

PR 2005/87 - Income tax: Sunwest Citrus Project - Late Growers (from 1 July 2005 to 15 June 2006)

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⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *1 June 2005*



Product Ruling

Income tax: Sunwest Citrus Project – Late Growers (from 1 July 2005 to 15 June 2006)

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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 'Sunwest 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;
- 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;
- section 108-5 of the ITAA 1997;
- section 110-25 of the ITAA 1997;
- Division 328 of the ITAA 1997;
- section 82KL of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 82KZL of the ITAA 1936;
- section 82KZME to 82KZMF of the ITAA 1936;
- Part III Division 6 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;
- do not intend to derive assessable income from it;
- elect to manage their Allotment(s);
- enter into finance arrangements with the Responsible Entity or any associate of the Responsible Entity, other than where the Responsible Entity or its associates are acting as an intermediary for an independent financier;
- participate in the Project through offers made other than through the Product Disclosure Statement; or
- enter into this arrangement before 1 July 2005 or after 15 June 2006.

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 1 June 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 2008. 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 18 April 2005 as constituted by documents received on 19 April 2005, 3 May 2005, 9 May 2005, 10 May 2005, 11 May 2005, 12 May 2005, 13 May 2005, 17 May 2005, 18 May 2005, 19 May 2005 and additional correspondence dated 29 April 2005, 11 May 2005, 12 May 2005, and 18 May 2005;
- Draft Product Disclosure Statement (PDS) for the Sunwest Citrus Project, and Sunwest Citrus Property Trust (Land Owner or Property Trust), received on 17 May 2005;
- Draft **Constitution** of the Sunwest Citrus Project (Project Constitution), received on 19 April 2005;
- Draft **Constitution and Supplementary Constitution** of the Sunwest Citrus Property Trust (Trust Constitution), received on 19 April 2005;
- Draft **Allotment Agreement** between SAITeysMcMahon AgInvest Limited (Responsible Entity) and the Grower, received on 19 May 2005;
- Draft **Management Agreement** between the Responsible Entity and the Grower, received on 18 May 2005;
- Draft Operations Agreement for the Project between Nangiloc Colignan Farms Pty Ltd (NCF), Treviso Estates Pty Ltd (Treviso) and the Responsible Entity, received on 18 May 2005;
- Draft Fruit Marketing Agreement between the Responsible Entity and NCF, received on 19 May 2005;
- Draft Yandilla Park Services Agreement between the Responsible Entity and Yandilla Park Limited (Yandilla), received on 19 April 2005;
- Draft Compliance Plan of the Sunwest Citrus Project, received on 19 April 2005;
- Draft Compliance Plan of the Sunwest Citrus Property Trust, received on 19 April 2005;
- Draft Custodian Agreement between the Responsible Entity and Sandhurst Trustees Limited (Custodian), received on 19 April 2005;
- Draft Lease between the Custodian as 'Lessor' and the Responsible Entity as 'Lessee', received on 19 May 2005;
- Draft Management Agreement and Declaration of Trust between SAITeysMcMahon AgInvest Limited as Responsible Entity of the Trust and Treviso, received on 19 April 2005; and

- Draft Sunwest Citrus Project Water Supply Agreement between SAITeysMcMahon AgInvest Limited as Responsible Entity of the Trust and Treviso, received on 19 April 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 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. 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 salient features of the Sunwest Citrus Project follow:

Location	Redcliffs, Victoria
Type of business to be carried on by each Grower	Commercial cultivation of citrus trees for the purpose of harvesting citrus for sale
Nature of Growers' participation in the Project	Stapled interest – interest as a Grower plus Unit(s) in the Property Trust that owns the Project Land
Number of hectares offered for cultivation	161
Size of each Allotment	0.25 hectares
Minimum allocation	1 'Entitlement'
Minimum subscription	10 'Entitlements'
Trees per Allotment	150 (average)
Trees per hectare	600 (average)
Term of the Project	17 years
Initial cost per 'Allotment'	\$13,125
Ongoing costs	Annual licence fees, annual maintenance fees, management & administration fees and charges (refer to paragraphs 54 to 65)
Other fees and costs	Insurance fees, marketing fees

18. The Project will be a registered managed investment scheme under the *Corporations Act 2001*. Offers in the Project are for stapled interests called Entitlements and will be made under a Product Disclosure Statement. For the purposes of this Ruling no Project Interests will be allotted or issued under the PDS before 1 July 2005 and after 15 June 2006.

19. The Project involves establishing, planting, cultivating citrus trees and harvesting citrus fruit for sale. An entity that participates in the Project will do so by acquiring an 'Entitlement' that will consist of two components:

- a Grower's Interest consisting of a 0.25 hectare Grower's 'Allotment'; and
- a 'Landowner's Interest' consisting of parcel of 4,000 units in the Property Trust at \$1.05 per unit.

20. Units in the Property Trust cannot be subscribed to separately but may be held either by the Grower or an associate of the Grower.

21. Under terms of the PDS the interests in Growers' Allotments and units in the Property Trust will be issued after a minimum subscription of 10 'Entitlements' has been achieved.

22. The Responsible Entity has purchased land for the project. The land is described as 'Lot 1 & 2 on Certificate of Title Volume 8343, Folio 110, and lot 18A on Certificate of Title Volume 7792, Folio 084'.

23. The Property Trust will own both the land on which the citrus trees will be planted and the water licences for the Project's needs.

24. The Responsible Entity may appoint an agent to hold Trust Property. The terms of the appointment will be determined by the Responsible Entity and the agent (clause 2.2 Trust Constitution). To do so the Responsible Entity may enter into the 'Custodian Agreement' with the 'Custodian' as custodian of assets.

25. It is anticipated that 161 hectares will be developed which corresponds to subscriptions of 645 'Entitlements', that is 645 Growers' Allotments and the issue of 2,580,000 units in the Property Trust.

26. Applicants who are accepted into the Project and who execute the Allotment Agreement and the Management Agreement on or after 1 July 2005 and on or before 15 June 2006 will become 'Late Growers'.

27. Each Grower will use the Grower's Allotment(s) for the purpose of carrying on a business of cultivating and harvesting citrus fruit and the sale of the harvested produce.

Project Constitution

28. The Constitution establishes a Managed Investment Scheme known as 'Sunwest Citrus Project' and operates as a deed binding on all Growers and the Responsible Entity.

29. The Constitution sets out the terms and conditions under which the Responsible Entity will operate and manage the Project and perform the functions conferred on it by the Constitution and the *Corporations Act 2001*.

30. The Responsible Entity holds the Application Money on trust for the Applicants in an Application Fund (clause 13.1). The Responsible Entity may transfer money paid by an Applicant from the Application Fund if the Responsible Entity has issued an interest to the Applicant. The Responsible Entity will only do so where it is ready, willing and able to perform its duties under the Allotment Agreement and the Management Agreement (clause 14.1).

31. The Responsible Entity must collect, receive and pay into the Proceeds Fund all gross proceeds from the sale of Fruit, and the proceeds of any income protection insurance, that is attributable to the Growers' Allotments (clause 15.2).

32. Under clause 15.3, a Grower is entitled to the money in the Proceeds Fund, which represents the gross income from that Grower's Fruit Attributable to the Grower's Allotment for a particular Production Period, less:

- (i) all fees payable under the Allotment Agreement;
- (ii) all fees payable under the Management Agreement; and
- (iii) any other amounts payable by the Grower under this Constitution, the Allotment Agreement, or the Management Agreement.

33. The Constitution also sets out in detail the following:

- the duration and termination of the Project (clause 3);
- register of Growers (clause 8);
- transfer of Grower's interests (clause 9);
- duties of Responsible Entity (clause 18);
- powers of Responsible Entity (clause 19);
- rights of Responsible Entity (clause 20);
- complaints handling (clause 21);
- retirement or removal of Responsible Entity (clause 23.2);
- meetings of Growers (clause 25);
- liability and indemnity of Responsible Entity (clause 27);
- winding up the Project (clause 28);
- dispute resolution (clause 29); and
- modification of Agreements (clause 30).

Trust Constitution

34. The Trust Constitution establishes the Trust to purchase and hold the Property. It operates as a deed binding on all Landowners and the Responsible Entity. The Responsible Entity agrees to manage the Trust subject to terms contained in the Trust Constitution.

35. The Responsible Entity may appoint an agent to hold Trust Property separately from any other property. The terms of the appointment will be determined by the Responsible Entity and the agent, however, the terms must be consistent with the provisions of this Constitution.

Compliance Plan

36. As required by the *Corporations Act 2001*, the Responsible Entity has prepared Compliance Plans for both the Project and the Property Trust. Each Compliance Plan sets out the measures the Responsible Entity must apply in operating the Scheme to ensure compliance with the *Corporations Act 2001* and the Constitution.

Custodian Agreement

37. Under this Agreement the Responsible Entity will appoint Sandhurst Trustees Limited as custodian of assets. All assets and property delivered to the Custodian will be held and dealt with in accordance with this Agreement. The Custodian agrees to exercise all due care, act honestly in good faith, and without negligence or default in carrying out obligations under this Agreement.

Lease Agreement

38. The Lease Agreement sets out the terms and conditions under which the Lessor (Custodian) leases the land to the Lessee (Responsible Entity) for the term. Under clause 7(c) the Lessor also grants to the Lessee licences:

- of the citrus trees to be grown, cultivated and harvested on the Allotments;
- of the Allotment Irrigation System installed on the Allotments;
- to draw water made available under the Water Licences and use that water to irrigate the Allotments; and
- to use the horticulture infrastructure on the Land.

Allotment Agreement

39. Each Grower will execute an Allotment Agreement with the Responsible Entity granting a non-exclusive licence to the Grower to use and occupy the land for the purpose of cultivating the citrus trees

and harvesting the fruit. The Agreement will commence on the date the Responsible Entity accepts the Grower's application under the PDS and continues until the earlier of 30 June 2022 or the date of termination of the Grower's interest in the Allotment.

40. Under clause 2.1 of the Allotment Agreement, the Responsible Entity will grant each Grower a licence:

- to use and occupy the Grower's Allotment for growing, maintaining and harvesting the Trees planted on the Allotment;
- to use the Allotment Irrigation System and to draw water made available to the Allotment from the Water Licences to the extent required to irrigate the Trees; and
- to use in common with all other Growers the horticultural infrastructure on the Land required for the Project.

41. Under clause 2.2 of this Agreement the Responsible Entity licenses the Trees planted on the Allotment to the Grower for the term of the Agreement.

42. The Responsible Entity's obligations are set out in detail in clause 5. The Responsible Entity agrees that it will ensure at the date of commencement of the Agreement, that the Land Owner has, or will cause the Land Owner to:

- prepare the Allotment for the planting and cultivation of the Trees;
- develop and install the Allotment Irrigation System on the Allotment;
- develop and install mainline irrigation works up to the boundary of the Allotment and to ensure the Allotment has adequate drainage;
- plant the optimum number of Trees on the Allotment in accordance with best practice requirements for citrus, including the replanting of any Trees which die within 12 months; and
- construct and continue to maintain suitable access roads and pathways to and from the Allotment.

43. The Responsible Entity will use reasonable endeavours to:

- develop and install the Allotment Irrigation System on the Grower's Allotment by 30 September 2005; and
- plant the optimum number of Trees on the Allotment by 31 March 2006.

44. The Grower's obligations are set out in detail in clause 4 under which the Grower agrees to use the Grower's Allotment solely for the purpose of cultivating, maintaining, tending and harvesting the citrus trees in accordance with sound horticultural practices.

45. Under clause 3.2 upon the termination of this Agreement, the Grower will have no further interest in the Grower's Allotment, the Trees or the Allotment Irrigation System on the Grower's Allotment. The Grower and the Responsible Entity acknowledge and agree all rights and interest in these items will vest in the Land Owner.

Management Agreement

46. Under the Management Agreement the Grower appoints the Responsible Entity to manage the Grower's Allotment and to carry out the management services subject to its terms and conditions. The Management Agreement commences on the date the Responsible Entity accepts the Grower's application under the PDS and continues until the earlier of 30 June 2022 or the date of termination of the Grower's interest.

47. The Responsible Entity agrees to carry out the initial management services within 15 days of application, the subsequent management services by 30 June 2006, and ongoing management and harvest duties until the end of the Management Agreement (clause 4). In this Project Growers may elect to manage their Allotment(s) or market their own fruit. This Product Ruling does not apply to Growers who make that election.

Pooling of Citrus

48. Clause 4.6 of the Management Agreement sets out provisions relating to the pooling of fruit held by the Responsible Entity on behalf of Growers. This Product Ruling only applies where the following principles apply to those pooling and distribution arrangements:

- only Growers in the Project who have contributed 'Citrus' to the pool making up the proceeds are entitled to benefit from distributions from those proceeds; and
- in the event of partial or total destruction of the Grower's Allotment or if the level of a Grower's production is otherwise reduced or inadequate compared to other Growers, the Grower's share of the sale proceeds may be adjusted to reflect these events.

Insurance

49. The Responsible Entity will insure or cause to be insured the Land Owner, the Grower, the Custodian, itself and such other persons it deems necessary against public risk for an amount of not less than five million dollars (\$5,000,000.00), and against risks and damage to the Trees and Fruit Attributable to the Grower's Allotment. The Responsible Entity will charge the cost of insurance in respect of the later to the Grower at cost and in proportion to the Grower's interest in the Project.

Operations Agreement

50. The Responsible Entity will subcontract its obligations under the Management Agreement by entering into an Operations Agreement with NCF. In consideration for payment of the fees set out in clause 9 of the Agreement NCF agrees to provide 'Services' to the Responsible Entity throughout the Term in accordance with the provisions of this Agreement. NCF will in the course of provision of Services, confer with and follow advice and direction of the Responsible Entity and any consultants retained by the Responsible Entity.

Fruit Marketing Agreement

51. Under the Agreement the Responsible Entity will subcontract its obligations under the Management Agreement in relation to marketing and sale of the 'Citrus' to NCF. In consideration for the fees as calculated under clause 3.2 of the Agreement NCF will carry out the marketing services that include:

- providing a marketing plan each year to the Responsible Entity;
- negotiating the sale of the 'Citrus' to potential local, national and overseas purchasers;
- providing advice and recommendations to the Responsible Entity regarding the most profitable means and method of selling the 'Citrus'; and
- arranging for delivery and transportation of the 'Citrus' to packing sheds and purchasers at NCF's cost.

52. NCF is the preferred agency for providing the marketing services, however, some of the services may also be subcontracted to Yandilla under the Yandilla Park Services Agreement.

Yandilla Park Services Agreement

53. The Responsible Entity is subcontracting some of its fruit packing and marketing obligations under the Management Agreement to Yandilla by entering into Yandilla Park Services Agreement. In consideration for the payment of the fees set out in clause 4 of the Agreement Yandilla will provide certain Consultancy Services, Marketing Services, and Packing Services as required by the Responsible Entity.

Fees

54. The amounts payable per Allotment for the first four years of the Project for Growers who are accepted on or after 1 July 2005 and on or before 15 June 2006 (Late Growers) are shown in the following table:

Late Grower Fees Growers accepted between 1 July 2005 & 15 June 2006	Year 1 to 30 June 2005	Year 2 to 30 June 2006	Year 3 to 30 June 2007	Year 4 to 30 June 2008
Allotment Agreement				
Water licence fees		\$655	\$369	\$404
Land licence fee	–	\$1,631	\$1,744	\$1,802
Irrigation		\$1,713	\$985	\$257
Management Agreement				
Management fee		\$1,573	\$770	\$770
Maintenance fee		\$3,353	\$1,361	\$2,749
Trust Constitution				
Subscription for units		\$4,200	–	–
Total amount payable		\$13,125	\$5,229	\$5,982

55. The amounts payable for Year 2 are to be paid as follows:

- \$9,579 payable on application; and
- \$3,546 being the balance, by 30 June 2006.

56. The fees for Years 3 and 4 are payable as follows:

- Year 3 fees are payable in two equal instalments of \$2614.50 by 31 December 2006 and 30 June 2007; and
- Year 4 fees are payable in two equal instalments of \$2,991 by 31 December 2007 and 30 June 2008.

Allotment Agreement Fees from Year 5 onwards

57. Fees under the Allotment Agreement from Year 5 onwards will be the sum of:

- (i) a Land licence fee for each year equal to the previous year's fee increased by 2.5%; and
- (ii) a Water licence fee for each year equal to the greater of previous year's fee increased by the CPI, or any actual water usage or supply costs incurred by the Responsible Entity in the previous year.

58. The fees from Year 5 onwards are payable from the gross income attributable to the Grower's Allotment. If the gross income attributable to the Grower's Allotment is insufficient to pay the fees in any year, then the unpaid fees may be carried forward to the following year and offset against that year's gross income.

Management Agreement Fees from Year 5 onwards

59. Fees under the Management Agreement for work for the period from 1 July 2008 to 30 June 2009 will be the sum of the following amounts and will be payable in two equal instalments by 31 December 2008 and 30 June 2009 respectively:

- (i) the estimated maintenance cost for the year, multiplied by 110%; and
- (ii) a Management and administration fee of \$770.

60. Fees under the Management Agreement for work for the period from 1 July 2009 to 30 June 2010 will be the sum of the following amounts:

- (i) the estimated maintenance cost for the year, multiplied by 110%;
- (ii) where the actual maintenance costs incurred for the previous year exceed the expected maintenance costs charged in that year, then the amount of that excess multiplied by 110%; and
- (iii) a Management and administration fee of \$770.

61. The fees for the period from 1 July 2009 to 30 June 2010 are payable as follows:

- (i) 25% by 30 June 2009;
- (ii) 50% by 31 December 2009; and
- (iii) 25% by 30 June 2010.

62. Fees under the Management Agreement for work for each 12 month period from 1 July 2010 will be the sum of:

- (i) an amount equal to 8% of the net income from the sale of Fruit Attributable to the Grower's Allotment for each year;
- (ii) the estimated maintenance cost for the year;
- (iii) where the actual maintenance costs incurred for the previous year exceed the expected maintenance costs charged in that year, then the amount of that excess, with the exception of the period 1 July 2010 to 30 June 2011 where any excess in the previous year is multiplied by 110%; and
- (iv) a Management and administration fee of \$440.

63. The fees for each 12 month period from 1 July 2010 are payable as follows. Those set out above in paragraph 62(i) are payable by 30 June in the relevant financial year. Those fees set out in paragraph 62(iii) are payable by 1 July in the relevant financial year. Those fees set out in paragraph 62(ii) & (iv) are payable in two equal instalments by 1 July and 31 December in the relevant financial year.

64. At the discretion of the Responsible Entity fees payable under the Management Agreement from the year ended 30 June 2009 onwards may be paid from the gross income attributable to the Grower's Allotment. If the gross income attributable to the Grower's Allotment is insufficient to pay the fees in any year, then the unpaid fees may be carried forward to the following year and offset against that year's gross income.

Marketing fees

65. In the first and each subsequent Production Period of the Project the Responsible Entity will charge the Grower a fee for packing and marketing the fruit equal to the cost the Responsible Entity reasonably expects to incur in marketing the fruit from the Allotment(s) for the relevant 12 month period. In addition, in any subsequent year if the actual costs incurred for the previous year exceed the expected costs charged in that year, then the Responsible Entity will charge the Grower the amount of that excess.

Finance

66. Growers can fund their involvement in the Project themselves or borrow from an independent lender.

67. Growers cannot rely on this Product Ruling if application monies remain unpaid by 30 June in the year of application. Where an application is accepted subject to finance approval by any lending institution, Growers cannot rely on this Ruling if written evidence of that approval has not been given to the Responsible Entity by 30 June in the year of application.

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

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' are or will be granted to the borrowers for the purpose of section 82KL or the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;
- the loan or rate of interest is non-arm's length;
- repayments of the principal and payments of interest are linked to the derivation of income from the Project;

- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender or any associate of the lender;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- entities associated with the Project are involved or become involved in the provision of finance to Growers for the Project, other than where the Responsible Entity or its associates are acting as an intermediary for an independent financier.

Ruling

Application of this Ruling

69. Subject to exclusions set out in paragraph 8, this Ruling applies only to Growers who are accepted to participate in the Project on or after 1 July 2005 and on or before 15 June 2006. Such Growers must execute an Allotment Agreement and Management Agreement on or before that date. The Grower's participation in the Project must constitute the carrying on of a business of primary production.

Minimum subscription

70. A Grower is not eligible to claim any tax deductions until the Grower's application to enter the Project is accepted and the Project has commenced. Under the terms of the Product Disclosure Statement, a Grower's application will not be accepted and the Project will not proceed until the minimum subscription of 10 Entitlements is achieved.

The Simplified Tax System ('STS')

Division 328

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

Qualification

72. 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.

25% Entrepreneurs tax offset

Subdivision 61-J

73. 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

74. 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.

75. Other than Growers referred to in paragraph 76, 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.

76. For the 2005-06 income year and later years, a 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 fee, Maintenance fee, Land licence fee and Water licence fee

Section 8-1 and section 328-105

77. A Grower accepted into the Project on or after 1 July 2005 and on or before 15 June 2006 may claim, on a per Allotment basis, tax deductions for the following expenditure.

78. However, if for any reason, an amount shown or referred to in the following Table is not fully paid in the year in which it is incurred by a Grower who is an 'STS taxpayer' using the cash accounting method, then the amount is only deductible to the extent to which it has been paid, or has been paid for the Grower. For these Growers, any amount or part of an amount shown in the Table which is not paid in the year in which it is incurred will be deductible in the year in which it is actually paid.

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Allowable Deductions	Year ended 30 June 2006	Year ended 30 June 2007	Year ended 30 June 2008
Management fee	\$1,573 See Notes (i), (ii), (iii) & (v)	\$770 See Notes (i), (ii), (iii) & (v)	\$770 See Notes (i), (ii), (iii) & (v)
Maintenance fee	\$3,353 See Notes (i), (ii), (iii) & (v)	\$1,361 See Notes (i), (ii), (iii) & (v)	\$2,749 See Notes (i), (ii), (iii) & (v)
Land licence fee	\$1,631 See Notes (i), (ii), (iii) (iv) & (v)	\$1,744 See Notes (i), (ii), (iii) & (v)	\$1,802 See Notes (i), (ii), (iii) & (v)
Water licence fee,	\$655 See Notes (i), (ii), (iii) & (v)	\$369 See Notes (i), (ii), (iii) & (v)	\$404 See Notes (i), (ii), (iii) & (v)

Notes:

- (i) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (for example input tax credits): Division 27. See Example at paragraph 121.
- (ii) For the 2005-06 income year and later years where a Grower pays the Management fee and Maintenance fee under the Management Agreement, and the Land licence fee (subject to Note (iv)) and Water licence fee under the Allotment Agreement, those amounts are deductible in full in the year incurred where the Grower **is not an 'STS taxpayer'** or, where the Grower **is an 'STS taxpayer' using the accruals accounting method.**
- (iii) For the 2005-06 income year and later years, where a Grower pays the Management fee and Maintenance fee under the Management Agreement, and the Land licence fee (subject to Note (iv)) and Water licence fee under the Allotment Agreement, those amounts are deductible in full in the year paid where the Grower **is an 'STS taxpayer' who uses the cash accounting method.**
- (iv) For a Grower accepted on or after 1 July 2005 and on or before 15 June 2006, the deduction for the Land licence fee is \$135.92 per month for each month or part month that the Grower is licensed to use the land. This will mean that only Growers accepted during July 2005 can claim the full \$1,631 payable for the year ended 30 June 2006. See paragraphs 108 and 109.

- (v) This Ruling does not apply to Growers who choose to prepay fees (see paragraph 112). 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 Grower who prepays such amounts may request a private ruling on the taxation consequences of their participation in the Project.

Deductions for capital expenditure (Non - 'STS taxpayers')

Division 40

79. A Grower who is not an 'STS taxpayer' will also be entitled to tax deductions relating to irrigation and the citrus trees. All deductions shown in the following Table are determined under Division 40.

Fee Type	Year ended 30 June 2006	Year ended 30 June 2007	Year ended 30 June 2008
Irrigation system	\$985 See Notes (i) & (vi)	\$985 See Notes (i) & (vi)	\$985 See Notes (i) & (vi)
Establishment of horticultural plant	NIL See Notes (i) & (vii)	NIL See Notes (i) & (vii)	NIL See Notes (i) & (vii)

- (vi) Any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. A 'Late Grower' incurs the expenditure of \$2,955 on irrigation system in year ending 30 June 2006. A deduction is available under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one-third of the capital expenditure incurred by each Grower on the installation of the 'water facility' in the year in which it is incurred and one-third in each of the next 2 years of income (section 40-540).
- (vii) Each Grower will also be entitled to tax deductions relating to the 'Trees' planted on their 'Allotment'. A citrus tree is considered to be a 'horticultural plant' as defined in subsection 40-520(2). A 'Grower' holds a licence to cultivate citrus 'Trees' on a designated area of land called an 'Allotment' for the growing of 'Citrus' for commercial gain. As a Grower holds the 'Allotment' 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. The deduction is determined using the formula in

section 40-545. The write-off rate for the types of citrus to be grown is shown in paragraph 80. The deduction is allowable when the 'Trees' enter their first commercial season (section 40-530, item 2). The Responsible Entity will notify 'Growers' when their 'Trees' enter their first commercial season and the amount that may be claimed annually.

80. 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:

Variety	Write-off rate
Navels	7%
Mandarins	13%

Deductions for capital expenditure ('STS taxpayers')

Subdivision 328-D and Subdivision 40-F

81. A Grower who is an 'STS taxpayer' will also be entitled to tax deductions relating to irrigation and the establishment of horticultural plant. An 'STS taxpayer' may claim deductions in relation to water facilities under Subdivision 40-F. If the 'water facility' is on a 'depreciating asset' used to carry on the business, they may choose to claim deductions under Division 328. Deductions for the citrus 'Trees' must be determined under Subdivision 40-F.

82. The deductions shown in the following Table assume, for representative purposes only, that a Grower has either chosen to or can only claim deductions for expenditure on water facilities under Subdivision 40-F and not under Division 328. If the expenditure has been incurred on 'depreciating assets' and is claimed under Division 328, the deduction is determined as discussed in Note (viii).

83. Under Division 328, if the 'cost' of a 'depreciating asset' at the end of the income year is less than \$1,000 (a low-cost asset), it can be claimed as an immediate deduction when first used or 'installed ready for use'. This is so provided the Grower is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income.

Fee Type	Year ended 30 June 2006	Year ended 30 June 2007	Year ended 30 June 2008
Irrigation system	\$985 See Notes (i) & (viii)	\$985 See Notes (i) & (viii)	\$985 See Notes (i) & (viii)
Establishment of horticultural plant	NIL See Notes (i) & (vii)	NIL See Notes (i) & (vii)	NIL See Notes (i) & (vii)

- (viii) Any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. A 'Late Grower' incurs the expenditure of \$2,955 on irrigation system in year ending 30 June 2006. If the expenditure is on a 'depreciating asset' (the underlying asset), the Grower may choose to claim a deduction under either Division 328 or Subdivision 40-F. For the purposes of Division 328, each Grower's interest in the underlying asset is deemed to be a 'depreciating asset'. If the 'cost' apportionable to that deemed 'depreciating asset' is less than \$1,000, the deemed asset is treated as a 'low-cost asset' and that amount is deductible in full when the underlying asset is first used or 'held' ready for use. This is so provided the Grower is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income. If the deemed asset is not treated as a 'low-cost asset', the tax deduction allowable in the year ended 30 June 2006 is determined by multiplying its 'cost' by half the relevant STS pool rate. At the end of the year, it is allocated to the relevant STS pool and in subsequent years the full pool rate will apply. If the expenditure is not on a 'depreciating asset', or if they choose to use Subdivision 40-F, Growers must claim deductions under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one-third of the capital expenditure incurred by each Grower on the installation of the 'water facility' in the year in which it is incurred and one-third in each of the next 2 years of income (section 40-540).

Interest

84. The deductibility or otherwise of interest incurred by Growers who finance their participation in the Project through a loan facility with a bank or other financier 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 110 to 113 as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the prepayment is required under the relevant loan agreement or is at the Grower's choice.

Units in the Sunwest Citrus Property Trust

85. The units in the Sunwest Citrus Property Trust are CGT assets (section 108-5 of the ITAA 1997) and the amount of \$4,200

payable upon subscription by a Grower or an associate of the Grower constitutes an outgoing of capital and is not an allowable deduction.

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

87. Distributions by the Sunwest Citrus Property Trust are included in the assessable income of a Grower or an associate of the Grower who is a unit holder, in accordance with Division 6 of Part III of the ITAA 1936.

Deferral of losses from non-commercial business activities

Division 35

Section 35-55 – exercise of Commissioner’s discretion

88. A Grower who is an individual accepted into the Project by 15 June 2006 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 2006 to 30 June 2011. This conditional exercise of the discretion will allow those losses to be offset against the Grower’s other assessable income in the income year in which the losses arise.

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

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

- expenditure by a Grower does not fall within the scope of sections 82KZME to 82KZMF;
- section 82KL does not apply to deny the deductions otherwise allowable; and
- the relevant provisions in Part IVA will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

Explanation

Is the Grower carrying on a business?

90. For the amounts set out in the Ruling section above to constitute allowable deductions the Growers’ activities of cultivating

and harvesting 'Citrus' for eventual sale as a participant in the Sunwest Citrus Project must amount to the carrying on of a business of primary production.

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

92. For schemes such as the Sunwest Citrus Project, 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*.

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

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

94. In this Project, each Grower enters into an Allotment Agreement and a Management Agreement.

95. Under the Allotment Agreement each individual Grower will have rights over a specific and identifiable area of 0.25 hectares of land, referred to as an Allotment. The Allotment Agreement provides the Grower with an ongoing interest in the specific citrus trees on the licensed area for the term of the Project. The Grower must use the land in question for the purpose of cultivating citrus trees and harvesting the 'Citrus', and for no other purpose. The Allotment Agreement allows the Responsible Entity or its agents to come onto the land to carry out its obligations under the Allotment Agreement and the Management Agreement.

96. Under the Management Agreement, the Responsible Entity is engaged by the Grower to establish and maintain the Allotment on the Grower's Allotment during the term of the Project. The Responsible Entity has sub-contracted management services to NCF under the Operations Agreement. NCF holds the appropriate professional skills

and credentials to provide the services to establish and maintain the Allotment during the term of the Project.

97. The Responsible Entity is also engaged to harvest and sell, on the Grower's behalf, the 'Citrus' grown on the Grower's Allotment(s).

98. 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.

99. 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 '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.

100. The pooling of the 'Citrus' grown on the Grower's Allotment(s) with the 'Citrus' of other Growers in the Project is consistent with general horticultural practices. Each Grower's proportionate share of the sale proceeds of the pooled 'Citrus' will reflect the proportion of the 'Citrus' contributed from their Allotment.

101. The management services are also consistent with general horticultural practices. They are of the type ordinarily found in citrus growing ventures that would commonly be said to be businesses. While the size of an individual Allotment is relatively small, it is of a size and scale to allow it to be commercially viable.

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

103. 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 Grower's horticulture activities in the Sunwest Citrus Project will constitute the carrying on of a business.

The Simplified Tax System

Division 328

104. 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.

105. Changes to the STS rules apply from 1 July 2005. 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 Management fee, Maintenance fee,
Land licence fee and Water licence fee**

Section 8-1

106. Consideration of whether the fees and expenses payable under the Management Agreement and the Allotment Agreement 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.

107. The fees payable under the Management Agreement and the Allotment Agreement will relate to the gaining of income from the Grower's horticulture business, and hence have a sufficient connection to the operations by which income (from the harvesting and sale of citrus) is to be gained from this business. They will thus be deductible under the first limb of section 8-1. Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. The fees appear to be reasonable and, other than as discussed in paragraphs 108 and 109, the fees have no capital component. The tests of deductibility under the first limb of section 8-1 are met and, subject to paragraphs 108 and 109, the exclusions do not apply.

108. One of the exclusions under section 8-1 relates to expenditure that is capital, or is capital in nature. Any part of the expenditure of a Grower entering into a horticulture business which is attributable to acquiring an asset or advantage of an enduring kind is generally capital or capital in nature and hence will not be deductible under section 8-1. The Commissioner is of the view that depending upon when they are accepted to participate in the Project, a portion of the Land licence fee payable by a Grower for the year ended 30 June 2006 will be capital expenditure.

109. Therefore, if a Grower enters the Project on or before 31 July 2005 the 'Licence Fee' of \$1,631 payable on application for the period to 30 June 2006 will be deductible in full. However, Growers' accepted to participate in the Project on or after 1 August 2005 and on or before 15 June 2006, will not be entitled to the full deduction. The deduction will be calculated on a pro-rata monthly basis of \$135.92 for each month or part month that the Grower is licensed to use the land.

Prepayment provisions

Sections 82KZL to 82KZMF

110. 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 services under the Management Agreement or the licensing of land under the Allotment Agreement) 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

111. During the period to which this Product Ruling applies fees and expenses to which the prepayment provisions might otherwise apply are incurred for services to be provided in the same income year. Accordingly, the prepayment provisions in sections 82KZME and 82KZMF have no application to this expenditure. A Grower who is an 'STS taxpayer using the cash accounting method 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 Growers can claim a deduction for each of the relevant amounts in the income year in which the fee is incurred.

112. However, sections 82KZME and 82KZMF may have relevance if a Grower in this Project chooses to prepay all or some of the expenditure payable under the Management Agreement and the Allotment Agreement or chooses or is required to prepay interest under a loan agreement. 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. As noted in the Ruling section above, 'Growers' who prepay fees or interest are not covered by this Product Ruling and may instead request a private ruling on the tax consequences of their participation in this Project.

113. It should be noted that the prepayment provisions will have application from the income year ended 30 June 2009. However, this is outside the period for which this Product Ruling applies and Growers may wish to seek a private ruling on or around 30 June 2009 when the first prepayment occurs.

Expenditure of a capital nature

Division 40 and Division 328

114. Any part of the expenditure of a Grower that is attributable to acquiring an asset or advantage of an enduring kind is generally capital or capital in nature and will not be an allowable deduction under section 8-1. In this Project, expenditure attributable to the Allotment Irrigation System and the establishment of the citrus trees is of a capital nature. Depending upon whether a Grower is an 'STS taxpayer' or not, that expenditure falls for consideration under either Division 40 or Division 328 of the ITAA 1997.

Deferral of losses from non-commercial business activities

Division 35

Section 35-55 – exercise of Commissioner's discretion

115. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for the income years 30 June 2006 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 2006 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; and
- there is an objective expectation that within a period that is commercially viable for the citrus industry, a Grower's business activity will satisfy one of the four tests set out in Division 35 or produce a taxation profit.

Therefore, 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.

116. 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

117. The operation of section 82KL depends, among other things, on the identification of a certain quantum of ‘additional benefit(s)’. Insufficient ‘additional benefit(s)’ 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

118. 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).

119. The Sunwest Citrus Project will be a ‘scheme’. A Grower will obtain a ‘tax benefit’ from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 77 to 83 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.

120. 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 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**

121. Susan, who is a sole trader and registered for GST, contracts with a manager to manage her viticulture business. Her manager is registered for GST and charges her a management fee payable every six months in advance. On 1 December 2003, Susan receives a valid tax invoice from her manager requesting payment of a management fee in advance, and also requesting payment for an improvement in the connection of electricity for her vineyard that she contracted him to carry out. The tax invoice includes the following details:

Management fee for period 1/1/2004 to 30/6/2004	\$4,400*
Carrying out of upgrade of power for your vineyard as quoted	<u>\$2,200*</u>
Total due and payable by 1 January 2004 (includes GST of \$600)	<u>\$6,600</u>

*Taxable supply

Susan pays the invoice by the due date and calculates her input tax credit on the management fee (to be claimed through her Business Activity Statement) as:

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

Hence her outgoing for the management fee is effectively \$4,400 *less* \$400, or \$4,000.

Similarly, Susan calculates her input tax credit on the connection of electricity as:

$$\frac{1}{11} \times \$2,200 = \$200.$$

Hence her outgoing for the power upgrade is effectively \$2,200 *less* \$200, or \$2,000.

In preparing her income tax return for the year ended 30 June 2004, Susan is aware that the management fee is deductible in the year incurred. She calculates her management fee deduction as \$4,000 (not \$4,400).

Susan is aware that the electricity upgrade is deductible 10% per year over a 10-year period. She calculates her deduction for the power upgrade as \$200 (one tenth of \$2,000 only, not one tenth of \$2,200).

Detailed contents list

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Commissioner of Taxation

1 June 2005

Previous draft:

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*Related Rulings/Determinations:*PR 1999/95; TR 92/1; TR 92/20;
TR 97/11; TR 97/16 ; TR 98/22;
TR 2000/8; TR 2000/18; TD 93/34*Other Rulings/Determinations:*

TR 2001/14

Subject references:

- advance deductions and expenses for certain forestry expenditure
- carrying on a business
- commencement of business
- fee expenses
- forestry agreement
- interest expenses
- management fees
- non commercial losses
- producing assessable income
- product rulings
- public rulings
- seasonally dependent agronomic activity
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- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters
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- ITAA 1936 177D(b)
- ITAA 1936 318
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 17-5
- ITAA 1997 Div 27
- ITAA 1997 Div 35
- ITAA 1997 35-10
- ITAA 1997 35-10(2)
- ITAA 1997 35-55
- ITAA 1997 35-55(1)(b)
- ITAA 1997 Div 40
- ITAA 1997 Subdiv 40-F
- ITAA 1997 40-515(1)(a)
- ITAA 1997 40-515(1)(b)
- ITAA 1997 40-520(1)
- ITAA 1997 40-520(2)
- ITAA 1997 40-525(2)
- ITAA 1997 40-530 item 2
- ITAA 1997 40-540
- ITAA 1997 40-545
- ITAA 1997 Subdiv 61-J
- ITAA 1997 108-5
- ITAA 1997 110-25
- ITAA 1997 110-25(2)
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