



# ***PR 2006/31 - Income tax: Rewards Group Tropical Fruits Project 2006***

 This cover sheet is provided for information only. It does not form part of *PR 2006/31 - Income tax: Rewards Group Tropical Fruits Project 2006*

 This document has changed over time. This is a consolidated version of the ruling which was published on *29 March 2006*



## Product Ruling

### Income tax: Rewards Group Tropical Fruits Project 2006

Contents	Para
<b>BINDING SECTION:</b>	
What this Ruling is about	1
Date of effect	12
Withdrawal	14
Scheme	15
Ruling	56
<b>NON BINDING SECTION:</b>	
Appendix 1:	
Explanation	74
Appendix 2:	
Detailed contents list	116

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

This publication (excluding appendixes) 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 relevant 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 underpaid 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 sometimes referred to as the Rewards Group Tropical Fruits Project 2006 or simply as 'the Project'.

### Relevant taxation provision(s)

2. The tax provisions 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;
- Division 328 of the *Income Tax (Transitional Provisions) Act 1997*;
- section 82KL of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 82KZME of the ITAA 1936;
- section 82KZMF of the ITAA 1936; and
- Part IVA of the ITAA 1936.

All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

### Goods and services tax

3. In this Ruling, all fees and expenditure referred to include 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 entities**

7. The class of entities to whom this Ruling applies are the entities who are more specifically identified in the Ruling part of this Product Ruling – refer to paragraphs 56 to 58, and who 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. In this Ruling these entities are referred to as ‘Growers’.

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

- who intend to terminate their involvement in the scheme prior to Project’s completion or do not intend to derive assessable income from the Project; or
- enter into finance arrangements with the Responsible Entity, or entities associated with the Responsible Entity other than those stated at paragraphs 46 to 54.

**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 55.

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

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12. This Ruling applies prospectively from 29 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 that private ruling if the income year to which it 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

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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, who entered into the specified scheme prior to withdrawal of the Ruling. This is subject to there being no change in the scheme or in the entity's involvement in the scheme.

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## Scheme

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

- Application for Product Ruling as constituted by documents received on 4 November 2005, 11 November 2005, 16 November 2005, 13 December 2005, 9 January 2006, 10 January 2006, 2 February 2006, 6 February 2006, 23 February 2006, 24 February 2006, 28 February 2006, 1 March 2006 and 17 March 2006 plus additional correspondence dated 11 November 2005, 16 November 2005, 13 December 2005, 4 January 2006, 9 January 2006, 10 January 2006, 2 February 2006, 6 February 2006, 23 February 2006, 24 February 2006, 28 February 2006, 1 March 2006, 2 March 2006, 9 March 2006, 10 March 2006, 14 March 2006 and 17 March 2006;
- Draft Product Disclosure Statement for the Rewards Group Tropical Fruits Project 2006, received 17 March 2006;
- Draft Constitution of the Rewards Group Tropical Fruits Project 2006 between Rewards Projects Limited ('Responsible Entity') and the Grower, received 17 March 2006;
- Draft **Management Agreement** for the Rewards Group Tropical Fruits Project 2006 between the Responsible Entity and the Grower, received 17 March 2006;
- Draft Head Lease for the Rewards Group Tropical Fruits Project 2006 between the Owner and the Responsible Entity, received on 4 November 2005;
- Draft **Sub-Lease** for the Rewards Group Tropical Fruits Project 2006 between the Responsible Entity (as 'Sub-Lessor') and the Grower, received 28 February 2006;
- Draft Rewards Group Tropical Fruits Project 2006 **12 Month Terms Agreement**, received 23 February 2006;
- Draft Rewards Group Tropical Fruits Project 2006 **Finance Application Form**, received 1 March 2006;

- Draft Compliance Plan for the Rewards Group Tropical Fruits Project 2006, received 4 November 2005;
- Draft Indicative Compliance Plan for the Rewards Group Tropical Fruits Project 2006, received 4 November 2005;
- Tropical Fruits 2006 Management Plan Kununurra, dated October 2005;
- Tropical Fruits 2006 Management Plan Dandaragan, dated October 2005;
- Tropical Fruits 2006 Management Plan Springmount and Robinson Road Property, dated November 2005;
- Draft Operations Agreement for the Rewards Group Tropical Fruits Project 2006 between the Responsible Entity and Rewards Management Proprietary Limited (as 'Manager'), received 28 February 2006;
- Independent Experts Report dated 2 February 2006;
- Draft Heads of Agreement Fruit Marketing Services, received 2 February 2006;
- Draft Australian Mango, Red Flesh Grapefruit and Stone Fruit: Independent Market Report, dated 20 January 2006; and
- Draft Application Guide for the Rewards Group Tropical Fruits Project 2006, received 2 February 2006.

**Note:** Certain information has been provided by the applicant on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information legislation.

16. The documents highlighted are those that the Growers enter into or become a party to. 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 part of the scheme to which this Ruling applies. All Australian Securities and Investments Commission ('ASIC') requirements are, or will be, complied with for the term of the agreements. The effect of these agreements is summarised as follows.

**Overview**

17. This scheme is called the Rewards Group Tropical Fruits Project 2006.

Location	Near Dandaragan and Kununurra in Western Australia and Mareeba in Queensland
Type of business each participant will be carrying on	Commercial growing and cultivation of fruit trees for producing Mango, Stone Fruit and Grapefruit
Number of hectares offered for cultivation	200 hectares
Size of each Grove	0.05 hectares
Minimum allocation per Grower	4 Groves
Minimum subscription	350 Groves
The term of the Project	20 years
Initial minimum cost	\$22,000
Initial cost per hectare	\$110,000
Ongoing costs	Management Services fees, Rent, planting fee, trellis and wind break fee, Harvest costs, costs of sale, marketing fee and optional insurance

18. The Project will be a registered Managed Investment Scheme under the *Corporations Act 2001* and has an Australian Financial Services Licence (number 221000). Rewards Projects Limited will act as the Responsible Entity for the Project. Offers for interests in the Project will be made under a Product Disclosure Statement ('PDS') on or before 31 May 2006. Under the PDS, the Responsible Entity will offer 4,000 interests of 0.05 hectares in size. The Term of the Project is a minimum of 20 years.

19. The Project involves the planting and cultivating of new Mango, Stone Fruit and Grapefruit trees as well as the cultivating of established Mango and Stone Fruit trees. The produce from the trees will be harvested and sold by the Responsible Entity on behalf of the Growers in the Project.

20. When a Grower is accepted into the Project, the Responsible Entity will enter into a Sub-Lease Agreement and a Management Agreement on behalf of the Grower. Under the Sub-Lease, the Grower will lease an identifiable area of land called a 'Grove'. This will enable the Grower to carry on the business of a fruit orchard for the commercial production of Mango, Stone Fruit and Grapefruit.



21. Under the Management Agreement, Growers will engage the Responsible Entity to establish and manage their Grove. This includes supplying and planting the trees, installing trellising and providing the ongoing maintenance of the trees.
22. Sufficient water is available for all plantations. Irrigation water from the Mareeba-Dimbulah Irrigation Area will be used to irrigate the established Mango Orchard near Mareeba. Water from the Leederville Parmelia aquifer will be used for the Mango and Stone Fruit plantations near Dandaragan. Water for the Grapefruit plantation will be sourced from the Ord River irrigation system.
23. The Project will not commence if the minimum subscription of 350 Groves has not been reached by 31 May 2006. Each Grower must subscribe for a minimum of four Groves at a cost of \$5,500 per Grove.
24. Upon application, Growers will execute a Power of Attorney enabling the Responsible Entity to act on their behalf. This will include the execution of the Sub-lease and Management Agreements.

## **Constitution**

25. The Constitution for the Project sets out the terms and conditions under which the Responsible Entity agrees to act for the Growers in the Project. Growers are bound by the Constitution by virtue of their participation in the Project.
26. Under the terms of the Constitution, the Responsible Entity must deposit all application moneys received from Growers into a trust account established for this purpose. This account is referred to as a Subscription Fund. The application moneys will be released from this fund when the Responsible Entity is satisfied that certain specified criteria in the Constitution have been met (clauses 3.3 and 3.8 of the Constitution).
27. The proceeds from the sale of the fruit will be paid into a Proceeds Fund established by the Responsible Entity. The Responsible Entity will deduct the Grower's share of harvest and sale costs and any other outstanding Project fees and amounts owing by the Grower before distributing the balance to the Grower (clause 11 of the Constitution).
28. In the event that a Grower's Grove(s) are destroyed or partially destroyed, the Grower's proceeds of the sale from the fruit will be reduced in accordance with the terms of clause 18.

## **Compliance Plan**

29. As required by the Corporations Act, a Compliance Plan has been prepared by the Responsible Entity. Its purpose is to ensure that Rewards Projects Limited meets its obligations as the Responsible Entity of the Project and that the rights of the Growers are protected.

**Lease and Sub-Lease**

30. The Responsible Entity has leased Project land from the Owner under the Head Lease. The land is located in three sites. One site is near the township of Dandaragan and one near Kununurra in Western Australia. The other site is near Mareeba in Queensland. The Responsible Entity as Sub-Lessor, sub-leases the 0.05 hectare portions of this land ('Groves') to the Growers by entering into Sub-Lease agreements for the purpose of growing and harvesting their Mango, Stone Fruit and Grapefruit trees.

31. Under the terms of the Sub-Lease, the Sub-Lessor will give the Grower quiet possession of the Groves, use its best endeavours to secure rights to water for irrigation and pay all rates, taxes and other charges in respect of the land (clause 5 of the Sub-Lease).

32. Growers are entitled to the fruit derived from the trees on their Groves (clause 2.2 of the Sub-Lease).

**Management Agreement**

33. Growers will enter into a Management Agreement with the Responsible Entity to plant, develop, manage and maintain their Groves and to harvest and market the fruit from their trees until completion of the Project. The Responsible Entity will enter into the Operations Agreement to appoint Rewards Management Pty Limited (the 'Manager') to carry out its obligations to the Grower under the Management Agreement.

34. The Management Services that will be provided from the date of the Management Agreement to 30 June 2006, include:

- laser-level the land for landcare operations or drainage and install soil erosion preventative measures;
- arrange for prospective Australian fruit agents and buyers to inspect the project;
- negotiate marketing and sales agreements with Australian fruit agents and purchasers;
- prepare and execute marketing and sales agreements with Australian fruit agents and purchasers;
- ensure Orchards are being managed in accordance with Australian fruit agents and purchasers requirements;
- provide strategic fruit marketing services for the Project;
- administration; and
- on the established orchards, undertake works such as, pruning, fertilising, pest control, nutrient analysis, repair roads and service machinery (clause 2.2 and Annexure A of the Management Agreement).

35. The Planting Services that will be provided from the date of the Management Agreement to 30 June 2006 are:

- supply suitable Mango, Stone Fruit and Grapefruit trees;
- prepare the Land for planting; and
- install trellis on the New Stone Fruit Orchard (clause 2.3 and Annexure B of the Management Agreement).

36. The Planting Services that will be provided after 30 June 2006 are:

- plant the Stone Fruit and Grapefruit trees by 30 September 2006; and
- plant the Mango trees and erect wind breaks around the Mango trees by 31 December 2006 (clause 2.3 and Annexure B of the Management Agreement).

37. The services that will be provided throughout the Project's Term include:

- provide an experienced and competent management team to perform the services under the Management Agreement;
- tend to the Orchard according to principles of good agriculture, including nutrient analysis, pruning, irrigating, fertilising and fumigating;
- in the five years following planting, conduct survival counts and where necessary replant trees;
- ensure that all roads, fences tracks and firebreaks in and about the Orchard are in good repair;
- ensure control on the Orchard of rabbits, rodents and other vermin;
- undertake periodic site inspections;
- provide periodic reports to the Growers; and
- administration in respect of the above services (clause 2.2 and Annexure A of the Management Agreement).

## ***Harvesting and Sale***

38. A Grower will appoint the Responsible Entity to arrange for each Harvest to take place as and when deemed appropriate with the aim of producing the best overall result for the Grower (clause 6 of Management Agreement). The Grower will appoint the Responsible Entity to negotiate the sale of the harvested fruit and the Responsible Entity will use its best endeavours to negotiate the sale of fruit for the highest price practicable (clause 7 of the Management Agreement).

**Fees**

39. The subscription fee payable to the Responsible Entity on application is \$5,500 **per Grove**. This fee consists of:

- **Management Services Fee** of \$5,150 for services to be performed from the Commencement Date to 30 June 2006, this fee includes \$330 for Landcare Services (item 2 of the Schedule to the Management Agreement);
- **Rent** of \$11 for the period from the Sub-Lease Commencement Date to 30 June 2006 (item 4 of the Schedule to the Sub-Lease);
- **Planting fee** of \$223 to supply trees and prepare the land by 30 June 2006 (item 4 of the Schedule to the Management Agreement); and
- **Trellis and wind break fee** of \$116. Of this fee \$30 relates to the supply and installation of trellis on the New Stone Fruit Orchard by 30 June 2006 and \$86 relates to the supply and installation of wind breaks on the New Mango Orchard before 31 December 2006 (item 3 of the Schedule to the Management Agreement).

40. The ongoing fees **per Grove** are:

Annual **Management Services Fees** of:

- \$583 for services to be performed from 1 July 2006 to 30 June 2007, payable on or before 1 October 2006;
- \$526 for services to be performed from 1 July 2007 to 30 June 2008, payable on or before 1 October 2007;
- \$315 for services to be performed from 1 July 2008 to 30 June 2009, payable on or before 1 October 2008; and
- \$315, indexed at 2.8% per annum, for each financial year commencing from 1 July 2009, payable on or before 1 October of the relevant year, until the end of the Project (Item 2 of the Schedule to the Management Agreement).

Annual **Rent per Grove** of:

- \$154 for the period 1 July 2006 to 30 June 2007, payable on or before 1 October 2006;
- \$158 for the period 1 July 2007 to 30 June 2008, payable on or before 1 October 2007;
- \$163 for the period 1 July 2008 to 30 June 2009, payable on or before 1 October 2008; and

- \$163, indexed at 2.8% per annum, for each financial year commencing from 1 July 2009, payable on or before 1 October of the relevant year, until the end of the Project (Item 4 of the Schedule to the Sub-Lease).

**Planting Fee per Grove of:**

- \$33 for the period from 1 July 2006 to 31 October 2006, payable on or before 1 October 2006 (item 4 of the Schedule to the Management Agreement).

**Other Fees per Grove:**

- **Harvest costs** , being the Grower's share of all costs of and incidental to the harvest, payable out of the Grower's share of the proceeds of sale of the relevant harvest (clause 6.2 of Management Agreement and clause 11.1 of the Constitution);
- **Costs of sale** , being the Grower's Share of all costs incidental to the sale of the fruit harvested, payable out of the Grower's share of the proceeds of sale of the relevant harvest (clause 7.4 of Management Agreement and clause 11.1 of the Constitution);
- **Marketing fee** equal to 16.5% of the Grower's share of the net sale proceeds of each harvest after deducting the Harvest costs and the costs of sale (Item 5 of the Schedule to Management Agreement); and
- **Optional tree insurance costs** for the period after 30 June 2007. The Responsible Entity will be responsible for the cost of public risk insurance for the Term of the Project and will pay for tree insurance from the date of the Management Agreement to 30 June 2007 (page 6 of the PDS).

***Joint venture***

41. The Project will allow two Growers to enter into a joint venture. The Joint Venturers are referred to as the 'First Joint Venturer' and the 'Second Joint Venturer'. They will be bound by the rules set out at clause 20 of the Constitution.

42. Under this joint venture:

- the First Joint Venturer will pay the subscription fee of \$5,500 per Grove that includes the initial fees for Management Services, Rent and planting and the trellis and wind break fee;
- the Second Joint Venturer will pay the annual Management Services Fees, annual Rent, any insurance costs and the second period planting fee; and

- both Joint Venturers will pay on a 50:50 basis the Harvest costs, costs of sale, Marketing Fee and any other amounts that are due to the Responsible Entity pursuant to the terms of the Constitution, Sub-Lease or Management Agreement.

43. The Joint Venturers are each entitled to a 50% share of the proceeds of selling the Fruit.

### **Finance**

44. Growers can fund their investment in the Project themselves, enter into a Terms Payment Option or borrow from a Nominated Financier. Alternatively, Growers may borrow from an independent lender.

45. This Product Ruling will not apply to Growers who enter into finance arrangements with the Nominated Financier, with terms and conditions that differ in any way from those set out in paragraphs 50 to 54.

### ***Terms Payment Option***

46. Under the Product Disclosure Statement, the Grower can pay the subscription fee of \$5,500 per Grove by the Terms Payment Option, involving a deposit of \$550 and 12 monthly repayments of \$418.33.

47. The total amount payable under the Terms Payment Option includes a terms administration fee of \$50 per Grove and any applicable stamp duty.

48. A Grower choosing to pay under the Terms Payment Option must complete a Terms Application Form and the Guarantee and Indemnity attached to the PDS. A Terms Agreement will be executed by the Responsible Entity.

49. The monthly instalments are paid commencing on the last business day of June following allotment. If a Grower does not pay the required instalments under the Terms Payment Option, then provided the Responsible Entity has given the Grower 14 days written notice to remedy the default and payment has still not been made, the balance owing under the Terms Payment Option will become immediately due and payable. In addition, the Responsible Entity may take legal proceedings to recover the amount, resume all rights and interest which the Grower has in their Grove(s), or do anything which an owner of the Grove(s) is entitled to do (clause 6.2 of the Terms Agreement).

### ***Finance offered by the Nominated Financier***

50. Growers can apply to borrow the subscription fee of \$5,500 per Grove from the Nominated Financier, by completing the Finance Application Form.

51. Growers who enter into the finance arrangement are required to pay a deposit of 10% of the subscription fee. The balance after the 10% deposit is repayable together with interest, under one of the following options:

- 2 years principal & interest loan – 24 monthly repayments;
- 5 years principal & interest loan – 60 monthly repayments;
- 10 years principal & interest loan – 120 monthly repayments; and
- 3 years interest only and then 7 years principal & interest loan – 36 interest only monthly repayments followed by 84 monthly repayments.

52. The interest rate is fixed at 10.95% and the repayments are due monthly over the term of the loan commencing on 30 June 2006.

53. In addition, an Application Fee of 1% of the loan amount is payable to the Lender on 30 June 2006, subject to, a minimum Application Fee of \$100 and Maximum Application fee of \$500.

54. The loan will be secured by first ranking charge over the Grower's right, title and interest in the Project Groves and the Project documents. The loan is on a full recourse basis and recovery action will be taken in respect of any default.

55. 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 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, other than under the Terms Payment Option offered by the Responsible Entity and the finance offered by the Nominated Financier described in paragraphs 46 to 54.

## **Ruling**

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### **Application of this Ruling**

56. This Ruling applies only to Growers who are accepted to participate in the Project on or before 31 May 2006 and who have executed a Management Agreement and a Sub-Lease Agreement on or before that date.

57. A 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.

58. This Ruling does not apply to Growers who:

- are accepted to participate in the Project before the date the Ruling is made;
- are accepted to participate in the Project after 31 May 2006;
- enter into finance arrangements with entities associated with this Project, other than those specified in paragraphs 46 to 54;
- have their application conditionally accepted by the Responsible Entity subject to finance for the payment of the subscription fee, where the finance has not been approved by the lender by 31 May 2006 and the funds have not been made available to the Responsible Entity by 30 June 2006; or
- intend to terminate their involvement in the scheme prior to Project's completion, or who do not intend to derive assessable income from the Project.

### **Minimum subscription**

59. 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 350 interests is achieved.



## **The Simplified Tax System (STS)**

### ***Division 328***

60. To be an 'STS taxpayer' a Grower must be eligible to be an 'STS taxpayer and must have elected to be an STS taxpayer (Division 328 of the ITAA 1997). 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 sections 328-120 and 328-125 of the *Income Tax (Transitional Provisions) Act 1997*.

61. 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***

62. For the first income year starting on or after 1 July 2005, Subdivision 61-J 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**

### ***Sections 6-5 and 328-105***

63. That part of the Gross 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.

64. The Grower recognises ordinary income from carrying on the business of horticulture at the time that income is derived.

**Deductions for Management Services Fees, Rent, Interest and Borrowing Expenses****Sections 8-1 and 25-25**

65. A Grower may claim tax deductions for the following revenue expenses on a **per Grove** basis:

<b>Fee Type</b>	<b>ITAA 1997 Section</b>	<b>Year 1 Year Ending 30 June 2006</b>	<b>Year 2 Year Ending 30 June 2007</b>	<b>Year 3 Year Ending 30 June 2008</b>
<b>Management Services Fee</b>	8-1	\$4,820 See Notes (i) & (ii)	\$583 See Notes (i), (ii) & (iii)	\$526 See Notes (i), (ii) & (iii)
<b>Rent</b>	8-1	\$11 See Notes (i) & (ii)	\$154 See Notes (i), (ii) & (iii)	\$158 See Notes (i), (ii) & (iii)
<b>Interest</b>	8-1	As incurred See Note (iv)	As incurred See Note (iv)	As incurred See Note (iv)
<b>Borrowing Expenses</b>	25-25	See Note (v)	See Note (v)	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.
- (ii) The Management Services Fee and Rent are deductible to the extent shown in the Table above under section 8-1 in the income year that they are incurred.

In Year 1 a Management Services Fee of \$5,150 is payable, however, only \$4,820 is deductible under section 8-1, as per the Table Above. The remaining amount of \$330 is for Landcare Services and its deductibility is considered at paragraph 67 and Note (viii).

- (iii) If a Grower **chooses** to prepay fees for the doing of a thing (for example the provision of management services or the leasing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA 1936 may apply to apportion those fees (see paragraphs 94 to 101). In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 96 unless the expenditure is 'excluded expenditure'. Excluded expenditure is an 'exception' to the prepayment rules and is deductible in full in the year in which it is incurred. For the purpose of this Ruling excluded expenditure refers to an amount of expenditure of less than \$1,000.
- (iv) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than the Nominated Financier, described in paragraphs 50 to 54, is outside the scope of this Ruling. However all Growers, including those who finance their participation in the Project other than with the Nominated Financier, should read the discussion of the prepayment rules in paragraphs 94 to 101 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.
- (v) The Application Fee of 1% charged by the Nominated Financier is a borrowing cost and is deductible under section 25-25. It is incurred for borrowing funds that are used or are to be used during that income year solely for income producing purposes. The deduction is spread over the period of the loan or 5 years, whichever is the shorter. The deductibility or otherwise of borrowing costs arising from loan agreements entered into with financiers other than the Nominated Financier is outside the scope of this Ruling.

#### *Joint Venture Growers*

66. A Joint Venture Grower may claim the following deductions per Grove as described in the Table and accompanying notes:

- for the First Joint Venturer the Year 1 Management Services Fee and Year 1 Rent and if applicable the borrowing expenses and interest; and
- for the Second Joint Venturer the Management Services Fee and Rent for Year 2 and onwards.

**Deductions for capital expenditure*****Division 40 and Subdivision 328-D***

67. Growers will also be entitled to tax deductions relating to trellising, wind-breaks, Landcare Services and the establishment of horticultural plants (for example fruit trees). The deductions are shown in the following Table and accompanying notes:

<b>Fee type</b>	<b>ITAA 1997 Section</b>	<b>Year 1 Year Ended 30 June 2006</b>	<b>Year 2 Year Ended 30 June 2007</b>	<b>Year 3 Year Ended 30 June 2008</b>
<b>Trellising</b>	40-25, 328-185 & 328-190	Amount must be calculated  See Notes (i), (vi) & (vii)	Amount must be calculated  See Notes (i), (vi) & (vii)	Amount must be calculated  See Notes (i), (vi) & (vii)
<b>Wind-breaks</b>	40-25, 328-185 & 328-190	Nil	Amount must be calculated  See Notes (i), (vi) & (vii)	Amount must be calculated  See Notes (i), (vi) & (vii)
<b>Landcare Services</b>	40-630	\$330  See Notes (i) & (viii)	Nil	Nil
<b>Establishment of horticultural plants (fruit trees)</b>	40-515	Nil	Nil	Must be calculated  See Notes (i) & (ix)

**Notes:**

- (vi) For **non-STs taxpayers** a Grower's interest in the trellising and wind breaks is an interest in two separate depreciating assets. The 'cost' of each asset is the amount paid by the Grower. The decline in value of each asset is calculated using the formula in either subsection 40-70(1) ('diminishing value method') or subsection 40-75(1) ('prime cost method'). Both formulas rely on the 'effective life' of the assets.

Growers can either self-assess the effective life (section 40-105) or if available, use the Commissioner's determination of effective life (section 40-100). The Commissioner has determined that trellising has an effective life of 20 years, however, has not determined the effective life of wind breaks. The trellising will be installed and first used during the year ended 30 June 2006 and the wind breaks will be installed and first used during the year ended 30 June 2007.

For a Grower who purchases less than 34 Groves in this Project, their interest in the trellising will be a 'low cost asset'. For a Grower who purchases less than 12 Groves in this Project, their interest in the wind breaks will be a low cost asset. A low cost asset is an asset costing less than \$1,000 and as such can be allocated to a 'low-value pool'. Once any low-cost asset of a Grower is allocated to a low-value pool, all other low-cost assets the Grower starts to hold in that year or a later year must be allocated to that pool. If the Grower has already allocated an asset to a low-value pool, the trellising and/or wind breaks, if low cost assets, would also have to be allocated to that pool. Otherwise, the Grower must decide whether to create a low-value pool.

If an asset is allocated to a low-value pool, the capital expenditure on the asset will be deducted under the diminishing value methodology of the pool based on a rate of 18.75% in the year the asset is first used and a rate of 37.5% in subsequent years (section 40-440). If the asset is not allocated to a low-value pool, they can be written off based on the effective life of the asset.

- (vii) For **STS taxpayers** a deduction equal to the amount of the Grower's expenditure for the trellising and wind breaks is available in the income year in which they are used or 'installed ready for use'. This is 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 and the asset is a 'low cost asset'.

Where a Grower acquires more than 33 interests, the Grower's interest in the trellising may not be a low cost asset. Similarly, the Grower's interest in the wind breaks may not be a low cost asset if a Grower acquires more than 11 interests. A low cost asset, being an asset costing less than \$1,000. An asset that is not a low cost asset can be allocated to a 'general STS pool'.

Where the trellising is allocated to a general STS pool the tax deduction allowable is determined in the year ended 30 June 2006 by multiplying the cost of the interest by half the 'general STS pool rate', that is, by 15%. Where the wind breaks are allocated to a general STS pool the tax deduction allowable is determined in the year ended 30 June 2007, by again multiplying the rate of 15%.

The part of the cost of the trellising not deducted in the year ended 30 June 2006 is added to the pool balance and in subsequent years, the full pool rate of 30% will apply. The part of the cost of the wind breaks not deducted in the year ended 30 June 2007 will also be added to the pool balance after this date with the full pool rate of 30% applying in subsequent years.

- (viii) Any capital expenditure incurred for a 'landcare operation' (as defined in section 40-635) is fully deductible in the year it is incurred under section 40-630.
- (ix) Fruit trees are a 'horticultural plant' as defined in subsection 40-525(2). As Growers hold the land under a Sub-Lease, 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 for the fruit trees is determined using the formula in section 40-545. For the new trees planted on a Grower's Grove, the deduction is based on the capital expenditure incurred by the Grower that is attributable to their establishment.

If the fruit trees have an effective life of greater than 13 but fewer than 30 years 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 fruit trees enter their first commercial season (section 40-530, item 2). The Responsible Entity will inform Growers of when the fruit trees enter their first commercial season.

#### *Joint Venture Growers*

68. The First Joint Venturer may claim the deductions for capital expenditure as listed in the Table above, being, trellising, wind-breaks, Landcare Services. In addition, the First Joint Venturer is entitled to deductions for the initial planting fee of \$223 in accordance with the conditions given in the Table above, for 'establishment of horticultural plants (fruit trees)'.

69. The Second Joint Venturer is entitled to deductions for the planting fee of \$33 in accordance with the conditions given in the Table above, for 'establishment of horticultural plants (fruit trees)'.

#### **Credit Card Merchant Fee**

70. Growers who use their credit card to pay the fees for this Project will incur a merchant fee for the use of their credit card. This fee will be deductible under section 8-1.

## **Terms Administration Fee**

71. Growers who elect to pay the Initial Fee under the Terms Payment Option must pay a Terms Administration Fee of \$50. This amount is **not** deductible under section 8-1.

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

### ***Section 35-55 – exercise of Commissioner’s discretion***

72. A Grower who is an individual and is accepted into the Project during the year ended 30 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 **30 June 2006 to 30 June 2010**. This conditional exercise of the discretion will allow those losses to be offset against the Grower’s other assessable income in the income year in which the losses arise.

## **Section 82KL and Part IVA**

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

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

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**Commissioner of Taxation**

29 March 2006

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## 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?**

74. For the amounts set out in the Tables above to constitute allowable deductions, the Grower's horticultural activities as a participant in the Rewards Group Tropical Fruits Project 2006 must amount to the carrying on of a business of primary production. These horticultural activities will fall within the definitions of 'horticulture' and 'commercial horticulture' in section 40-535.

75. For schemes such as that of the 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 *FCT v. Lau* (1984) 6 FCR 202; 84 ATC 4929, (1984) 16 ATR 932.

76. 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 holds rights over the land (under a licence) on which the Grower's fruit trees are established;
- the Grower has a right to harvest and sell the fruit each year from those fruit trees;
- the horticulture activities are carried out on the Grower's behalf;
- the horticulture 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.

77. In this Project, each Grower enters into a Sub-Lease and a Management Agreement.

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



79. Under the Management Agreement the Responsible Entity is engaged by the Grower to maintain the fruit trees on the Grower's Groves during the term of the Project. The Responsible Entity will subcontract the management services to the Manager, under the Operations Agreement. The Manager has provided evidence that it holds the appropriate professional skills and credentials to provide the management services to maintain the Groves on the Grower's behalf.

80. The Grower engages the Responsible Entity to maintain the fruit trees on the Groves according to the principles of sound horticulture practice, which includes irrigation, fertilisation, weed control and pruning. The Responsible Entity is also engaged to harvest and sell, on the Grower's behalf, the fruit grown on the Grower's Groves.

81. 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.

82. The activities that will be regularly carried out during the term of the Project demonstrate a significant commercial purpose. Based on reasonable forecasts, a Grower in the Project may derive assessable income from the sale of its fruit that may 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.

83. The pooling of fruit grown on the Grower's Groves with the fruit of other Growers is consistent with general horticulture practices. Each Grower's proportionate share of the sale proceeds of the pooled fruit will reflect the proportion of the fruit contributed from their Grove.

84. The Responsible Entity's and Manager's services are consistent with general horticulture practices. While the size of a Grove is relatively small, it is of a size and scale to allow it to be commercially viable.

85. 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 Groves 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.

86. 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 Growers' horticulture activities in the Rewards Group Tropical Fruits Project 2006 will constitute the carrying on of a business.

**The Simplified Tax System*****Division 328***

87. 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.

88. 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 Services Fees and Rent*****Section 8-1***

89. Consideration of whether the initial Management Services Fees and Rent are deductible under section 8-1 begins with the first limb of the section. This view proceeds on the following basis:

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

90. The Management Services Fees and Rent associated with the horticulture activities will relate to the gaining of income from the Grower's business of horticulture, and hence have a sufficient connection to the operations by which income (from the regular sale of fruit) 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 scheme. The fee appears to be reasonable. Other than the Landcare Services expenditure, there is no capital component of the Management Services Fee and 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 enter into a finance arrangement offered by the Nominated Financier*

91. Some Growers may finance their participation in the Project through the Nominated Financier described in paragraphs 50 to 54. Whether the resulting interest costs are deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of the fees under the Sub-Lease and Management Agreement.

92. The interest incurred in the year ending 30 June 2006 and in subsequent years of income will be in respect of financing the Grower's business operations – the commercial growing and cultivation of fruit trees – that will continue to be directly connected with the gaining of 'business income' from the Project. Such interest will, therefore, have a sufficient connection with the gaining of assessable income to be deductible under section 8-1.

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

93. The deductibility of interest incurred by Growers who finance their participation in the Project through a finance facility with a bank or financier other than Nominated Financier 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**

94. 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.

95. There are a number of exceptions to these rules, but for Growers participating in this Project, only the 'excluded expenditure' exception in subsection 82KZME(7) of the ITAA 1936 is relevant. 'Excluded expenditure' is defined in subsection 82KZL(1) of the ITAA 1936. However, for the purposes of Growers in this Project, excluded expenditure is prepaid expenditure incurred under the scheme that is less than \$1,000. Such expenditure is immediately deductible.

96. Where the requirements of section 82KZME of the ITAA 1936 are met, section 82KZMF of the ITAA 1936 applies to apportion relevant prepaid expenditure. Section 82KZMF uses the formula below, to apportion prepaid expenditure and allow a deduction over the period that the benefits are provided.

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

97. In the formula 'eligible service period' (defined in subsection 82KZL(1) of the ITAA 1936) means, the period during which the thing under the agreement is to be done. The eligible service period begins on the day on which the thing under the agreement commences to be done or on the day on which the expenditure is incurred, whichever is the later, and ends on the last day on which the thing under the agreement ceases to be done, up to a maximum of 10 years.

#### ***Application of the prepayment provisions to this Project***

98. Under the scheme to which this Product Ruling applies, the Management Services Fees, Rent and interest are incurred in the same income year that the services for these costs are provided. Accordingly, the prepayment provisions in sections 82KZME and 82KZMF of the ITAA 1936 have no application to this scheme.

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

99. Although not required under either the Management Agreement or the Sub-Lease, a Grower participating in the Project may choose to prepay fees for a period beyond the 'expenditure year'. Similarly, Growers who use financiers may either choose, or be required to prepay interest. Where this occurs, contrary to the conclusion reached in paragraph 98, section 82KZMF of the ITAA 1936 will apply to apportion the expenditure and allow a deduction over the period in which the prepaid benefits are provided.

100. For these Growers, the amount and timing of deductions for any relevant prepaid Management Services Fees, prepaid Rent, or prepaid interest will depend upon when the respective amounts are incurred and what the eligible service period is in relation to these amounts.

101. However, as noted above, prepaid fees of less than \$1,000 incurred in an expenditure year will be excluded expenditure and will be not subject to apportionment under section 82KZMF of the ITAA 1936.

## **Expenditure of a capital nature**

102. 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 trellising, wind breaks, Landcare Services and the establishment of the Fruit trees is of a capital nature. This expenditure falls for consideration under Division 40 or Division 328.

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

104. The tax treatment of capital expenditure has been dealt with in a representative way in paragraph 67 in the Table and accompanying notes.

## **Nominated Financier Application Fee**

### ***Section 25-25***

105. Some Growers may finance their participation in the Project through the Nominated Financier, described in paragraphs 50 to 54. In doing so, they will incur an Application Fee of 1% of the loan amount (subject to, a minimum Application Fee of \$100 and Maximum Application fee of \$500). This fee is a borrowing cost and is deductible under section 25-25. It is incurred for borrowing funds that are used or are to be used during that income year solely for income producing purposes. The deduction is spread over the period of the loan or 5 years, whichever is the shorter. The deductibility or otherwise of borrowing costs arising from loan agreements entered into with financiers other than the Nominated Financier is outside the scope of this Ruling.

## **Terms Administration Fee**

### ***Section 8-1***

106. Some Growers may finance their participation in the Project through a Terms Payment Option with the Responsible Entity. In doing so, they will incur a terms administration fee. Whether the resulting fee is deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of the initial fees.

107. One of the exclusions under section 8-1 relates to expenditure that is capital or capital in nature. 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, the terms administration fee is capital in nature. It is not deductible under section 8-1 or any other section of the Act.

**Credit Card Merchant Fee**

108. Some Growers in this Project may choose to pay all or part of their fees for the Project by credit card. In doing so, they will incur a merchant fee charge. Whether the resulting fee is deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of the initial fees.

109. The merchant fee has been incurred in the gaining or producing of the Growers assessable income from the Project. It is not capital in nature and will be deductible on the same basis that the fees are deductible.

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

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

111. 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**

112. The operation of section 82KL of the ITAA 1936 depends, among other things, on the identification of a certain quantum of ‘additional benefit(s)’. Insufficient ‘additional benefits’ will be provided to trigger the application of section 82KL. It will not apply to deny the deduction otherwise allowable under section 8-1.

## **Part IVA – general tax avoidance provisions**

113. For Part IVA of the ITAA 1936 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).

114. The Rewards Group Tropical Fruits Project 2006 will be a scheme commencing with the issue of the Product Disclosure Statement. A Grower will obtain a tax benefit from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 65 to 69 that would not have been obtained but for the scheme. However, it is not possible to conclude that the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

115. 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 their fruit. 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 are no non-recourse financing or round robin characteristics, and no indication that the parties are not dealing with each other at arm's length, or, if any parties are not 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.

## **Appendix 2 – Detailed contents list**

116. The following is a detailed contents list for this Ruling:

	<b>Paragraph</b>
<b>What this Ruling is about</b>	<b>1</b>
Relevant taxation provision(s)	2
Goods and services tax	3
Changes in the law	4
Note to promoters and advisers	6
Class of entities	7
Qualifications	9
<b>Date of effect</b>	<b>12</b>
<b>Withdrawal</b>	<b>14</b>
<b>Scheme</b>	<b>15</b>
Overview	17
Constitution	25
Compliance Plan	29
Lease and Sub-Lease	30
Management Agreement	33
<i>Harvesting and Sale</i>	38
Fees	39
<i>Joint venture</i>	41
Finance	44
<i>Terms Payment Option</i>	46
<i>Finance offered by the Nominated Financier</i>	50
<b>Ruling</b>	<b>56</b>
Application of this Ruling	56
Minimum subscription	59
The Simplified Tax System (STS)	60
<i>Division 328</i>	60
25% entrepreneurs tax offset	62
<i>Subdivision 61-J</i>	62
Assessable income	63
<i>Sections 6-5 and 328-105</i>	63
Deductions for Management Services Fees Rent, Interest and Borrowing Expenses	65
<i>Sections 8-1 and 25-25</i>	65
<i>Joint Venture Growers</i>	66



Deductions for capital expenditure	67
<i>Division 40 and Subdivision 328-D</i>	67
<i>Joint Venture Growers</i>	68
Credit Card Merchant Fee	70
Terms Administration Fee	71
Division 35 – deferral of losses from non-commercial business activities	72
<i>Section 35-55 – exercise of Commissioner’s discretion</i>	72
Section 82KL and Part IVA	73
<b>Appendix 1 – Explanation</b>	<b>74</b>
Is the Grower carrying on a business?	74
The Simplified Tax System	87
<i>Division 328</i>	87
Deductibility of Management Services Fees and Rent	89
<i>Section 8-1</i>	89
Interest deductibility	91
<i>Section 8-1</i>	91
<i>(i) Growers who enter into a finance arrangement offered by the Nominated Financier</i>	91
<i>(ii) Growers who enter into finance arrangements with other finance providers</i>	93
Prepayment provisions	94
<i>Sections 82KZL to 82KZMF</i>	94
<i>Application of the prepayments provisions to this Project</i>	98
<i>Growers who <u>choose</u> to pay fees for a period in excess of that required by the Project’s agreements</i>	99
Expenditure of a capital nature	102
Nominated Financier Application Fee	105
<i>Section 25-25</i>	105
Terms Administration Fee	106
<i>Section 8-1</i>	106
Credit Card Merchant Fee	108
Division 35 – deferral of losses from non-commercial business activities	110
<i>Section 35-55 – exercise of Commissioner’s discretion</i>	110
Section 82KL – recouped expenditure	112
Part IVA – general tax avoidance provisions	113
<b>Appendix 2 – Detailed contents list</b>	<b>116</b>

## 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

### *Subject references:*

- carrying on a business
- commencement of business
- fee expenses
- horticulture
- irrigation expenses
- management fees expenses
- non-commercial losses
- primary production
- primary production expenses
- primary production income
- producing assessable income
- product rulings
- public rulings
- schemes and shams
- tax administration
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters
- tax shelters project

### *Legislative references:*

- TAA 1953
- ITAA 1936 82KL
- ITAA 1936 Pt III Div 3 Subdiv H
- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZM
- ITAA 1936 82KZMA
- ITAA 1936 82KZMB
- ITAA 1936 82KZMC
- ITAA 1936 82KZMD
- ITAA 1936 82KZME
- ITAA 1936 82KZME(7)
- ITAA 1936 82KZMF
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C

- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 17-5
- ITAA 1997 25-25
- ITAA 1997 Div 27
- ITAA 1997 Div 35
- ITAA 1997 35-10
- ITAA 1997 35-10(2)
- ITAA 1997 35-55
- ITAA 1997 35-55(1)(b)
- ITAA 1997 Div 40
- ITAA 1997 40-25
- ITAA 1997 40-70(1)
- ITAA 1997 40-75(1)
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