



PR 2006/93 - Income tax: Great Southern 2007 Beef Cattle Project

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 This document has changed over time. This is a consolidated version of the ruling which was published on *24 May 2006*



Product Ruling

Income tax: Great Southern 2007 Beef Cattle Project

Contents	Para
BINDING SECTION:	
What this Ruling is about	1
Date of effect	12
Withdrawal	16
Scheme	17
Ruling	61
NON BINDING SECTION:	
Appendix 1:	
<i>Explanation</i>	77
Appendix 2:	
<i>Detailed contents list</i>	114

ⓘ This publication 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 relevant 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, the scheme is sometimes referred to as the 'Great Southern 2007 Beef Cattle Project' or simply as 'the Project'.

Relevant provision(s)

2. The relevant 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 25-5 of the ITAA 1997;
 - Division 27 of the ITAA 1997;
 - Division 35 of the ITAA 1997;
 - Subdivision 61-J of the ITAA 1997;
 - Division 70 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 82KZL of the ITAA 1936;
 - sections 82KZME and 82KZMF of the ITAA 1936; and
 - Part IVA of the ITAA 1936.

Note: 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 the Goods and Services Tax (GST) where applicable. In order for an entity (referred to in this Ruling as a Grazier) 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 taxation legislation enacted at the time it was issued, later tax changes 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. Entities who are considering investing 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 entities in projects such as this. In keeping with that intention, the Tax Office suggests that promoters and advisers ensure that potential entities are fully informed of any changes in tax laws that take place after the Ruling is issued.

Class of entities

7. The class of entities to whom this Ruling applies consists of the entities more specifically identified in the Ruling part of this Product Ruling 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 'Graziers'.

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 its completion or who otherwise do not intend to derive assessable income from it;
- have entered into the scheme specified below prior to the date this Ruling is made or after 15 June 2007;
- participate in the Project other than through offers made under the Product Disclosure Statement;
- enter into finance arrangements with Great Southern Finance Pty Ltd, or with any associate of Great Southern Finance Pty Ltd, that do not comply with the written undertakings given to the Tax Office by Great Southern Finance Pty Ltd dated 30 March 2006 and 11 May 2006 (the word 'associate' has the meaning given in section 318 of the ITAA 1936); or
- enter into finance arrangements with Great Southern Finance Pty Ltd, the Preferred Financier or entities associated with this Project other than those specified in paragraph 56 (the word 'associate' has the meaning given in section 318 of the ITAA 1936).

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 17 to 60.

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 24 May 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. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

13. If this Product Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

14. If this Product Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Product Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

15. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Withdrawal

16. This Product Ruling is withdrawn and ceases to have effect after 30 June 2009. The Ruling continues to apply, in respect of the relevant provisions ruled upon, to all entities within the specified class who enter into the specified scheme during the term of the Ruling. 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 entities' involvement in the scheme.

Scheme

17. The scheme that is the subject of this Ruling is described below. This description incorporates the following documents:

- Application for Product Ruling dated 16 February 2006 and additional correspondence including emails, between the Tax Office and the Applicant, received 9 March 2006, 15 March 2006, 30 March 2006, 3 April 2006, 19 April 2006, 20 April 2006, 21 April 2006, 26 April 2006, 27 April 2006, 4 May 2006, 9 May 2006 and 16 May 2006;
- Draft **Product Disclosure Statement** ('PDS') for the Great Southern 2006 Beef Cattle Project and the Great Southern 2007 Beef Cattle Project, to be issued by Great Southern Managers Australia Ltd ('GSMAL'), dated 14 February 2006 and updates received 13 April 2006, 21 April 2006 and 4 May 2006;
- Draft **Constitution** of the Great Southern 2007 Beef Cattle Project, received 22 February 2006 and updates received 30 March 2006, 20 April 2006, 26 April 2006 and 4 May 2006;
- Draft standard terms for **Lease, Management and Agistment Agreement** ('LMAA') between GSMAL (as 'Responsible Entity') and the Grazier, received 22 February 2006 and updates received 30 March 2006, 3 April 2006, 20 April 2006, 26 April 2006, 27 April 2006 and 4 May 2006;
- Draft Head Lease between GSMAL (as the 'Lessee') and Great Southern Holdings Pty Ltd (as the 'Lessor'), received 22 February 2006;

- Compliance Plan for Great Southern 2007 Beef Cattle Project, dated 30 January 2006 and updated 30 March 2006;
- Management Services Agreement between GSMAL and Great Southern Plantations Ltd ('GSPL'), received 30 March 2006;
- **Application for Term Finance** Principal and Interest Loan, received 30 March 2006;
- **Cattle terms of Loan Deed** (Term Finance) between Great Southern Finance Pty Ltd or the Preferred Financier (as the 'Lender') and the Borrower, received 30 March 2006;
- Loan Sale and Servicing Deed between Great Southern Finance Pty Ltd, GSMAL and the Preferred Financier, dated 18 April 2006;
- Draft Beef Cattle Independent Expert Report, received 30 March 2006;
- Draft Marketing Services Agreement between GSMAL and Great Southern Securities Pty Limited, received 22 February 2006;
- Undertakings provided by Great Southern Finance Pty Ltd regarding the Cattle terms of Loan Deed (Term Finance) and the Loan Sale and Servicing Deed, dated 30 March 2006 and 11 May 2006; and
- Additional correspondence from the Applicant, dated 15 May 2006.

Note: certain information received from Great Southern Managers Australia Limited has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

18. The documents highlighted are those that Graziers 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 Grazier, or any associate of a Grazier, will be a party to, which are a part of the scheme. The effect of these agreements is summarised as follows.

Overview

19. The salient features of the 'Great Southern 2007 Beef Cattle Project' are as follows:

Location	Properties situated in the Northern Territory, Queensland, Tasmania, Victoria, Western Australia and other regions of Australia that the Responsible Entity determines are suitable for breeding beef cattle.
Type of business each participant will be carrying on	Medium term commercial breeding and production of beef cattle.
Number of Cows involved in the breeding program	Up to 20,000 cows (5,000 Drovers)
Size of each Drove	4 cows
Minimum interest	2 Drovers
The term of the Project	7 years
Initial Cost	\$5,500 per Drove
Ongoing costs	<ul style="list-style-type: none"> • Ongoing Management Fees payable to the Responsible Entity for performing the services in each Financial Year following the end of the 2008 Financial Year. • Agistment Fees payable to the Responsible Entity to agist the 'Grazier's Herd' on the 'Agistment Land' for each Financial Year from 1 July 2007 up to and including the Termination Year. • Shortfall Amount. • Costs of sale. • Taxes, duties and fees payable to any regulatory authority.

20. The Great Southern 2007 Beef Cattle Project is registered as a Managed Investment Scheme under the *Corporations Act 2001*. Great Southern Managers Australia Limited has been issued with an Australian Financial Services Licence and will be the Responsible Entity for the Project. Under the Product Disclosure Document ('PDS'), Great Southern Managers Australia Ltd (the 'Responsible Entity') intends to offer 5,000 interests in the Project.

21. The offer to participate in the Project must be made through the Application Form attached to the PDS. The minimum subscription for each Grazier is 2 Drovers. Oversubscription will be accepted subject to the availability of suitable land and suitable 'Breeding Cows'.

22. Upon execution of the Application Form contained in the PDS Applicants execute a Power of Attorney. The Power of Attorney irrevocably appoints Great Southern Managers Limited as attorney of the Applicant to enter into a Lease, Management and Agistment Agreement (LMAA) and any other documents required to hold an interest in the Project or to sell the 'Grazier's Progeny'.

Constitution

23. The Constitution establishes the Project and, from the time of a Grazier's acceptance into the Project, operates as a deed binding the Grazier and the Responsible Entity. The Constitution sets out the terms and conditions under which Great Southern Managers Australia Limited agrees to act as 'Responsible Entity' and thereby manage the Project. Pursuant to clause 28 of the Constitution, the Responsible Entity will keep a register of Graziers.

24. Under the terms of the Constitution, all moneys received from applications shall be paid to the Responsible Entity. The Responsible Entity will deposit all 'Application Moneys' received from applicants in an 'Application Fund' (clause 3.3). Until the LMAA is entered into the Responsible Entity holds the 'Application Money' on bare trust (clause 5.1). Once the Responsible Entity has accepted the application and a LMAA has been executed and remains in force the 'Application Money' may be transferred and applied against the fees due to Great Southern Managers Australia Limited in payment of the Initial Management Period Fees (clause 8.1). The application monies will be released by the Responsible Entity when it is reasonably satisfied that criteria outlined in the Constitution have been met (clauses 7 and 8).

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

- the appointment of GSMAL as the Responsible Entity for the Project, the creation of the Application Fund and the Proceeds Fund and the interest of the Applicants and Graziers in those funds (clause 3);
- procedures relating to 'Applications' (clause 4);
- procedures relating to 'Application Moneys' (clause 5);
- completion and execution of Project Documents prior to or upon acceptance of an application by the Responsible Entity (clause 6);
- the issue of interests in the Project and the transfer of 'Application Money' paid by an 'Applicant' from the 'Application Fund' to the Responsible Entity (clauses 7 and 8);

- the Responsible Entity's powers in relation to investments and borrowings (clause 11);
- the Responsible Entity's powers and duties relating to the management of the Project (clause 12);
- resolution of complaints made by the Grazier in relation to the Responsible Entities management of the Project (clause 13);
- the appointment of agents to perform tasks (clause 16);
- the appointment of an Independent Cattle Expert and the provision of a Cattle Expert's Report to Graziers (clause 18);
- the assignment of a Grazier's interest in the Project (clause 20);
- transmission of a Grazier's interest in the Project as a consequence of the death, bankruptcy or mental incapacity of a Grazier (clauses 22 and 23);
- the liabilities and indemnities of Applicants and the Graziers (clause 24);
- the retirement and removal of the Responsible Entity (clause 25)
- the right of the Responsible Entity to be paid fees (clause 26);
- the issue of a numbered 'Certificate' to each Grazier (clause 27) and the keeping and maintenance of a register of Graziers who hold an interest in the Project (clause 28);
- the keeping of a 'Proceeds Fund' for the holding of proceeds of sale of 'Project Progeny' and any other amounts held by the Responsible Entity on behalf of the Graziers and the manner in which amounts held in the 'Proceeds Fund' are to be distributed (clauses 30 and 31);
- the deductions that may be made by the Responsible Entity from any amounts payable to a Grazier (clause 32);
- termination of the Project (clause 35) and the winding up of the Project and other agreements or arrangements that the Responsible Entity has entered into with the Graziers relating to the Project (clause 36); and
- the liabilities and indemnities of the Responsible Entity (clauses 38 and 39).

Acceptance of Applications

26. The Grazier's participation in the Project commences on the date the Grazier's LMAA is executed and Drovers are allocated to the Grazier.

27. Under clauses 4, 5, 6, 7 and 8 of the Constitution, the Responsible Entity will accept an applicant and an applicant will be issued an interest in the Project and become a Grazier where, amongst other things, the following conditions are satisfied:

- the applicant has paid the full amount of 'Application Price' for Drovers upon application, as specified in the PDS;
- the Responsible Entity has accepted the applicant's application;
- the Responsible Entity is able to release the Application Moneys in accordance with clauses 7 and 8 of the Constitution; and
- the Responsible Entity has determined the 'Leased Cattle' comprising each Drove to be specified in the LMAA and prepared and executed that agreement.

28. Clause 4.2 provides that the amount payable on application may be a deposit being the percentage of the 'Application Price' specified by the Responsible Entity. Where a deposit is made the balance of the 'Application Price' becomes due and payable on or before the date the Graziers Lease, Management and Agistment Agreement is executed. Graziers cannot rely on any part of this Ruling if the 'Application Fee', consisting of Initial Management Period Fees and Ongoing Management Fees – 2008 Financial Year, is not paid in full to the Responsible Entity on or before 15 June 2007 either by the Grazier or, on the Grazier's behalf, by a lending institution.

29. The Responsible Entity may accept applications under the PDS during the period on or after 1 July 2006 and on or before 30 June 2007. However, this Ruling only applies to Graziers who commence to participate in the Project during the period on or after 1 July 2006 and on or before 15 June 2007.

Compliance Plan

30. As required under the Corporations Law, a Compliance Plan has been prepared by Great Southern Managers Australia Ltd. Its purpose is to ensure that the Responsible Entity manages the Project in accordance with its obligations and responsibilities contained in the Constitution and that the interests of Graziers are protected.

Lease, Management and Agistment Agreement

31. Graziers participating in the arrangement will enter into a LMAA between Great Southern Managers Australia Limited (the 'Responsible Entity') and each Grazier individually. Graziers are granted an interest in the 'Leased Cattle' in the form of a lease to use their 'Leased Cattle' for the purpose of conducting a business of breeding and production of beef cattle. Graziers are also granted an 'Agistment Licence' over the 'Agistment Land' for the purpose of agisting the Grazier's Herd and each Grazier appoints the Responsible Entity to manage their business.

Cattle lease

32. The Responsible Entity owns or holds a leasehold interest in the 'Leased Cattle'. On the 'Commencement Date', being the date on which the Grazier's LMAA is executed, until termination, the Responsible Entity agrees to 'Lease' the 'Leased Cattle' to the Grazier (clause 2.1).

33. Each Grazier will lease a minimum of 2 Drovers of 'Leased Cattle' for the purpose of producing the 'Grazier's Progeny'. The 'Grazier's Progeny' will be used in the Grazier's business of breeding and production of beef cattle (clause 2.2).

34. Each drove will consist of a group of four 'Leased Cattle'. Each cow contained in each Drove leased by the Grazier will be identified via an 'Identifier Code'. The details of each leased cow contained in each Drove leased to the Grazier will be set out in item 4 of the Schedule 1 to the LMAA.

35. Among other things, the Responsible Entity and the Grazier agree that:

- the Responsible Entity must ensure that each of the 'Leased Cattle' has been 'Joined' at the time it is Leased to the Grazier;
- the Responsible Entity may substitute any of the 'Leased Cattle' with replacements as required;
- the Responsible Entity must retire the 'Leased Cattle' if it determines that the Grazier's Progeny includes sufficient Grazier Breeding Cows to replace any of the 'Leased Cattle'; and
- the Grazier must retire and return the remaining the 'Leased Cattle' on or before the end of the Project.

36. In addition, the Responsible Entity guarantees that upon completion of the first muster of the 'Project Herd', the Responsible Entity will replace any of the 'Leased Cattle' that have died or are determined by the Responsible Entity to be unsuitable for breeding with replacements which have been 'Joined'.

37. The Grazier is the absolute owner of all the 'Graziers Progeny' but the 'Leased Cattle' will remain the property of the Responsible Entity.

Agistment

38. Under the terms of the LMAA the Grazier will agist the 'Graziers Herd' on the 'Initial Land' and such additional 'Agistment Land' as may be required for the purposes of agisting and grazing the Grazier's Herd. The 'Agistment Land' on which the Project will be conducted will be licensed by Great Southern Cattle Holdings Pty Ltd to Great Southern Cattle Managers Pty Ltd, who will sub-licence the land to Great Southern Managers Australia Limited, who will grant an Agistment Licence to the Grazier to occupy and use the 'Agistment Land' for the purpose of agisting and grazing the Grazier's Herd'.

39. Each Grazier will be granted a non exclusive licence to occupy the 'Initial Land' for a period commencing on the 'Commencement Date'. The Agistment Licence will terminate on the termination date of the Project in accordance with the Constitution, or subject to earlier termination pursuant to clause 3.5 of the LMAA. Where a new Agistment Licence is granted over additional 'Agistment Land' (clause 3.3) and the Responsible Entity determines that an Agistment Licence in relation to the 'Initial Land' or additional 'Agistment Land' is no longer required for the purposes of agisting and grazing the 'Grazier's Herd' the Responsible Entity may terminate the relevant Agistment Licence.

40. Item 7 of Schedule 1 to the LMAA provides the particulars of the 'Agistment Land' on which the Project will be conducted. The 'Agistment Land' will comprise of the 'Initial Land' and any additional land as may be required. The 'Initial Land' is situated in Tasmania, Northern Territory, Queensland, and Western Australia.

41. Under the terms of the LMAA the Grazier will occupy and use the 'Agistment Land' to agist and graze the cows leased by the Grazier from the Responsible Entity and the Grazier's Progeny ('the Grazier's Herd') on the 'Agistment Land' for the term of the Agistment Licence.

42. Each Grazier must pay an Agistment Fee to the Responsible Entity being an amount as specified in clause 3.6 of the LMAA and items 5.1 and 5.2 of Schedule 1 to the LMAA.

Management of the Grazier's business

43. Under the terms of the LMAA the Grazier appoints the Responsible Entity to manage the Grazier's business of breeding and production of beef cattle by performing the 'Initial Management Services' and the 'Ongoing Management Services'. The appointment commences on the date the Grazier's LMAA is executed. The appointment is terminated pursuant to the provisions of the LMAA on the 'Termination Date', being 3 months after the completion of the final muster of the 'Project Herd' in the 7th year after the 'Initial Management Period', or at such time as determined under the LMAA (clauses 15 and 37).

44. The LMAA provides that each Grazier appoints the Responsible Entity to perform services under the LMAA. The services to be performed are specified in the definition of 'Initial Management Services' and 'Ongoing Management Services'. The Responsible Entity will supervise and manage all activities to be carried out with respect to the 'Grazier's Herd' on behalf of the Grazier including, but not limited to the provision of the following services:

- (i) The Initial Management Services will be those services provided during the Initial Management Period, being the period commencing on the 'Commencement Date' up to and including 30 June 2007. The services relating to the management of the 'Leased Cattle' within the Grazier's Drovers will include, but are not limited to, the following:
- the ear tagging of the 'Leased Cattle' with an Identifier Code and recording of the Identifier Code against the name of the Grazier in the register;
 - Pregnancy Testing of the 'Leased Cattle' within the Drove, as necessary, from the Commencement Date;
 - the care of the 'Leased Cattle' within the Drove, including disease and parasite control, veterinary treatment activities, confinement and protection activities and relocation and rotation activities, as necessary, from the Commencement Date;
 - assessment of the health of the 'Leased Cattle' within the Drove and any remedial action as may be required;
 - maintenance of the 'Agistment Land' on which the 'Leased Cattle' within the Drove are agisted, including repairs and maintenance, soil improvement or fertilizing activities, disease vermin or pest reduction and farm management activities, as necessary and in accordance with the Grazier's obligations, from the Commencement Date;

- all administrative services required in respect of providing the services; and
 - any other activity that may be required to tend and care for the 'Leased Cattle' within the Drove in accordance with industry practices in respect of the services listed above.
- (ii) The 'Ongoing Management Services' will provided during the 'Ongoing Management Period', being each Financial Year following 30 June 2007 up to and including the 'Termination Year'. The services will include but are not limited to the following:
- care of the Grazier's Herd, including disease and parasite control, veterinary treatment activities, confinement and protection activities and relocation and rotation activities;
 - assessment of the health of the Grazier's Herd and any remedial action as may be necessary;
 - maintenance of the 'Agistment Land' upon on which the Grazier's Herd is agisted, including repairs and maintenance, soil improvement or fertilizing activities, disease vermin or pest reduction and farm management activities in accordance with the Grazier's obligations;
 - arranging the 'Joining' of the 'Leased Cattle', and suitable female Grazier's Progeny of breeding age, with suitable bulls;
 - arranging for the sale of selected 'Project Progeny' in each year of the Project, and arranging the sale of all remaining 'Project Progeny' in the 'Termination Year';
 - obtaining a Report from the Cattle Expert by no later than 31 October 2008 and, thereafter annually, to be provided to the Grazier;
 - all administrative services required in respect of providing the services; and
 - any other activity that may be required to tend and care for the Grazier's Herd in accordance with industry practices in respect of the services listed above.

45. The Responsible Entity will not undertake any work on behalf of a Grazier prior to the Grazier being issued an interest in the Project.

Pooling of 'Progeny' and 'Grazier's Proportional Share' of 'Net Proceeds of Sale'

46. The LMAA (clause 20) set out provisions relating to the Grazier's rights to 'Net Proceeds of Sale'.

47. During the term of the Project, the Responsible Entity will sell selected 'Project Progeny' in accordance with normal cattle management practices. During the 'Termination Year' the Responsible Entity will arrange for the sale of all the 'Project Progeny'. Under the LMAA the Grazier appoints the Responsible Entity as the Grazier's agent for the purpose of negotiating and making sales of the 'Grazier's Progeny' for the maximum practicable price.

48. The 'Net Proceeds of Sale' are the 'Gross Proceeds of Sale' from the sale of 'Project Progeny' which will be paid into the 'Proceeds Fund', less the costs and expenses of sale reimbursed to the Responsible Entity. Under clause 21.2 of the LMAA, the Responsible Entity will deduct from 'Gross Proceeds of Sale' the 'Grazier's Proportional Share' of the 'Costs of Sale' and any taxes, duties and fees payable to any regulatory authority. Under clause 21.3 of the LMAA the Responsible Entity will deduct from the 'Net Proceeds of Sale' the 'Ongoing Management Fees', 'Agistment Fees' and 'Shortfall Amounts' due and payable under the terms of the LMAA for each 'Financial Year'. The Grazier's 'Proportional Interest' in the 'Net Proceeds of Sale' from the sale of the 'Project Progeny' is the proportion which the number of Doves initially leased by that Grazier bears to the total number of Doves initially leased by all Graziers.

49. Graziers who do not contribute any 'Grazier's Progeny' to the 'Project Progeny' sold in any 'Accounting Period' will not be entitled to a distribution from the 'Proceeds Fund' relating to 'Project Progeny' sold during that 'Accounting Period' (clause 31.6 of the Constitution).

Fees

50. Under the terms of the LMAA and the Constitution a Grazier will make payments per Drove as described below.

51. The **Application Fee** is to be paid in full by each Grazier on application for the provision of 'Initial Management Services' in the 'Initial Management Period' and the provision of 'Ongoing Management Services' and the Lease of the 'Leased Cattle' for the '2008 Financial Year'. The 'Initial Management Services' are to be provided in the period commencing on the 'Commencement Date' and expiring on 30 June 2007. The 'Ongoing Management Services' and Lease of the 'Leased Cattle' for the '2008 Financial Year' are to be provided in the period commencing on 1 July 2007 and expiring on 30 June 2008. The 'Application Fee' consists of the following amounts:

- \$4,400 per Drove being the fee payable for the 'Initial Management Services'; and
- \$1,100 per Drove being the 'Ongoing Management Fee' – 2008 Financial Year.

52. Following the 2008 'Financial Year' and up to and including the 'Termination Year', '**Ongoing Management Fees**' are payable in arrears to the Responsible Entity for performing the Ongoing Management Services and Lease of the 'Leased Cattle'. The fees will be 49.5% of the 'Net Proceeds of Sale' for that 'Financial Year'.

53. In each 'Financial Year' from 1 July 2007 and up to and including the 'Termination Year', '**Agistment Fees**' are payable in arrears to the Responsible Entity. The fees will be 5.5% of the 'Net Proceeds of Sale' for that 'Financial Year'.

54. If in any of the 'Financial Years' following the 2008 'Financial Year', but not including the 'Termination Year', the Ongoing Management Fee and Agistment Fee does not meet a 'Minimum Cost' of \$550 (indexed) then the Responsible Entity will deduct the '**Shortfall Amount**' from the 'Net Grazier Return' in the following 'Financial Year'. If the 'Net Grazier Return' in the following 'Financial Year' is not sufficient to meet the 'Shortfall Amount' from the previous 'Financial Year', the Responsible Entity will require the Grazier to pay to the Responsible Entity the outstanding 'Shortfall Amount'.

Finance

55. Graziers can fund their involvement in the Project by borrowing from independent sources, from Great Southern Finance Pty Ltd ('the Lender') or from the Preferred Financier.

56. Details of the loans that will be offered to Graziers by the Lender and the Preferred Financier are set out in the in the Application for Term Finance form and the Cattle Terms of Loan Deed (Term Finance). These options are summarised as follows:

(i) **Great Southern Finance Pty Ltd**

- Great Southern Finance Pty Ltd will provide Graziers with loans on a full recourse basis and will pursue legal action against any defaulting borrowers.
- The Lender will offer two finance options to Graziers. These options are summarised as follows:

Option A – 12 months Interest Free Finance – 1 or more Droves

- equal monthly principal instalments over a period of 12 months;
- instalments paid by direct debit commencing 15 July 2007;
- the GST component is payable by the Grazier on execution of the Lease, Management and Agistment Agreement (\$500 per Drove); and

- no interest applicable.

Option B – Principal and Interest Finance – Minimum of 3 Droves

- principal and interest loans with a term of 3, 4 or 5 years;
- equal monthly principal and interest repayments over the term of the loan, commencing 31 July 2007;
- interest rates will be fixed for the period of the loan and are set at 10.0% for loans with a term of 3 years and 10.5% for loans with a term of 4 or 5 years;
- the GST component is payable on execution of the Lease, Management and Agistment Agreement (\$500 per Drove);
- a Loan Establishment Fee of \$250 plus 1% of the amount financed may be payable; and
- the loans will be secured by a registered charge over the Grazier's interest in the Project.

(ii) Preferred Financier

- The Preferred Financier will offer two finance options to Graziers. These options are summarised as follows:

Option A – 12 months Interest Free Finance – 1 or more Droves

- equal monthly principal instalments over a period of 12 months;
- instalments paid by direct debit commencing 15 July 2007;
- the GST component is payable by the Grazier on execution of the Lease, Management and Agistment Agreement (\$500 per Drove); and
- no interest applicable.

Option B – Principal and Interest Finance – Minimum of 3 Droves

- Loans with a term of:
 - 3 years, comprised of 1 year interest only then principal and interest for a period of 2 years;

- 4 years, comprised of 1 year interest only then principal and interest for a period of 3 years; or
- 5 years, comprised of 1 year interest only then principal and interest for a period of 4 years.
- equal monthly interest repayments commencing 31 July 2007 and ending on 30 June 2008; followed by equal monthly principal and interest repayments over the term of the loan, commencing 31 July 2008;
- interest rates will be fixed for the period of the loan and are set at 10.0% for loans with a term of 3 years and 10.5% for loans with a term of 4 or 5 years;
- the GST component is payable on execution of the Lease, Management and Agistment Agreement (\$500 per Drove);
- a Loan Establishment Fee of \$250 plus 1% of the amount financed may be payable; and
- the loans will be secured by a registered charge over the Grazier's interest in the Project.

57. This Ruling will not apply to Graziers who enter into any other finance arrangements offered to Graziers by Great Southern Finance Pty Ltd, or by any 'associate' of the Responsible Entity (the word 'associate' has the meaning given in section 318 of the ITAA 1936).

58. This Ruling will not apply to Graziers who enter into finance arrangements with Great Southern Finance Pty Ltd, or with any associate of Great Southern Finance Pty Ltd, that do not comply with the written undertakings given to the Tax Office by Great Southern Finance Pty Ltd dated 30 March 2006 and 11 May 2006.

59. Graziers cannot rely on any part of this Ruling if the 'Application Fee', consisting of the Initial Management Period Fees and Ongoing Management Fees – 2008 Financial Year, is not paid in full to the Responsible Entity on or before 15 June 2007 either by the Grazier or, on the Grazier's behalf, by a lending institution. Where an application is accepted by the Responsible Entity, and that application is subject to finance approval by any lending institution, Graziers cannot rely on this Ruling if written evidence of that approval has not been given to the Responsible Entity by the relevant lending institution on or before 15 June 2007.

60. This Ruling does not apply if a Grazier enters into any finance agreement that includes or has any of the following features:

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- entities associated with the Project are involved in the provision of finance for the Project;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' 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 terms or rate of interest are of a non-arm's length nature;
- repayments of the principal and 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) back to the lender or any associate;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- Entities associated with the Project, other than Great Southern Finance Pty Ltd are involved or become involved in the provision of finance to Graziers for the Project.

Ruling

Application of this Ruling

61. Subject to paragraph 8 and the specific exclusions set out in paragraphs 57, 58, 59 and 60, this Ruling applies only to Graziers who:

- are accepted to participate in the Project during the period on or after 1 July 2006 and on or before 15 June 2007; and
- have executed a Lease, Management and Agistment Agreement by 15 June 2007.

62. A Grazier's participation in the Project must constitute the carrying on of a business of primary production (cattle breeding and production). A Grazier is not eligible to claim any tax deductions until their application to enter the Project is accepted and the Project has commenced.

The Simplified Tax System (STS)

Division 328

63. To be an 'STS taxpayer' a Grazier 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 Grazier participating in the Project, the recognition of income and the timing of tax deductions is different depending on whether the Grazier who was an 'STS taxpayer' prior to 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*.

64. For such Graziers, 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

65. 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

Section 6-5 and Division 328

66. That part of the gross sales proceeds from the Project attributable to the Grazier's progeny and any additional amounts paid to the Grazier by the Responsible Entity, less any GST payable on those proceeds (section 17-5), will be assessable income of the Grazier under section 6-5.

67. The Grazier recognises ordinary income from carrying on the business of breeding and production of beef cattle at the time that income is derived.

Trading stock***Sections 70-35, 70-45, 70-50 and 70-55***

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

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

70. Under section 70-45, the Grazier can elect to value trading stock on hand at the end of the income year at cost, market selling value or replacement value. Where the Grazier elects to value the trading stock at the end of the income year at cost, 'cost' would include only those expenses incurred until the cattle became trading stock of the Grazier.

71. Under section 70-55, where the Grazier holds trading stock, being live stock, that the Grazier acquired by natural increase, the Grazier can elect to value the cost of that live stock at the actual cost of each animal or the cost prescribed by the regulations for each animal in the applicable class of live stock.

Section 328-285

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

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

Deductions for Initial Management Period Fees, Ongoing Management Fees – 2008 Financial Year, Ongoing Management Fee – Subsequent Financial Years, Agistment Fees, Interest and Loan Establishment Fees

Section 8-1 and section 25-25

74. A Grazier may claim tax deductions under sections 8-1 and 25-25 for the following fees and expenses on a per Drove basis:

Fee Type	Year ending 30 June 2007	Year ending 30 June 2008	Year ending 30 June 2009
Initial Management Period Fee	\$4,400 See Notes (i) & (ii)		
Ongoing Management Fees – 2008 Financial Year		\$1,100 See Notes (i) & (ii)	
Agistment Fee		As incurred See Notes (i) & (iii)	As incurred See Notes (i) & (iii)
Ongoing Management Fee			As incurred See Notes (i) & (iii)
Interest on loans with Great Southern Finance or the Preferred Financier	As incurred See Notes (i), (iv) & (v)	As incurred See Notes (i), (iv) & (v)	As incurred See Notes (i), (iv) & (v)
Loan Establishment Fee	As incurred See Notes (i) & (vi)	As incurred See Notes (i) & (vi)	As incurred See Notes (i) & (vi)

Notes:

- (i) If the Grazier 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 amount of \$5,500 per Drove payable on application consists of an Initial Management Period Fee of \$4,400 and a prepayment of the Ongoing Management Fees – 2008 Financial Year for the income year ending 30 June 2008 of \$1,100. The Initial Management Period Fee of \$4,400 is payable on application for services to be provided in the Initial Management Period and is deductible in the year in which it is incurred.

However, the amount of \$1,100 per Drove prepaid in respect of the Ongoing Management Services is **NOT** deductible in the year in which it is incurred'. Deductions for this amount **must** be determined using the formula in subsection 82KZMF(1) of the ITAA 1936 (see paragraphs 95 to 102). This section operates to apportion expenditure over the eligible service period or ten years, whichever is the lesser. The 'eligible service period' for the Ongoing Management Services commences on 1 July 2007 and ends on 30 June 2008. Accordingly, an amount of \$1,100 per Drove is deductible in the year ended 30 June 2008.

- (iii) Where the Grazier pays the Agistment Fees for the 2007-08 income year and later years and Ongoing Management Fees for the 2008-09 income year and later years in the relevant income years shown set out in the Lease, Management and Agistment Agreement, those fees are deductible in full in the year that they are incurred.
- (iv) Graziers who enter into a the finance arrangements described in paragraph 56 with Great Southern Finance Pty Ltd or with the Preferred Financier incur interest daily. Repayments are payable monthly in arrears. Such interest is deductible under section 8-1 in full in the year that it is incurred.
- (v) The deductibility or otherwise of interest arising from agreements entered into with financiers other than Great Southern Finance Pty Ltd and the Preferred Financier is outside the scope of this Ruling. However, all Graziers including those who finance their participation in the Project with Great Southern Finance Pty Ltd or the Preferred Financier should take note of the prepayment rules in paragraphs 95 to 102 as those rules may be applicable if interest is prepaid. A prepayment of interest to any lender is not covered by this Product Ruling. Graziers who prepay interest may request a private ruling on the deductibility of the interest incurred.

- (vi) The Loan Establishment Fee payable to Great Southern Finance Pty Ltd and to the Preferred Financier is a borrowing expense and is deductible under section 25-25. 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 Great Southern Finance or the Preferred Financier is outside the scope of this Ruling.

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

Section 35-55 – exercise of Commissioner’s discretion

75. A Grazier who is an individual and is accepted into the Project during the year ended 30 June 2007 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 Graziers for the income years **30 June 2007 to 30 June 2008**. This conditional exercise of the discretion will allow those losses to be offset against the Grazier’s other assessable income in the income year in which the losses arise.

Section 82KL and Part IVA

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

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

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 Grazier carrying on a business?

77. For the amounts set out in the Table at paragraph 74 to constitute allowable deductions, the Grazier’s cattle breeding and production activities must amount to the carrying on of a business of primary production.

78. Where there is a business, or a future business, the gross proceeds from the sale of the cattle will constitute 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.

79. For schemes such as that of the Great Southern 2007 Beef Cattle Project, Taxation Ruling TR 2000/8 sets out in paragraph 89 the circumstances in which the Grazier’s activities can constitute the carrying on of a business. As 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 932.

80. Generally, a Grazier will be carrying on a business of cattle breeding and production, and hence primary production, if:

- the Grazier has an identifiable interest (by lease) or rights over (by licence) cattle held for breeding purposes;
- the Grazier has a right to take and sell the progeny of those leased or licensed cattle;
- the breeding of the cattle and sale of their progeny are carried out on the Grazier’s behalf;
- the cattle breeding and production activities of the Grazier are typical of those associated with a cattle breeding and production business; and
- the weight and influence of general indicators point to the carrying on of a business.

81. In this Project, each Grazier enters into a Lease, Management and Agistment Agreement.

82. Under the Lease, Management and Agistment Agreement, each individual Grazier will have rights over a specific and identifiable area of land (the 'Agistment Land'). The licence provides the Grazier with an ongoing interest in the 'Agistment Land' in the form of a non-exclusive licence to occupy and use the 'Agistment Land' to agist and graze the 'Grazier's Herd' for the term of the Project. Under the licence the Grazier must use the 'Agistment Land' in question for the purpose of carrying out Cattle breeding and production activities and for no other purpose. The licence allows the Responsible Entity to come onto the land to carry out its obligations under the Lease, Management and Agistment Agreement.

83. Under the Lease, Management and Agistment Agreement the Responsible Entity is engaged by the Grazier to establish and maintain the 'Grazier's Herd' agisted on the 'Agistment Land' during the term of the Project. The Responsible Entity has provided evidence that it holds the appropriate professional skills and credentials to provide the management services to maintain the 'Grazier's Herd' on the Grazier's behalf.

84. The Responsible Entity is also engaged to sell, on the Grazier's behalf, the progeny of the Grazier's 'Leased Cattle'.

85. 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.

86. The activities that will be regularly carried out during the term of the Project demonstrate a significant commercial purpose. Based on reasonable forecasts, a Grazier in the Project may derive assessable income from the sale of their cattle 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.

87. The pooling of the Grazier's cattle with cattle of other Graziers is consistent with general pastoral practices. Each Grazier's proportionate share of the sale proceeds of the pooled cattle will reflect the proportion of the cattle contributed by the Grazier. Graziers who do not contribute cattle to a pool of cattle sold in any accounting period are excluded from sharing in the proceeds of sale in that accounting period.

88. The Responsible Entity's services are consistent with general cattle breeding and production practices. While the size of a Drove is relatively small, it is of a size and scale to allow it to be commercially viable.

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

90. The cattle breeding and production 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 Graziers' cattle breeding and production activities in the Great Southern 2007 Beef Cattle Project will constitute the carrying on of a business.

The Simplified Tax System

Division 328

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

92. Changes to the STS rules apply from 1 July 2005. The question of whether a 'Grazier' is eligible to be an 'STS taxpayer' is outside the scope of this Product Ruling (but refer to Taxation Ruling TR 2002/6 and Taxation Ruling TR 2002/11). Therefore, any Grazier 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 Initial Management Period Fees, Ongoing Management Fees – 2008 Financial Year, Ongoing Management Fee – Subsequent Financial Years, Agistment Fees and Interest

Section 8-1

93. Consideration of whether the Initial Management Period Fees, Ongoing Management Fees – 2008 Financial Year, Ongoing Management Fee – Subsequent Financial Years, Agistment Fees and Interest 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.

94. The Initial Management Period Fees, Ongoing Management Fees – 2008 Financial Year, Ongoing Management Fee – Subsequent Financial Years, Agistment Fees and Interest associated with the cattle breeding and production activities will relate to the gaining of income from the Grazier's business of cattle breeding and production, and hence have a sufficient connection to the operations by which income (from the regular sale of progeny) is to be gained from this business. They will thus be deductible under the first limb of section 8-1. Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. The fee appears to be reasonable. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

Prepayment provisions

Sections 82KZL to 82KZMF

95. 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.

96. For this Project, only section 82KZL of the ITAA 1936 (an interpretive provision) and sections 82KZME and 82KZMF of the ITAA 1936 are relevant. These provisions also apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes them from the operation of section 82KZMF.

Sections 82KZME and 82KZMF

97. Subject to certain exceptions, where the requirements of subsections 82KZME(2) and (3) of the ITAA 1936 are met, the formula in subsection 82KZMF(1) of the ITAA 1936 applies to apportion expenditure that is otherwise deductible under section 8-1 of the ITAA 1997.

98. Section 82KZMF of the ITAA 1936 uses the formula below to apportion prepaid expenditure and allow a deduction over the period that the benefits are provided.

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

Application of the prepayment provisions to this Project

99. Under the Lease, Management and Agistment Agreement, a Grazier incurs fees on application of \$5,500 per Drove. These fees are made up of:

- \$4,400 for the Initial Management Services to be provided in the Initial Management Period from the 'Commencement Date' to 30 June 2007; and
- a prepayment of \$1,100 for Ongoing Management Services to be provided in the 2008 Financial Year from 1 July 2007 to 30 June 2008.

100. The fee of \$4,400 for the Initial Management Services is for services to be provided within the year in which the fee is incurred or paid, and is therefore deductible in that year.

101. The expenditure incurred by a Grazier in the Project for the Ongoing Management Services to be carried out in the 2008 Financial Year meets the requirements of subsections 82KZME(1) and (2) of the ITAA 1936 and is incurred under an 'agreement' as described in subsection 82KZME(3). Therefore, unless one of the exceptions to section 82KZME applies, the amount and timing of those deductions for those fees are determined under section 82KZMF of the ITAA 1936.

102. The prepaid Ongoing Management Fees for the 2008 Financial Year do not fall within any of the five exceptions to section 82KZME of the ITAA 1936, therefore, the deduction for the 2007-2008 income year is determined using the formula in subsection 82KZMF(1) of the ITAA 1936. The eligible service period for the expenditure commences on 1 July 2007 and ends on 30 June 2008. Applying this formula to the Ongoing Management Fees results in no amount being deductible in the year ended 30 June 2007 and a deduction of \$1,100 being allowable in the income year ended 30 June 2008.

Interest deductibility**Section 8-1**

(i) Graziers who use Great Southern Finance Pty Ltd or the Preferred Financier as the finance provider

103. Some Graziers may finance their participation in the Project through a loan facility with Great Southern Finance Pty Ltd or with the Preferred Financier. Whether the resulting interest costs are deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of management fees and agistment fees.

104. The interest incurred by these Graziers will be in respect of a loan to finance the Project business operations of breeding and production of cattle and is therefore 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.

105. In the absence of any application of the prepayment provisions (see Note (v)) interest is deductible in the year in which it is incurred.

(ii) Graziers who DO NOT use Great Southern Finance Pty Ltd or the Preferred Financier as the finance provider

106. The deductibility of interest incurred by Graziers who finance their participation in the Project through a loan facility with a bank or financier other than Great Southern Finance Pty Ltd or the Preferred 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.

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

Section 35-55 – exercise of Commissioner's discretion

107. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for the income years **30 June 2007 to 30 June 2008** 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 2007 up to and including 30 June 2008:

- it is because of its nature the business activity of a Grazier that will not satisfy one of the four tests in Division 35; and
- there is an objective expectation that within a period that is commercially viable for the cattle industry, a Grazier's business activity will satisfy one of the four tests set out in Division 35 or produce a taxation profit.

108. Therefore, a Grazier 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.

109. 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 Grazier will need to apply for a private ruling on the application of section 35-55 to those changed circumstances.

Section 82KL – recouped expenditure

110. 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 of the ITAA 1997.

Part IVA

111. 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).

112. The Great Southern 2007 Beef Cattle Project will be a ‘scheme’ commencing with the issue of the Product Disclosure Statement. A Grazier will obtain a ‘tax benefit’ from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraph 74 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.

113. Graziers 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 cattle. There are no facts that would suggest that Graziers 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

114. Below is a detailed contents list for this Ruling:

	Paragraph
What this Ruling is about	1
Relevant 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
Date of effect	12
Withdrawal	16
Scheme	17
Overview	19
Constitution	23
<i>Acceptance of Applications</i>	26
Compliance Plan	30
Lease, Management and Agistment Agreement	31
<i>Cattle lease</i>	32
<i>Agistment</i>	38
<i>Management of the Grazier's business</i>	43
<i>Pooling of 'Progeny' and 'Grazier's Proportional Share' of 'Net Proceeds of Sale'</i>	46
Fees	50
Finance	55
Ruling	61
Application of this Ruling	61
The Simplified Tax System (STS)	63
<i>Division 328</i>	63
25% entrepreneurs tax offset	65
<i>Subdivision 61-J</i>	65
Assessable income	66
<i>Section 6-5 and Division 328</i>	66
Trading stock	68
<i>Sections 70-35, 70-45, 70-50 and 70-55</i>	68

<i>Section 328-285</i>	72
Deductions for Initial Management Period Fees, Ongoing Management Fees – 2008 Financial Year, Ongoing Management Fee – Subsequent Financial Years, Agistment Fees, Interest and Loan Establishment Fees	74
<i>Section 8-1 and section 25-25</i>	74
Division 35 – deferral of losses from non-commercial business activities	75
<i>Section 35-55 – exercise of Commissioner’s discretion</i>	75
<i>Section 82KL and Part IVA</i>	76
Appendix 1 – Explanation	77
Is the Grazier carrying on a business?	77
The Simplified Tax System	91
<i>Division 328</i>	91
Deductibility of Initial Management Period Fees, Ongoing Management Fees – 2008 Financial Year, Ongoing Management Fee – Subsequent Financial Years, Agistment Fees and Interest	93
<i>Section 8-1</i>	93
Prepayment provisions	95
<i>Sections 82KZL to 82KZMG</i>	95
<i>Sections 82KME and 82KZMF</i>	97
Application of the prepayment provisions to this Project	99
Interest deductibility	103
<i>Section 8-1</i>	103
<i>(i) Graziers who use Great Southern Finance Pty Ltd or the Preferred Financier as the finance provider</i>	103
<i>(ii) Graziers who DO NOT use Great Southern Finance Pty Ltd or the Preferred Financier as the finance provider</i>	106
Division 35 – deferral of losses from non-commercial business activities	107
<i>Section 35-55 – exercise of Commissioner’s discretion</i>	107
Section 82KL – recouped expenditure	110
Part IVA	111
Appendix 2 – Detailed contents list	114

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- non-commercial losses
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- public rulings
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NO: 2006/4252
ISSN: 1441-1172
ATOlaw topic: Income Tax ~~ Product ~~ livestock