	115
Entitlement to GST input tax credits	115
Detailed contents list	116

Commissioner of Taxation

11 May 2005

Previous draft:

Not previously issued as a draft

*Legislative references:**Related Rulings/Determinations:*

PR 1999/95; TR 92/1; TR 92/20;
 TR 97/11; TR 97/16; TR 98/22;
 TR 2000/8; TR2000/18;
 TR 2002/6; TR 2002/11; TD 93/34

Subject references:

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

- ITAA 1936 82KL
- ITAA 1936 Pt III Div 3 Subdiv H
- ITAA 1936 82KZL
- ITAA 1936 82KZM
- ITAA 1936 82KZMA
- ITAA 1936 82KZMB
- ITAA 1936 82KZMC
- ITAA 1936 82KZMD
- ITAA 1936 82KZME
- ITAA 1936 82KZMF
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- 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 35-55
- ITAA 1997 Div 40
- ITAA 1997 40-515(1)(b)

- ITAA 1997 40-520(2)
- ITAA 1997 40-525(2)
- ITAA 1997 40-530
- ITAA 1997 40-545
- ITAA 1997 Subdiv 61-J
- ITAA 1997 Div 328
- ITAA 1997 328-105(1)(b)
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- TAA 1953 Pt IVAAA

- Copyright Act 1968
- Corporations Act 2001

Case references:

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

ATO references:

NO: 2005/3603
ISSN: 1441-1172
ATOlaw topic: Income tax ~~ Product Ruling ~~ orchards