



PR 2006/14 - Income tax: 2006 Swan Hill Almond Grower Project - 2006 Growers

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 This document has changed over time. This is a consolidated version of the ruling which was published on *8 March 2006*



Product Ruling

Income tax: 2006 Swan Hill Almond Grower Project – 2006 Growers

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ⓘ This Ruling provides you with the following level of protection:

This publication (excluding appendices) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a taxation provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any under-paid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

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 scheme is carried out in accordance with the information we have been given, and have described below in the **Scheme** part of this document.

If the scheme 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 scheme 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 scheme has been implemented as described below and to ensure that the participants in the scheme 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 entity(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 Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'taxation provision(s)' identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates. In this Ruling this scheme is referred to as the '2006 Swan Hill Almond Grower Project' or simply as 'the Project'.

Relevant taxation provision(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);
- section 82KZL of the ITAA 1936;
- sections 82KZME to 82KZMG of the ITAA 1936; and
- Part IVA of the ITAA 1936.

Goods and Services Tax

3. All fees and expenditure referred to in this Ruling include the Goods and Services Tax (GST) where applicable. In order for an entity (referred to in this Ruling as a 'Grower') to be entitled to claim input tax credits for the GST included in its expenditure, it must be registered or required to be registered for GST and hold a valid tax invoice.

Changes in the Law

4. Although this Ruling deals with the laws enacted at the time it was issued, later amendments may impact on this Ruling. Any such changes will take precedence over the application of this Ruling and, to that extent, this Ruling will be superseded.

5. Taxpayers who are considering participating in the Project are advised to confirm with their taxation adviser that changes in the law have not affected this Product Ruling since it was issued.

Note to promoters and advisers

6. Product Rulings were introduced for the purpose of providing certainty about tax consequences for participants in projects such as this. In keeping with that intention the Tax Office suggests that promoters and advisers ensure that potential participants are fully informed of any legislative changes after the Ruling is issued.

Class of entities

7. The class of entities to which this Ruling applies is the entities more specifically identified in the Ruling part of this Product Ruling and which enter into the scheme specified below on or after the date this Ruling is made. They will have a purpose of staying in the scheme 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 scheme. In this Ruling, these entities are referred to as 'Growers'.

8. The class of entities to whom this Ruling applies does not include entities which intend to terminate their involvement in the scheme prior to its completion or who otherwise do not intend to derive assessable income from it. A Grower who elects to take and sell their own produce is also excluded from this Ruling (see paragraph 58).

Qualifications

9. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 15 to 57.

10. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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Date of effect

12. This Ruling applies prospectively from 8 March 2006, 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).

13. 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 scheme 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

14. 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 entities within the specified class who enter into the scheme specified below. Thus, the Ruling continues to apply to those entities, even following its withdrawal, which enter into the specified scheme prior to withdrawal of the Ruling. This is subject to there being no change in the scheme or in the entities' involvement in the scheme.

Scheme

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

- Application for a Product Ruling for the 2006 Swan Hill Almond Grower Project as constituted by documents received September 2005, 6 and 7 December 2005, 17, 23 and 24 January 2006 and 6, 8 and 20, 24 and 28 February 2006 and 1 March 2006 and additional correspondence (including e-mails) dated 3, 4, 7, 21, 24 and 25 November 2005, 1, 2, 5, 6, 7, 13, 15 and 23 December 2005, 24 and 25 January 2006, 1, 2, 7, 10, 17 and 20, 21, 22, 23, 24, 27 and 28 February 2006;
- Draft **Product Disclosure Statement** for the 2006 Swan Hill Almond Grower Project, received 24 February 2006;
- Draft **Constitution of the 2006 Swan Hill Almond Grower Project**, between Almond Investors Limited ('AIL') and each Grower, received 24 February 2006;
- **Supplemental Deed – Constitution 2006 Swan Hill Almond Grower Project**, between Almond Investors Limited ('AIL') and each Grower, received 28 February 2006, lodged with the Australian Securities and Investment Commission 27 February 2006;
- Draft Constitution of the 2006 Swan Hill Almond Orchard Asset Trust ('the Trust'), received 6 February 2006;
- Draft Compliance Plan of the 2006 Swan Hill Almond Grower Project, received 1 September 2005;
- Deeds between AIL and B. D. and R. J. Hayward Pty. Ltd. ('Hayward') detailing various land options and the associated Contracts of Sale, received 24 January 2006;
- Letter from AIL to Hayward dated 12 December 2005, evidencing the arrangement whereby access is provided for preparatory works;

- Lease Agreement between Sandhurst Trustees Limited in its capacity as custodian of the 2006 Swan Hill Almond Orchard Asset Trust ('Lessor') and Sandhurst Nominees (Victoria) Limited in its capacity as Custodian of the 2006 Swan Hill Almond Grower Project ('Lessee') and AIL as Responsible Entity of the 2006 Swan Hill Almond Orchard Asset Trust ('Responsible Lessor') and as Responsible Entity of the 2006 Swan Hill Almond Grower Project ('Responsible Lessee'), received 28 February 2006 ('Head Lease');
- **Allotment Sublease Agreement** between AIL, Sandhurst Nominees (Victoria) Limited as subcustodian of the 2006 Swan Hill Almond Grower Project ('Project Custodian') and each Grower, received 28 February 2006;
- **Allotment Management Agreement** between AIL ('Responsible Entity') of the 2006 Swan Hill Almond Grower Project and each Grower, received 28 February 2006;
- Orchard Management Agreement between RMONPRO Developments Pty Ltd ('the Manager') and AIL ('Responsible Entity') of the 2006 Swan Hill Almond Grower Project, received 1 September 2005;
- **Finance application and Terms of Loan** between Allco Managed Investments Limited ABN 58 101 402 635 as trustee of the Gateway Momentum Funding Trust No. 1 ('Momentum Finance') and each Grower, received 17 January 2006;
- Draft Custody Agreement between AIL as ('Responsible Entity') for the 2006 Swan Hill Almond Grower Project and Sandhurst Trustees Limited as custodian of the 2006 Swan Hill Almond Grower Project ('the Custodian'), received September 2005; and
- Draft Almond Crop Supply Agreement between Almondco Australia Limited and AIL ('Responsible Entity') of the 2006 Swan Hill Almond Grower Project, received 1 September 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.

16. The documents highlighted are those that Growers may enter into. For the purposes of describing the scheme 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 scheme. The effect of these agreements is summarised as follows.

17. 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

18. The main features of the 2006 Swan Hill Almond Grower Project are as follows:

Location	Swan Hill, Victoria
Type of business each Grower will be carrying on	Cultivating almond 'Trees' on their designated 0.125 hectare 'Allotments' and harvesting the almonds for processing and sale.
Area available for cultivation	Up to 406 hectares, divided into 'Allotments' of 0.125 hectares each.
The term of the Grower Project	The Grower Project will be completed in approximately 15 years, commencing on acceptance of a participant's application.
Initial cost	\$4,600 for 'Growing and Management Fees' and \$2,700 for 'Irrigation Charge', payable on application, or not later than 15 June 2006.
Ongoing fees and other Grower costs	'Growing and Management Fees', 'Land and Asset Rent', Growing, Processing, marketing and drying fees, Interest payments and Borrowing Costs, under the Loan Deed Incentive fees; and Optional insurance costs.

19. AIL has registered the 2006 Swan Hill Grower Project (the Project) and the 2006 Swan Hill Almond Orchard Asset Trust (the Trust) as managed investment schemes pursuant to the *Corporations Act 2001*.

20. An offer to participate in the schemes will be made through a Product Disclosure Statement ('PDS'). The maximum offer under the PDS is for 3,000 'Grower Allotments' and 3,000 Orchard Asset Units in the Trust. AIL may accept oversubscription in the Project at its discretion. Growers must apply for a minimum of one 0.125 hectare 'Grower Allotment' in the Project. The land on which the Project will be conducted is in Swan Hill, Victoria.

21. The Grower or a Nominee of the Grower must subscribe for the equivalent number of Units in the Trust. The options over the land required for the 2006 Growers in the Project will be exercised and the Contracts of Sale executed on or before 15 June 2006. The Head Lease, Allotment Sublease Agreements and Allotment Management Agreements will not be executed until the land is purchased. AIL in its capacity as the trustee of the Trust, will own the Trust Property including the Land, Trees and the Water Licences which will be held in the name of the Custodian, Sandhurst Trustees as nominee. The Trust will use these Water Licences to obtain water to irrigate the 'Grower Allotments' of Growers participating in the Project.

22. A Head Lease will be entered into between the Custodian of the Trust and AIL as Responsible Entity. AIL will grant the Grower a sublease of the Grower's Allotment for the term of the Project for the purpose of growing, maintaining and harvesting almonds for sale.

23. Growers will also enter into an Allotment Management Agreement with AIL as Responsible Entity who will perform services in relation to the management of their 'Grower's Allotment'. Under this agreement AIL will harvest the almonds, process the almonds as required, and sell the almonds on behalf of the Grower, unless the Grower has elected to take and sell their own produce.

Constitution of the Grower Project

24. The Project Constitution operates as a deed and is binding on all Growers and AIL. It sets out the legal obligations of the parties and the rights and powers of each.

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

- the appointment of AIL as the Responsible Entity of the Grower Project (clause 3);
- the manner in which an applicant can apply for a Grower's Interest in the Project and the holding of the 'Contribution' (meaning the application money set out in Schedule 3) by AIL on trust for the Applicant (clauses 6 and 7);
- preparation and execution of the Allotment Sublease Agreement and Allotment Management Agreement by AIL (clause 7.6);
- conditions which must be satisfied before money paid by an Applicant into the Growers' Application Fund can be transferred to AIL (clause 8). The Responsible Entity must be ready, willing and able to perform its duties under this Constitution and there must not be any outstanding material breaches of any of the provisions of the Constitution or the Law which are detrimental to the interests of the Applicants. To avoid doubt, one condition is therefore that the options have been exercised over the land necessary for the 2006 Growers in the Project and the Contracts of Sale have been executed;

- an Applicant's Interest in the Application Fund (clause 9);
- the appointment of a Custodian to hold Project Assets on behalf of the Growers which must be held separately from the assets of AIL and any other managed investment scheme (clause 12);
- maintenance of an up-to-date register of Growers' details which AIL must permit the Grower to inspect or to obtain a copy (clause 13);
- the opening of a 'Growers' Proceeds Account' at an Australian bank (clause 24) and the payment of proceeds into the 'Growers' Proceeds Account', deductions that may be made from the 'Growers' Proceeds Account' and distribution to the Growers from the 'Growers' Proceeds Account' (clause 26); and
- termination of the Project (clause 29).

Compliance Plan

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

Options to purchase land

27. The Option Deeds between AIL and Hayward give AIL the right to purchase the various titles making up the land to be used for the Project. The associated Contracts of Sale set out the terms of sale for each title. The commencement of the Project is conditional on the exercise of the options and execution of the Contracts of Sale.

Letter from AIL to Hayward dated 12 December 2005

28. This letter is signed by both parties. A fee of \$30 per acre per annum is payable for access to the land for the period 1 January 2006 to 31 December 2006 to prepare it for the 2006 Project. If there is no unsold land, under the option described above, at 1 January 2007, no further payments are required. If there is unsold land, a proportionate payment is required for the period 1 January 2007 to 31 December 2007.

Head Lease

29. The 'Land' and 'Water Licences' for the Project will be owned by 2006 Swan Hill Almond Orchard Asset Trust ('Responsible Lessor') and will be leased to AIL under the 'Head Lease'. The 'Head Lease' sets out the terms and conditions under which the 'Responsible Lessor' and Sandhurst Trustees Ltd in its capacity as custodian of the Trust ('Lessor') will lease the 'Land' and 'Water Licences' to AIL to use during the 'Term' of the Project.

Allotment Sublease Agreement

30. AIL as Responsible Entity and Sandhurst Nominees (Victoria) Ltd in its capacity as subcustodian of the Project, will grant to each Grower through an Allotment Sublease Agreement, rights over a specific and identifiable area of 0.125 hectares or more of land for the purposes of horticultural activities.

31. The Allotment Sublease Agreement commences on the later of the date the Grower's Application is accepted and the date the Head Lease commences (clause 3.1). The Sublease will continue until the termination of the Project, being 15 years after the date the Allotment Sublease Agreement commences (clause 3.2).

32. Pursuant to clauses 2.1 and 4.1 of the Allotment Sublease Agreement, the Project Custodian on behalf of AIL grants to each Grower a Sublease of a 'Grower's Allotment' for the term of the agreement for the purpose of growing, maintaining and harvesting the 'Trees' and to take away the crop of almonds harvested from the 'Trees'.

33. Under clause 2.2 of the Allotment Sublease Agreement the Grower has the right to use the Water Licences for the term of the sublease.

34. Under clause 6.3 the Grower has the right to install all or part of the 'Irrigation System' and is required to maintain the 'Irrigation System'.

35. Clause 8 stipulates the fees and charges payable by the Grower. Pursuant to clause 8.1 the Grower will pay annual 'Land and Asset Rent' for the Sublease of the 'Grower's Allotment', and Trees and the right to use the water licences.

Orchard Management Agreement

36. Under the Orchard Management Agreement AIL engages the 'Orchard Manager' as an independent contractor. The Orchard Manager will provide certain 'Services' on the 'Property' associated with the establishment of an almond 'Orchard'. The 'Services' include the preparation of the 'Property', maintaining the 'Irrigation System' and the planting of the 'Almond Trees'.

37. Under clause 5.1 the 'Orchard Manager' carries out the 'Initial Services' as set out in the Allotment Management Agreement. Under clause 5.2, the 'Orchard Manager' will conduct the 'Services' in a good workmanlike and commercially responsible manner; having regard to the 'Management Plan' and to a standard consistent with 'Best Horticultural Practice'.

Allotment Management Agreement

38. The Allotment Management Agreement sets out the terms and conditions of AIL's appointment as an independent contractor, by the Grower, to manage the 'Grower's Allotment' on the terms set out in this Agreement (clause 2). The Project will continue until the termination of the Project being 15 years from the Commencement Date (clause 3).

39. In accordance with sound horticultural and environmental practices AIL will maintain, supervise and manage on behalf of each Grower the orchard management services and orchard maintenance services to be carried out on the relevant 'Grower's Allotment'. The services to be performed in the 'Initial Period' are outlined in Part 1 of Schedule 3.

40. In the second and subsequent 'Financial Years', AIL must provide the services outlined in Part 2 of Schedule 3 of the Agreement.

41. The Responsible Entity has installed, or must cause to be installed, the 'Irrigation System' and provide the Grower with access to the 'Irrigation System' as necessary for the management of the 'Grower's Allotment' (clause 4.6).

42. Under clause 4.4 of the Agreement the Grower may engage AIL to market and sell the almonds harvested from the 'Grower's Allotment'. Where the Grower engages AIL to market and sell the 'Almonds attributable to the 'Grower's Allotment', AIL may in its discretion aggregate these almonds together with the almonds of other 'Growers' Allotment'. This Ruling does not apply to a Grower who elects to take and sell their own produce (see paragraph 58).

43. Where the produce from a 'Grower's Allotment' is partially or totally destroyed or the level of production is otherwise reduced or is inadequate compared to other 'Growers' Allotment' then AIL must adjust the Grower's share of the sale proceeds.

44. The Grower acknowledges that AIL may call for a first and paramount lien in respect of the 'Almonds attributable to the Grower's Allotment' for any outstanding fees or expenses due and payable to AIL under this agreement. Any surplus for each Grower after all deductions are made must be distributed to the Grower.

45. AIL must insure from its own funds, the Grower, the Custodian, itself and such other persons it deems necessary against public risk liability and against the ordinary and insurable risks associated with the use of the 'Grower's Allotment'. AIL may also take out insurance against ordinary and insurable risks associated with the storage and transport of 'Almonds attributable to the Grower's Allotment' (clause 7).

46. Clause 7.2 allows a Grower to take out additional insurance over the 'Grower's Allotment', the 'Trees' or the 'Almonds attributable to the Grower's Allotment'. Any such insurance will be at the Grower's own cost. AIL may facilitate the acquisition of this insurance.

Almond Crop Supply Agreement

47. The Almond Crop Supply Agreement is entered into by Almondco Australia Limited and AIL (as Responsible Entity of the Project) as a 'Member'. AIL agrees to supply all of the almonds produced by the Project to Almondco to process, pack, market and distribute on their behalf.

Pooling of amounts and distribution of proceeds

48. Both the Constitution (clause 25) and the Allotment Management Agreement (clause 4.4) set out provisions relating to the pooling of amounts from the sale of the Growers' almonds 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 Growers who have contributed proceeds from the sale of almonds, insurance or other proceeds to the pool making up the 'Growers' Proceeds Account' are entitled to benefit from distributions from the 'Growers' Proceeds Account'; and
- any pools of proceeds from the sale of almonds or other proceeds must consist only of proceeds from the sale of almonds or other proceeds contributed by Growers in the 2006 Swan Hill Almond Grower Project.

Grower fees

49. Pursuant to Schedule 4 of the Allotment Management Agreement, and Schedule 3 of the Allotment Sublease Agreement a Grower will make the following payments as required per Allotment:

Year ended 30 June 2006

- \$4,600 for 'Growing and Management Fees' in respect of services to be provided from the Commencement Date to 30 June 2006 payable on application.

- \$2,700 as an Irrigation Charge. This fee is payable on application.

Year ended 30 June 2007

- \$1,350 for 'Growing and Management Fees' in respect of the services to be provided in the period from 1 July 2006 to 30 June 2007, payable 1 March 2007.
- Deferred Management fees of 3% of 'Gross Proceeds' in respect of the services to be provided in the period from 1 July 2006 to 30 June 2007.
- \$900 for 'Land and Asset Rent' for the period from 1 July 2006 to 30 June 2007, payable on 1 March 2007.

Year ended 30 June 2008

- \$1,350 for 'Growing and Management Fees' in respect of the services to be provided in the period from 1 July 2007 to 30 June 2008, payable on 1 March 2008.
- Deferred Management fees of 3% of 'Gross Proceeds' in respect of the services to be provided in the period from 1 July 2007 to 30 June 2008.
- \$900 for 'Land and Asset Rent' for the period from 1 July 2007 to 30 June 2008, payable on 1 March 2008.

Year ended 30 June 2009 and subsequent years

- The 'Growing Fee' for the services to be provided in the period from 1 July 2008 to 30 June 2009 and each subsequent year until the end of the Project will be determined in accordance with the management plan prepared by the Manager and agreed by AIL, pursuant to the Orchard Management Agreement for the relevant year.
- 'Management Fee' of \$150 per 'Grower's Allotment' per financial year for the services to be provided in the period from 1 July 2008 to 30 June 2011.
- \$900 for 'Land and Asset Rent' for the period from 1 July 2008 to 30 June 2009. The amount for each subsequent year until the end of the Project is \$900 increased by CPI.
- A processing and marketing fee for each kilogram of processed 'Almonds attributable to the Grower's Allotment' in respect of that Production Period.
- A Grower will pay a performance fee equal to 20% of so much of the annual 'Net Proceeds' payable to the Grower in a Financial Year in excess of the annual 'Net Proceeds' estimated in the Product Disclosure Statement.

50. As noted above, the 'Growing and Management Fees' in the 'Financial Years' ended 30 June 2007 and 30 June 2008 consist of a set dollar amount and a deferred amount equal to 3% of 'Gross Proceeds' payable to the Grower. It will be payable in each 'Financial Year' from and including the seventh 'Financial Year' until the end of the Project. The deferred fee in each 'Financial Year' shall be equal to 6.0% of the 'Gross Proceeds' payable to the Grower in respect of that Financial Year.

Finance

51. Growers can fund their involvement in the Project by borrowing from independent sources or from Momentum Finance, a lender that is a preferred financier of AIL.

52. Where a loan application is accepted, Momentum Finance will provide '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 'Growers' by Momentum Finance are set out in the 'Finance Application Form' and 'Loan Deed'. These documents are summarised as follows.

53. All loans have the following features:

- an application fee of \$250 plus 0.5% of the borrowed sum;
- repayments monthly in arrears;
- a variable interest rate, set at a published market rate, initially 10.75%; and
- a maximum loan amount of \$250,000.

54. There are two types of loan to be offered:

- a **Fees Payable on Application Loan**, consisting of an Interest Only Loan with a term up to 3 years and a Principal and Interest Loan for the balance of the 8 year term; and
- an **Ongoing Fees Loan** consisting of a Principal and Interest Loan with a term up to 10 years with interest payable monthly in arrears.

55. This Product Ruling does not cover financing arrangements, other than those set out above in paragraphs 51 to 54. Growers who enter into finance agreements not covered by this Product Ruling may request a private ruling on the deductibility or otherwise of interest incurred under the agreement.

56. Growers cannot rely on any part of this Product Ruling if their 'Contributions' (meaning the application money set out in Schedule 3 of the Constitution) remain unpaid by 15 June 2005. Growers cannot rely on this Product Ruling if AIL accepts their application subject to finance approval by any lending institution, including Momentum Finance, and written evidence of that approval has not been given to AIL by 15 June 2005.

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

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' are or will be granted to the borrowers for the purpose of section 82KL of the ITAA 1936 or the funding arrangements transform the Project into a 'scheme' to which Part IVA of the ITAA 1936 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.

Ruling

Application of this Ruling

58. This Ruling applies only to Growers who:

- are accepted to participate in the Project and have executed an Allotment Management Agreement and Allotment Sublease Agreement on or after the date of this Product Ruling and on or before 15 June 2006; and
- do not elect to take and sell their own produce.

The Grower's participation in the Project must constitute the carrying on of a business of primary production. A Grower is not eligible to claim any tax deductions until the Grower's application to enter the Project is accepted and the Project has commenced. It is a condition for the commencement of the Project that the options over the land needed for the 2006 Growers in the Project will be exercised and the Contracts of Sale executed on or before 15 June 2006.

The Simplified Tax System (STS)

Division 328

59. 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 a Grower who was an 'STS taxpayer' prior to the 1 July 2005 continues to use the cash accounting method (called the 'STS accounting method' – see section 328-120 *Income Tax (Transitional Provisions) Act 1997*).

60. For such Growers, a reference in this Ruling to an amount being deductible when 'incurred' will mean that amount is deductible when paid and a reference to an amount being included in assessable income when 'derived' will mean that amount is included in assessable income when received.

25% entrepreneurs' tax offset

Subdivision 61-J

61. For the first income year starting on or after 1 July 2005, Subdivision 61-J of the ITAA 1997 provides a 25% tax offset 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

62. 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 of the ITAA 1997), will be assessable income of the Grower under section 6-5 of the ITAA 1997 in the income year in which that income is derived.

Deductions for the 'Growing and Management Fees', the 'Land and Asset Rent', interest under a Loan Deed with Momentum Finance and Borrowing Costs

Section 8-1 and section 25-25

63. A Grower may claim tax deductions under section 8-1 of the ITAA 1997, for the revenue expenses set out in the Table below on a 'per Allotment' basis.

Fee Type	Year ended 30 June 2006	Year ended 30 June 2007	Year ended 30 June 2008
'Growing and Management Fee'	\$4,600 – See Notes (i), (ii) & (iii)	\$1,350 – See Notes (i), (ii) & (iii)	\$1,350 – See Notes (i), (ii) & (iii)
'Land and Asset Rent'	Nil	\$900 – See Notes (i), (ii) & (iii)	\$900 – See Notes (i), (ii) & (iii)
Interest payable to Momentum Finance under a Loan Deed	As incurred See Notes (iii) & (iv)	As incurred See Notes (iii) & (iv)	As incurred See Notes (iii) & (iv)
Borrowing costs for loans with Momentum Finance	Must be calculated – see Note (v)	Must be calculated – see Note (v)	Must be calculated – see Note (v)

Notes:

- (i) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (for example input tax credits): Division 27 of the ITAA 1997.
- (ii) The 'Growing and Management Fees' and the 'Land and Asset Rent' shown in the Allotment Management Agreement and the Sub-lease are deductible under section 8-1 of the ITAA 1997 in full in the year that they are incurred.
- (iii) This Ruling does not apply to Growers who prepay the 'Growing and Management Fees', the 'Land and Asset Rent' and/or interest under a loan agreement, (including loans from lenders other than Momentum Finance). Amounts that are prepaid for a period that extends beyond the income year in which the expenditure is incurred are subject to the prepayment provisions in sections 82KZME and 82KZMF of the ITAA 1936 (see paragraphs 93 to 96).
- (iv) Growers who enter into a Loan Agreement with Momentum Finance will incur interest monthly in arrears, as set out in the Loan Deed. The interest is deductible as incurred. The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Momentum Finance, the internal financier, is outside the scope of this Ruling.
- (v) The Loan Application fee payable to Momentum Finance is a borrowing expense and is deductible under section 25-25 of the ITAA 1997. It is incurred for borrowing money that is used or is 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 Momentum Finance is outside the scope of this Ruling.

Deductions for capital expenditure (Non-‘STS taxpayers’)

Division 40

64. A Grower who is not an ‘STS taxpayer’ will also be entitled to tax deductions relating to irrigation and the almond trees. All deductions shown in the following Table are determined under Division 40 of the ITAA 1997.

Fee Type	Year ended 30 June 2006	Year ended 30 June 2007	Year ended 30 June 2008
Irrigation Fee	\$900 – See Notes (i) & (vi)	\$900 – See Notes (i) & (vi)	\$900 – See Notes (i) & (vi)
Establishment of horticultural plant	Nil See Notes (i) & (vii)	Nil See Notes (i) & (vii)	Nil See Notes (i) & (vii)

Notes:

- (vi) Any irrigation system, dam or bore is a ‘water facility’ as defined in subsection 40-520(1) of the ITAA 1997, being used primarily and principally for the purpose of conserving or conveying water. A deduction is available under Subdivision 40-F of the ITAA 1997, paragraph 40-515(1)(a) of the ITAA 1997. 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 of the ITAA 1997).
- (vii) Each Grower will also be entitled to tax deductions relating to the almond ‘Trees’ planted on the ‘Grower’s Allotment’. An almond tree is considered to be a ‘horticultural plant’ as defined in subsection 40-520(2) of the ITAA 1997. A Grower holds a sub-lease to cultivate almond ‘Trees’ on a designated area of land called a ‘Grower’s Allotment’ for the growing of almonds for commercial gain. As a Grower holds the ‘Grower’s Allotment’ under a sub-lease, one of the conditions in subsection 40-525(2) of the ITAA 1997 is met and a deduction for ‘horticultural plants’ is available under paragraph 40-515(1)(b) of the

ITAA 1997 for their decline in value. The deduction is determined using the formula in section 40-545 of the ITAA 1997. Almond 'Trees' have an 'effective life' of greater than 13 years but fewer than 30 years and, for the purposes of section 40-545, this results in a straight-line write-off at a rate of 13%. The deduction is allowable when the 'Almond Trees' enter their first commercial season (section 40-530 of the ITAA 1997, item 2). AIL will notify 'Growers' when their 'Almond Trees' enter their first commercial season and the amount that may be claimed.

Deductions for capital expenditure ('STS taxpayers')

Subdivision 328-D and Subdivision 40-F

65. 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 of the ITAA 1997. If the 'water facility' is on a 'depreciating asset' used to carry on the business, they may choose to claim deductions under Division 328 of the ITAA 1997. Deductions for the Almond 'Trees' must be determined under Subdivision 40-F.

66. 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 of the ITAA 1997 and not under Division 328 of the ITAA 1997. If the expenditure has been incurred on 'depreciating assets' and is claimed under Division 328, the deduction is determined as discussed in Note (viii).

Fee Type	Year ended 30 June 2006	Year ended 30 June 2007	Year ended 30 June 2008
Irrigation Fee	\$900 – See Notes (i) & (viii)	\$900 – See Notes (i) & (viii)	\$900 – See Notes (i) & (viii)
Establishment of horticultural plant	Nil See Notes (i) & (vii)	Nil See Notes (i) & (vii)	Nil See Notes (i) & (vii)

Notes:

- (viii) Any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1) of the ITAA 1997, being used primarily and principally for the purpose of conserving or conveying water. If the expenditure is on a 'depreciating asset' (the underlying asset), the Grower may choose to claim a deduction under either

Division 328 of the ITAA 1997 or Subdivision 40-F of the ITAA 1997. For the purposes of Division 328 of the ITAA 1997, each Grower's interest in the underlying asset is deemed to be a 'depreciating asset'. The Irrigation Fee is \$2,700. 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 of the ITAA 1997, Growers must claim deductions under Subdivision 40-F, paragraph 40-515(1)(a) of the ITAA 1997. 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 of the ITAA 1997).

Units in the 'Trust'

Part 3-1 of the ITAA 1997 and Division 6 of Part III of the ITAA 1936

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

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

69. Income distributions by the 'Trust' are included in the assessable income of a 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

Section 35-55 – Commissioner's discretion

70. A Grower who is an individual accepted into the Project may have losses arising from their participation in the Project deferred to a later income year under section 35-10 of the ITAA 1997. Subject to the Project being carried out in the manner described above, the Commissioner will exercise the discretion in paragraph 35-55(1)(b) of the ITAA 1997 for the income years ending **30 June 2006 to 30 June 2010**. This conditional exercise of the discretion will allow those losses to be offset against the Growers other assessable income in the income year in which the losses arise.

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

71. For a Grower who participates in the Project and incurs expenditure as required by the Allotment Management Agreement and the Allotment Sublease 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 and 82KZMF of the ITAA 1936;
- section 82KL of the ITAA 1936 does not apply to deny the deductions otherwise allowable; and
- relevant provisions in Part IVA of the ITAA 1936 will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

Commissioner of Taxation8 March 2006

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Is the Grower carrying on a business?

72. For the amounts set out in the Tables above to constitute allowable deductions, the Grower's almond orchard activities as a participant in the 2006 Swan Hill Almond Grower Project must amount to the carrying on of a business of primary production.

73. Where there is a business, or a future business, the gross proceeds from the sale of the almonds 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.

74. For schemes such as that of the 2006 Swan Hill Almond Grower 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.

75. Generally, a Grower will be carrying on a business of cultivating almond 'Trees' and harvesting the almonds for processing and sale, and hence primary production, if:

- the Grower has an identifiable interest in the land on which the Grower's 'Trees' are established;
- the Grower has a right to take and sell the almonds each year from those Trees;
- the almond orchard activities are carried out on the Grower's behalf;
- the almond orchard activities of the Grower are typical of those associated with an almond orchard business; and
- the weight and influence of general indicators point to the carrying on of a business.

76. In this Project, each Grower enters into an Allotment Management Agreement and an Allotment Sublease Agreement.

77. Under the Allotment Sublease Agreement each individual Grower will have rights over a specific and identifiable area of 0.125 hectares or more of land. The Allotment Sublease Agreement provides the Grower with an ongoing interest in the specific 'Trees' on the subleased area for the term of the Project. Under the Sublease the Grower must use the land in question for the purpose of carrying out almond orchard activities and for no other purpose. The Sublease allows AIL to come onto the land to carry out its obligations under the Allotment Management Agreement.

78. Under the Allotment Management Agreement AIL is engaged by the Grower to manage and maintain a 'Grower's Allotment' on the Grower's identifiable area of land during the term of the Project. AIL will subcontract the management services to the Manager, under the Orchard Management Agreement.

79. The Grower engages AIL to maintain the 'Trees' on the 'Grower's Allotment' according to the principles of sound horticulture practice which includes irrigation, fertilisation and weed control. AIL is also engaged to harvest and sell, on the Grower's behalf, the almonds grown on the 'Grower's Allotment'.

80. 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.

81. 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 their almonds 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.

82. The pooling of almonds grown on the 'Grower's Allotment' with the almonds of other Growers is consistent with general horticultural practices. Each Grower's proportionate share of the sale proceeds of the pooled almonds will reflect the proportion of the almonds contributed from their 'Grower's Allotment'.

83. AIL's services on the Grower's behalf are also consistent with general horticultural practices. The assets are of the type ordinarily used in carrying on a business of cultivating almond 'Trees' and harvesting the almonds for processing and sale. While the size of a 'Grower's Allotment' is relatively small, it is of a size and scale to allow it to be commercially viable (see Taxation Ruling IT 360).

84. The Grower's degree of control over AIL as evidenced by the Allotment Management Agreement, and supplemented by the *Corporations Act 2001*, is sufficient. During the term of the Project, AIL 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 AIL in certain instances, such as cases of default or neglect.

85. The horticultural activities, and hence the fees associated with their procurement, are consistent with an intention to commence regular activities that have an 'air of permanence' about them. For the purposes of this Ruling, the Growers' horticultural activities in the 2006 Swan Hill Almond Grower Project will constitute the carrying on of a business.

The Simplified Tax System

Division 328

86. Subdivision 328-F of the ITAA 1997 sets out the eligibility requirements that a Grower must satisfy in order to enter the STS and Subdivision 328-G of the ITAA 1997 sets out the rules for entering and leaving the STS.

87. 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 'Growing and Management Fees' and 'Land and Asset Rent'

Section 8-1

88. Consideration of whether the 'Growing and Management Fees' and 'Land and Asset Rent' are deductible under section 8-1 of the ITAA 1997 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.

89. The 'Growing and Management Fees' and 'Land and Asset Rent' associated with the horticultural activities will relate to the gaining of income from the Grower's business of horticulture (see above) after the relevant Agreements have been executed, and hence have a sufficient connection to the operations by which income (from the regular sale of almonds) is to be gained from this business. They will thus be deductible under the first limb of section 8-1 of the ITAA 1997. Further, no 'non-income producing' purpose in incurring the fee is identifiable from the scheme. The fee appears to be reasonable. There is no capital component of the 'Growing and Management Fees' and 'Land and Asset Rent'. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

Interest deductibility

Section 8-1

(i) Growers who use Momentum Finance as the finance provider

90. Some Growers may finance their participation in the Project through a loan facility with Momentum Finance. Whether the resulting interest costs are deductible under section 8-1 of the ITAA 1997 depends on the same reasoning as that applied to the deductibility of lease and management fees.

91. The interest incurred for the year ended 30 June 2006 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 almond trees and the lease of the land on which the almond 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 of the ITAA 1997.

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

92. The deductibility of interest incurred by Growers who finance their participation in the Project through a loan facility with a bank or financier other than Momentum Finance 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

93. 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

94. Under the Scheme to which this Product Ruling applies 'Growing and Management Fees' and 'Land and Asset Rent' are incurred annually and interest payable to Momentum Finance is incurred monthly in arrears. Accordingly, the prepayment provisions in sections 82KZME of the ITAA 1936 and 82KZMF of the ITAA 1936 have no application to this Scheme.

95. However, sections 82KZME of the ITAA 1936 and 82KZMF of the ITAA 1936 may have relevance if a 'Grower' in this Project prepays all or some of the expenditure payable under the Allotment Management Agreement and/or the Allotment Sublease Agreement or prepays interest under a loan agreement (including loan agreements with lenders other than Momentum Finance). 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.

96. 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.

Expenditure of a capital nature

Division 40 and Division 328

97. Any part of the expenditure if 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 of the ITAA 1997. In this Project, expenditure attributable to the water facility is of a capital nature. This expenditure falls for consideration under Division 40 or Division 328 of the ITAA 1997.

98. The application and extent to which a Grower claims deductions under Division 40 and Division 328 of the ITAA 1997 depends on whether or not the Grower is an 'STS taxpayer'.

99. The tax treatment of capital expenditure has been dealt with in a representative way in paragraphs 64 and 66 above in the Tables and accompanying notes.

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

Section 35-55 – exercise of Commissioner's discretion

100. In deciding to exercise the discretion in paragraph 35-55(1)(b) of the ITAA 1997 on a conditional basis for the income years **30 June 2006 to 30 June 2010** 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 2010:

- it is because of its nature the business activity of a Grower will not satisfy one of the four tests in Division 35 of the ITAA 1997;
- there is an objective expectation that within a period that is commercially viable for the almond industry, a Grower's business activity will satisfy one of the four tests set out in Division 35 of the ITAA 1997 or produce a taxation profit; and
- a Grower who would otherwise be required to defer a loss arising from their participation in the Project under subsection 35-10(2) of the ITAA 1997 until a later income year is able to offset that loss against their other assessable income.

101. The exercise of the Commissioner's discretion under paragraph 35-55(1)(b) of the ITAA 1997 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 of the ITAA 1997 to those changed circumstances.

Section 82KL – recouped expenditure

102. The operation of section 82KL of the ITAA 1936 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 of the ITAA 1997.

Part IVA – general tax avoidance provisions

103. For Part IVA of the ITAA 1936 to apply there must be a 'scheme' (section 177A of the ITAA 1936), a 'tax benefit' (section 177C of the ITAA 1936) and a dominant purpose of entering into the scheme to obtain a tax benefit (section 177D of the ITAA 1936).

104. The 2006 Swan Hill Almond Grower 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 63 to 66 that would not have been obtained but for the scheme. However, it is not possible to conclude the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

105. 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 almonds. 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) of the ITAA 1936 it cannot be concluded, on the information available, that participants will enter into the scheme for the dominant purpose of obtaining a tax benefit.

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TD 93/34; TR 92/20; TR 97/11;
TR 98/22; TR 2000/8;
TR 2001/14; IT 360

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
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters
- tax shelters project
- taxation administration

Legislative references:

- 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
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- ITAA 1936 Pt III Div 6
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- ITAA 1936 177A
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- ITAA 1936 177D
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- ITAA 1997 Subdiv 328-D
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
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