



PR 2006/96 - Income tax: Barossa Vines Project 2006 - Applicant Group 2

 This cover sheet is provided for information only. It does not form part of *PR 2006/96 - Income tax: Barossa Vines Project 2006 - Applicant Group 2*

 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: Barossa Vines Project 2006 – Applicant Group 2

Contents Para

BINDING SECTION:

What this Ruling is about 1

Date of effect 12

Withdrawal 16

Scheme 17

Ruling 70

NON BINDING SECTION:

Appendix 1:

Explanation 87

Appendix 2:

Detailed contents list 128

❗ 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 provisions 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 Barossa Vines Project 2006 or simply as 'the Project'.

Relevant provision(s)

2. The relevant provision(s) dealt with in this Ruling are:

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 8-1 of the ITAA 1997;
- section 17-5 of the ITAA 1997;
- Division 27 of the ITAA 1997;
- Division 35 of the ITAA 1997;
- Division 40 of the ITAA 1997;
- Subdivision 61-J of the ITAA 1997;
- section 108-5 of the ITAA 1997;
- Division 110 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.

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 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 70 to 71, 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.

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 69.

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.

11. This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to:

Commonwealth Copyright Administration
Attorney General's Department
Robert Garran Offices
National Circuit
Barton ACT 2600

or posted at: <http://www.ag.gov.au/cca>

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 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.

Scheme

17. 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 provided on 2 November 2005, 21 December 2005, 30 January 2006, 16 February 2006, 17 February 2006, 21 February 2006, 22 February 2006 and 23 February 2006 and additional correspondence dated 21 December 2005, 30 January 2006, 15 February 2006, 16 February 2006, 17 February 2006, 21 February 2006, 22 February 2006, 23 February 2006, 7 March 2006, 29 March 2006 and 26 April 2006;
- Draft Prospectus and Product Disclosure Statement of the Barossa Vines Project 2006 received 17 February 2006;
- Draft Constitution of the Barossa Vines Project 2006 received 2 November 2005;
- Draft **Licence Agreement No. 1 (Commencement Date to 30 June 2011)** of the Barossa Vines Project 2006, between Barossa Vines Ltd ('Licensor') and the Grower received 2 November 2005;
- Draft **Licence Agreement No 2 (1 July 2011 to 30 June 2016)** of the Barossa Vines Project 2006, between Barossa Vines Ltd and the Grower received 2 November 2005;
- Draft **Licence Agreement No 3 (1 July 2016 to 30 June 2021)** of the Barossa Vines Project 2006, between Barossa Vines Ltd and the Grower received 2 November 2005;

- Draft Memorandum Of Lease (Waltons' property) between Barossa Vines Landholding Ltd ('Landholder' and 'Lessor') and Barossa Vines Ltd ('Lessee') received 2 November 2005;
- Draft Memorandum Of Lease (Sturt Highway Block) between Barossa Vines Landholding Ltd ('Landholder' and 'Lessor') and Barossa Vines Ltd ('Lessee') received 23 February 2006;
- Draft **Management Agreement** of the Barossa Vines Project 2006 between Barossa Vines Ltd ('Responsible Entity') and the Grower received 2 November 2005;
- Draft Assignment of Licence Agreement of the Barossa Vines Project 2006, between the Assignor, the Assignee and Barossa Vines Ltd received 2 November 2005;
- Draft Assignment of Management Agreement of the Barossa Vines Project 2006, between the Assignor, the Assignee and Barossa Vines Ltd received 2 November 2005;
- Compliance Plan for the Barossa Vines Project 2006 received 2 November 2005;
- Viticultural Report for the Barossa Vines Project 2006 received 21 December 2005;
- Viticultural Report for Additional Land for the Barossa Vines Project 2006 received 16 February 2006;
- Draft Vineyard Management Agreement of the Barossa Vines Project 2006, between the Responsible Entity and Agribusiness Services Pty Ltd ('Vineyard Manager') received 2 November 2005;
- Agreement to Produce and Supply Wine Grapes dated 1 July 2005; and
- Draft Finance Application Form for the Nominated Financier received 21 February 2006.

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

18. The documents highlighted are those that the Growers enter into. There are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower, or an associate of the Grower will be a party to that are part of the scheme to which this Ruling applies.

19. All Australian Securities and Investments Commission (ASIC) requirements are, or will be, complied with for the term of the agreements. The effect of the agreements may be summarised as follows.

Overview

20. The scheme is called 'Barossa Vines Project 2006' and is summarised as follows:

Location	Barossa Valley, South Australia
Type of business	Viticulture
Size of each lot	0.05 hectare
Number of lots available	4,150
Number of vines per lot	93 vines
Minimum subscription	100 Vineyard Lots
The term of the Project	Expires on 30 June 2021
Initial cost per lot	\$4,620 plus a Licence Fee of \$11 per month
Initial costs per hectare	\$92,400
Subscription for one 'C' class share in Landholder	\$1 of the cost of \$1,000 for one share in Barossa Vines Landholding Ltd paid on Application, the balance of \$999 payable 1 July 2011
Ongoing costs	Annual Management Fees, annual Licence fees, Vineyard Operating Costs, insurance costs and Harvesting Costs

The Project

21. The Barossa Vines Project 2006 is registered as a Managed Investment Scheme under the *Corporations Act 2001*. The Responsible Entity for the Project is Barossa Vines Ltd. The Responsible Entity has been issued with Financial Services Licence Number 227136 by ASIC.

22. The Project Land is comprised of the 'Waltons' property that is 144 hectares in size and the 'Sturt Highway Block' that is 136 hectares in size. Both properties are situated in the Barossa Valley Region of South Australia and are owned by Barossa Vines Landholding Ltd (the 'Landholder'). The Project Land is leased by the Responsible Entity from Barossa Vines Landholding Ltd.

23. The Project is initially 4,150 Vineyard Lots, each being 0.05 of a hectare in size. The Landholder is seeking additional suitable land. The Responsible Entity is able to accept oversubscriptions to the extent of the additional land available. The Responsible Entity may allot additional Vineyard Lots and will only do so if it acquires additional land, with similar characteristics to the land already acquired and a viticultural expert reports that the land is suitable for the Project.

24. The Responsible Entity will plant approximately 93 vines per Vineyard Lot (1,860 per hectare). Water for irrigation of the Vineyard Lots will be from the Barossa Infrastructure Scheme and proposed dams.

25. An interest in the Project is offered under a combined Prospectus and Product Disclosure Statement ('PDS'). The minimum subscription for the Project is 100 Vineyard Lots. Each Applicant may subscribe for a minimum of one Vineyard Lot and one 'C' class share in the Landholder.

26. Upon Application, the Grower will grant a Power of Attorney enabling the Responsible Entity to execute:

- the Licence Agreements between the Responsible Entity and the Grower;
- the Management Agreement between the Responsible Entity and the Grower; and
- the application for shares in Barossa Vines Landholding Ltd.

27. Under each Licence Agreement, the Responsible Entity agrees to licence to the Grower an identifiable area of land (a 'Grower's Vineyard Lot') for the purpose of cultivating vines and harvesting grapes until the Project is terminated on 30 June 2021. Each Licence Agreement is for a term of approximately five years.

28. Under the Management Agreement, the Grower appoints the Responsible Entity to establish, maintain and manage the Grower's Vineyard Lot. The Grower also appoints the Responsible Entity to harvest, market and sell the grapes produced on the Vineyard Lot.

29. The Responsible Entity will enter into a Vineyard Management Agreement with Agribusiness Services Pty Ltd (the 'Vineyard Manager') to perform the initial, ongoing and harvesting services required under the Management Agreement.

30. There will be two classes of Growers in the Project, determined by the date of application:

- Applicant Group 1 – Growers who apply on or after the date of this Ruling and on or before 1 June 2006; and
- Applicant Group 2 – Growers who apply after 1 June 2006 and on or before 30 November 2006. Applications made between 2 June 2006 and 30 June 2006 will be accepted on or after 1 July 2006 (clause 1 of the Constitution).

31. **This Ruling does not apply to Applicant Group 1 Growers.**

32. Each Grower is required to subscribe for one 'C' Class Share in the Landholder, Barossa Vines Landholding Ltd, at a cost of \$1,000 payable \$1 on application and \$999 on 1 July 2011.

Constitution

33. The Constitution establishes the Project and operates as a deed binding on the Growers and the Responsible Entity. The Constitution sets out the terms and conditions under which Barossa Vines Ltd agrees to act as the Responsible Entity and thereby manage the Project. Growers are bound by the Constitution by virtue of their participation in the Project.

34. All Project Property, as defined in clause 1 of the Constitution, will be held by the Responsible Entity on trust for the Growers or an agent appointed by the Responsible Entity on trust for the Growers (clause 3 of the Constitution). The Project Property includes the initial fees payable on application that will be transferred to the Responsible Entity when the conditions at clause 7.15 of the Constitution are satisfied.

35. All Gross Proceeds will be payable to the Responsible Entity. Gross Proceeds includes all interest and accretions received by the Responsible Entity from Authorised Investments and all moneys received from the sale of the Grapes. The Responsible Entity must deposit the full amount of Gross Proceeds into a Gross Proceeds Account. These proceeds will be invested in Authorised Investments until disbursed to Growers (clause 13 of the Constitution).

36. The balance of Gross Proceeds, after payment to the Responsible Entity of fees, costs and expenses, will be distributed to the Growers within 28 days of receipt of the Gross Proceeds. The amount each Grower receives will be based on the number of Vineyard Lots licensed to the Grower as a proportion of the total number of Lots licensed under the Project. However, in the event of a partial or total destruction of the vines or grapes on the Grower's Vineyard Lots, the Grower's Proportion will be reduced accordingly (clause 13.3.6 of the Constitution).

Compliance Plan

37. The Responsible Entity has prepared a Compliance Plan in accordance with the Corporations Law. Under the Compliance Plan, a Compliance Committee will monitor to what extent the Responsible Entity meets its obligations as the Responsible Entity of the Project and if the rights of the Growers are protected.

Leases

38. Under the Memorandums of Lease, Barossa Vines Landholding Ltd (the 'Lessor') leases the Project Land to the Responsible Entity. The Lessor agrees the Responsible Entity may licence the land or portions of the land without the consent of the Lessor. Also, the Lessor agrees to provide, at the Lessor's cost, an adequate water supply to enable the Responsible Entity to irrigate the vineyards on the leased land.

Licence Agreements

39. The Responsible Entity, as Licensor, grants a licence to the Grower for a portion of the Project Land, the Grower's Vineyard Lot, for the purpose of establishing and maintaining a vineyard and subsequently to harvest and sell grapes. The terms and conditions under which the licence of the Vineyard Lot is granted to the Grower are contained in the Licence Agreements.

40. Each Grower will enter into three consecutive Licence Agreements with the Licensor. The first Licence Agreement takes effect from the Commencement Date until 30 June 2011, the second Licence Agreement will be in effect from 1 July 2011 to 30 June 2016 and the third Licence Agreement will be in effect from 1 July 2016 to 30 June 2021.

Management Agreement

41. Each Grower enters into a Management Agreement with the Responsible Entity, contracting the Responsible Entity to establish, manage and maintain the Grower's Vineyard Lot in accordance with good viticultural practices.

42. During the Establishment Period, the Responsible Entity will carry out the following activities to establish the vineyard on behalf of the Grower:

- preparing that part of the Grower's Vineyard Lot which can be used to satisfactorily grow Grapevines, obtaining healthy Grapevine rootlings for planting and planting these grapevine rootlings on the Grower's Vineyard Lot;
- spacing and trellising each Grapevine rootling on the Grower's Vineyard Lot in accordance with good viticultural practices so that grapes can be harvested commercially; and
- installing the appropriate irrigation equipment (clause 2 of the Management Agreement).

43. The Responsible Entity will provide initial management services during the Establishment Period. These services include:

- eradicating vermin;
- fertilising;
- controlling diseases;
- regular inspection of trellising, irrigation and Grapevines; and
- providing any other services incidental to conduct of the Grower's Business, including engaging the services of an external viticultural consultant (clause 1.1 of the Vineyard Management Agreement).

44. The Establishment Period, for Growers in Applicant Group 2, is defined in the Management Agreement (clause 30) as from the Commencement Date to 1 January 2007.

45. After the Establishment period, the Responsible Entity will provide ongoing vineyard maintenance and management services for the term of the Project. These services include:

- pruning the Grapevines by mechanical or other methods;
- as permitted by Law, eradicate vermin which have or may cause damage to the Grapevines or the Grower's Vineyard Lot and put in place measures to control such vermin;
- operating the irrigation system in order to irrigate the Grower's Vineyard Lot;
- fertilising the Grower's Vineyard Lot as required to maintain satisfactory rates of growth and productivity of the Grapevines;
- protecting the Grapevines from insect infestation and competition from competing growth using good viticultural practices, including but not limited to applying herbicides to the Grower's Vineyard Lot and spraying under the Grapevines;
- regularly inspecting the Grapevines, trellising and irrigation equipment;
- replacing any of the Grapevines in need of replacement after the Establishment Period; and
- any other service or thing, which, in the reasonable opinion of the Responsible Entity, is incidental and/or ancillary to the conduct of the Grower's business (clause 3 of the Management Agreement).

46. The Responsible Entity will send a report to the Grower within 90 days of the end of each financial year containing information on matters considered material to the Grower's Business, including harvest and sales results, the Proceeds of Sale and the condition of the Grower's Vineyard Lot.

47. In addition, the Responsible Entity must ensure that insurance policies are taken out to cover the destruction or loss of Grapevines and the Grapes as well as a public liability insurance policy. Each Grower will pay the Grower's Proportion of the Insurance Premiums or the premiums will be reimbursed to the Responsible Entity from the Gross Proceeds of the Project (clause 11 of the Management Agreement and clauses 9.7 and 13.3 of the Constitution).

Harvesting

48. Under the Management Agreement, the Responsible Entity must harvest all of the mature Grapes grown on the Grower's Vineyard Lot (clause 5 of the Management Agreement). The Responsible Entity will determine when the harvest will commence by assessing the maturity of the Grapes in accordance with good viticultural practices.

49. The Responsible Entity will determine how and where the Grapes are to be stored and whether mechanical or hand harvesting will be the most cost efficient option.

50. The costs of providing the harvesting services will be met from the Grower's payment of Harvesting Costs (clauses 9 and 12 of the Management Agreement), which will be deducted from the Gross Proceeds.

Sale of Grapes

51. The Grower unconditionally appoints the Responsible Entity as its sole and exclusive agent to market and sell the Grapes, for the term of the Project (clause 6 of the Management Agreement). The Grapes from each Vineyard Lot in the Project will be pooled and sold, by the Responsible Entity on behalf of the Growers. The Responsible Entity will use all reasonable endeavours to sell the Grapes at a price equivalent to the price likely to be paid for the majority of the fruit variety grown in the vicinity of the land.

Vineyard Management Agreement

52. Under the Vineyard Management Agreement, the Responsible Entity will engage the Vineyard Manager, Agribusiness Services Pty Ltd, to establish the Growers' Vineyard Lots and to manage and maintain the Vineyard Lots on the terms and conditions contained in the Agreement. The Vineyard Manager will be subject to the direction of the Responsible Entity in all matters relating to the Vineyard Management Agreement.

53. The Vineyard Manager will perform services including planting and the installation of irrigation during the Establishment Period. After the Establishment Period the Vineyard Manager will provide Ongoing Services and Harvesting Services in relation to the Vineyard Lots.

Fees

54. Under the Management Agreement and the Licence Agreements the Grower is required to pay the following:

- initial fees on application;
- annual Management Fees;
- annual Licence Fees;

- Vineyard Operating Costs;
- reimbursement of insurance costs; and
- Harvesting Costs.

Initial Fees on Application

55. For each Grower, an initial fee of \$4,620 per Vineyard Lot, is payable on application. The fee consists of:

- \$121 for initial planting and preparation, to be provided by 1 January 2007;
- \$358 for trellising to be provided by 1 January 2007;
- \$302 for installing irrigation to be provided by 1 January 2007;
- \$3,179 for all other maintenance and management services to be provided by 1 January 2007; and
- \$660 for Vineyard Operating Costs, of which \$330 is for the period commencing after the establishment of the Grower's Vineyard Lot to 30 June 2007 and \$330 is in respect of the year ending 30 June 2008 (clause 12.2 and item 5 and 6 to Schedule 1 of the Management Agreement).

56. Also, on application a Licence Fee is payable of \$11 for each month, or part thereof, for the period from the Commencement Date to 30 June 2007 (item 6 of Schedule 1 to the Licence Agreement No. 1).

Annual Management Fees

57. From 1 July 2008 until the end of the Project, the Management Fee will be an amount equal to 8.25% of the Grower's Proportion of the Gross Proceeds and will be deducted from these proceeds (item 5 of Schedule 1 to the Management Agreement and clause 13.3 of the Constitution).

Annual Licence Fees

58. The Licence Fees for the financial years ending 30 June 2008 and 30 June 2009 are \$132 per year. These amounts are payable by the Grower on 1 July in each financial year. The fees for both these years will be adjusted to reflect movements in the Consumer Price Index (CPI).

59. Commencing from 1 July 2009 and until the end of the Project, the Licence Fees will be 2.75% of the Grower's Proportion of the Gross Proceeds and the fees will be deducted from these proceeds (item 6 of Schedule 1 to the Licence Agreement No. 1 and clause 13.3 of the Constitution).

Vineyard Operating Costs

60. From 1 July 2008, Vineyard Operating Costs will be the actual direct costs incurred by the Vineyard Manager (on behalf of the Responsible Entity) in maintaining and managing the Grower's Vineyard Lot. These costs will be payable from the Grower's Gross Proceeds derived from the Project (item 6 of Schedule 1 to the Management Agreement and clause 9.7 of the Constitution).

Reimbursement of Insurance Costs

61. The Grower's Proportion of the cost of insurance taken out by the Responsible Entity on behalf of the Growers will be reimbursable to the Responsible Entity from the Grower's Gross Proceeds (clause 11 of the Management Agreement and clause 9.7 of the Constitution).

Harvesting Costs

62. Harvesting Costs will be deducted from the Grower's Proportion of the Gross Proceeds commencing on 1 July immediately following the first harvest and thereafter on 1 July immediately following each succeeding harvest (item 7 of Schedule 1 to the Management Agreement and clause 9.7 of the Constitution).

Fees and costs that are deducted from Gross Proceeds

63. The Gross Proceeds from the sale of the Grapes will be paid into a Gross Proceeds Account to be established by the Responsible Entity. From 1 July 2008 Vineyard Operating Costs, Annual Management Fees, insurance costs and Harvesting Costs will be deducted from the Gross Proceeds before the proceeds are distributed to the Grower. From 1 July 2009, Licence Fees will also be deducted from these proceeds.

64. If Gross Proceeds are insufficient to pay any fees in any financial year, the Grower will either be required to pay the amount of the excess, or if the Responsible Entity chooses, the amount will be carried forward to be deducted in a later financial year. The maximum period that such amounts will be carried over is two years, after which Growers will be required to pay any amounts outstanding. No amount may be carried forward beyond the final year of the Project (clause 13.3 of the Constitution).

Shares

65. Each Grower must also subscribe for a share in the Landholder, Barossa Vines Landholding Ltd, for each Vineyard Lot. The cost of each share is \$1,000 of which \$1 is payable on application and \$999 on 1 July 2011.

Finance

66. Growers can fund their investment in the Project themselves or enter into a terms payment option. A Grower who enters into a finance arrangement with an independent lender to fund their investment may request a private ruling on the deductibility or otherwise of interest incurred under that finance arrangement as it is not covered by this Product Ruling.

Terms Payment Option

67. Under the PDS, the Grower can pay the initial fees of \$4,620 by the terms payment option, involving 12 monthly repayments of \$385.

68. The monthly instalments are paid by direct debit commencing on the last day of the month the Vineyard Lot is allotted to the Grower. If a Grower does not pay the required instalments under the terms payment option, the Responsible Entity will undertake action to recover the debt. The Responsible Entity may take legal proceedings to recover the amount due, including, resuming all rights and interest which the Grower has in their Vineyard Lot(s).

Other qualifications relating to finance arrangements

69. 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 described in paragraphs 67 to 68.

Ruling

Application of this Ruling

70. This Ruling applies only to Growers who are accepted to participate in the Project on or after the date of this Ruling and on or before 30 November 2006 (Applicant Group 2). A Grower's participation in the Project must constitute the carrying on of a business of primary production.

71. 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 30 November 2006;
- who enter into finance arrangements with entities associated with this Project, other than the terms payment option specified in paragraphs 67 to 68; and
- have their application conditionally accepted by the Responsible Entity subject to finance, where finance has not been approved by the lender and the funds have not been made available to the Responsible Entity on or by 15 December 2006.

Minimum subscription

72. 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 Prospectus and PDS, a Grower's application will not be accepted and the Project will not proceed until the minimum subscription of 100 interests is achieved.

The Simplified Tax System (STS)***Division 328***

73. 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*.

74. 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.

Qualification

75. This Product Ruling assumes that a Grower who is an 'STS taxpayer' is so for the income year in which their participation in the Project commences. A Grower may become an 'STS taxpayer' at a later point in time. Also, a Grower who is an 'STS taxpayer' may choose to stop being an 'STS taxpayer', or may cease to be eligible to be an 'STS taxpayer', during the term of the Project. These are contingencies relating to the circumstances of individual Growers that cannot be accommodated in this Ruling. Such Growers can ask for a private ruling on how the taxation legislation applies to them.

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

76. 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***

77. 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.

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

Deductions for Management Fees, Licence Fees and Vineyard Operating Costs**Sections 8-1 and 328-105**

79. A Grower may claim tax deductions for the following revenue expenses on a per Vineyard Lot basis:

Fee Type	ITAA 1997 sections	Year ended 30 June 2007	Year ended 30 June 2008	Year ended 30 June 2009
Management Fees	8-1	\$3,179 See Notes (i) & (ii)	Nil	Nil
Licence Fees	8-1	See Notes (i) & (iii)	\$132 See Notes (i), (iii) & (iv)	\$132 (indexed) See Notes (i), (iii) & (iv)
Prepaid Vineyard Operating Costs	8-1	\$660 Must be calculated if Grower holds more than one interest . See Notes (i), (ii) & (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 initial Management Fee and prepaid Vineyard Operating Costs are deductible under section 8-1 in full in the year that they are incurred. However, if the Grower holds more than one interest, the prepaid Vineyard Operating Costs must be calculated – see Note (v).
- (iii) The Licence fees are deductible in full in the year that they are incurred.

For the year ended 30 June 2007, the Licence Fee is \$11 per month or part thereof, for the period from the Commencement Date to 30 June 2007.

- (iv) 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. In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 110 unless the expenditure is 'excluded expenditure'.
- (v) Where the Grower holds **more than one interest**, the formula in subsection 82KZMF(1) of the ITAA 1936 must be used to determine the apportionment of the prepaid fee (see paragraph 110). Where the Grower holds **one interest** the prepayment meets the definition of 'excluded expenditure' and section 82KZMF of the ITAA 1936 does not operate to apportion deductibility of the payment.

Deductions for capital expenditure

Division 40 and Subdivision 328-D

Non-STS taxpayers

80. A Grower who is not an STS taxpayer will also be entitled to tax deductions relating to trellising, irrigation and the establishment and decline in value of grapevines as outlined in the following Table.

STS taxpayers

81. A Grower who is an STS taxpayer will also be entitled to tax deductions relating to trellising, irrigation and the establishment and decline in value of grapevines.

82. Deductions relating to the 'cost' of trellising must be determined under Division 328. An 'STS taxpayer' may claim deductions in relation to irrigation under Subdivision 40-F and if the irrigation expenditure is on a 'depreciating asset' used to carry on the business, they may choose to claim deductions under Division 328. Deductions for the grapevines must be determined under Subdivision 40-F.

Fee Type	ITAA 1997 sections	Year ended 30 June 2007	Year ended 30 June 2008	Year ended 30 June 2009
Trellising	40-25	Must be calculated See Notes (i) & (vi)	Must be calculated See Notes (i) & (vi)	Must be calculated See Notes (i) & (vi)
	STS taxpayers 328-185 & 328-190	STS taxpayers \$358 See Notes (i) & (vii)	STS taxpayers Nil See Notes (i) & (vii)	STS taxpayers Nil See Notes (i) & (vii)

Irrigation	40-515	\$101 See Notes (i) & (viii) STS taxpayers \$302 See Notes (i) & (xi)	\$101 See Notes (i) & (viii) STS taxpayers Nil See Notes (i) & (xi)	\$100 See Notes (i) & (viii) STS taxpayers Nil See Notes (i) & (xi)
Establishment of Grapevines	40-515	Nil	Nil	Must be calculated See Notes (i) & (x)

Notes:

- (vi) For non-STS taxpayers each Grower's interest in the trellising is a 'depreciating asset'. The 'cost' of the asset is the amount paid by the Grower. The decline in value of the 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 trellising.

Growers can either self-assess the effective life (section 40-105) or use the Commissioner's determination of effective life (section 40-100). The Commissioner has determined that trellising has an effective life of 20 years. For Growers who are accepted into the Project after 30 June 2006, the trellising will be installed and first used during the year ended 30 June 2007.

For a Grower who purchases one or two Vineyard Lots in this Project, their interest in the trellising will be a 'low cost asset' that is, an asset costing less than \$1,000. A low-cost asset 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 would also have to be allocated to that pool. Otherwise, the Grower must decide whether to create a low-value pool.

If the asset is allocated to a low-value pool, the capital expenditure on the trellising will be deducted under the diminishing value methodology of the pool based on a rate of 18.75% in the year the trellising is first used and a rate of 37.5% in subsequent years (section 40-440). If the trellising is not allocated to a low-value pool, it 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 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 two Interests**, the Grower's interest in the trellising may not be a low cost asset as the cost may be \$1,000 or greater. For these Growers, their interest in the trellising is a depreciating asset that can be allocated to a 'general STS pool'. The cost of the asset is the amount paid by each Grower.

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

Each Grower's interest in the trellising is allocated to their general STS pool at the end of the financial year ending 30 June 2007 and that part of the cost not deducted in the first year is added to the pool balance. In subsequent years, the full pool rate of 30% will apply.

- (viii) For non-STS taxpayers an irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. A deduction for water facilities is available under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one-third of the capital expenditure of \$302 per Vineyard Lot incurred by each Grower on the installation of the water facility in the year in which it is incurred and one-third in each of the next 2 years of income (section 40-540).
- (ix) For STS taxpayers, if the expenditure is on a 'depreciating asset' and the cost apportionable to that depreciating asset is less than \$1,000, the asset is treated as a 'low-cost asset' and that amount is deductible in full when the asset is first used or held 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.

If the asset is not treated as a low-cost asset, the tax deduction allowable in the year ending 30 June 2007 is determined by multiplying its cost by half the relevant STS pool rate, that is, by 15%. At the end of the year, it is allocated to the relevant STS pool and in subsequent years the full pool rate of 30% will apply.

If the expenditure is not on a depreciating asset, or if the Grower chooses to use Subdivision 40-F, the deductions are claimed under Subdivision 40-F, paragraph 40-515(1)(a). The deduction is equal to one third of the capital expenditure incurred by each Grower on the installation of the water facility, in the year in which it is incurred and one third in each of the next 2 years of income (section 40-540).

- (x) The Grapevines meet the definition of 'horticultural plant' in subsection 40-525(2). As Growers hold the land under a licence, the condition in item 3 of subsection 40-525(2) is met and a deduction for the decline in value of horticultural plants is available under paragraph 40-515(1)(b).

The deduction for the Grapevines is determined using the formula in section 40-545 and is based on the capital expenditure of \$121 per Vineyard Lot incurred by the Grower that is attributable to their establishment. If the Grapevines 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% per annum. The deduction is allowable when the Grapevines enter their first commercial season (section 40-530, item 2). The Project Manager will inform Growers of when the Grapevines enter their first commercial season.

Shares

83. The shares in Barossa Vines Landholding Ltd are CGT assets (section 108-5) and the amounts paid by a Grower to acquire the shares are an outgoing of capital and not allowable as a deduction.

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

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

85. A Grower who is an individual accepted into the Project 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 the income years ending **30 June 2007 to 30 June 2009** for Applicant Group 2 Growers. 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

86. For a Grower who participates in the Project and incurs expenditure as required by the Management Agreement and the Licence Agreements 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.

Commissioner of Taxation24 May 2006

Appendix 1 – Explanation

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

Is the Grower carrying on a business?

87. For the amounts set out in the Tables above to constitute allowable deductions the Grower's viticulture activities as a participant in the Barossa Vines Project 2006 must amount to the carrying on of a business of primary production. These viticulture activities will fall within the definitions of 'horticulture' and 'commercial horticulture' in section 40-535.

88. For schemes such as that of the Barossa Vines Project 2006, 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 TR 2000/8 sets out, these circumstances have been established in court decisions such as *Commissioner of Taxation v. Lau* (1984) 6 FCR 202; 84 ATC 4929; (1984) 16 ATR 55.

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

- the Grower has an identifiable interest (by lease or by licence) in the land on which the Grower's grapevines are established;
- the Grower has a right to harvest and sell the grapes each year from those grapevines;
- the viticulture activities are carried out on the Grower's behalf;
- the viticulture activities of the Grower are typical of those associated with a viticulture business; and
- the weight and influence of general indicators point to the carrying on of a business.

90. In this Project, each Grower enters into a Management Agreement and three Licence Agreements.

91. Under the Licence Agreements, each individual Grower will have rights over a specific and identifiable area of land. The Licence Agreements provide the Grower with an ongoing interest in the specific Grapevines on the licenced area for the term of the Project. Under the licences the Grower must use the land in question for the purpose of carrying out viticultural activities and for no other purpose. The licences allow the Responsible Entity to come onto the land to carry out its obligations under the Management Agreement.

92. Under the Management Agreement, the Responsible Entity is engaged by the Grower to establish and maintain a Vineyard Lot(s) on the Grower's identifiable area of 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 establish and maintain the Vineyard Lot on the Grower's behalf.

93. In establishing the Vineyard Lot(s), the Grower engages the Responsible Entity to purchase and install trellising, irrigation and to acquire and plant vine seedlings/rootlings on the Grower's Vineyard Lot. During the term of the Project, these assets will be used wholly to carry out the Grower's viticulture activities. The Responsible Entity is also engaged to harvest and sell, on the Grower's behalf, the grapes grown on the Grower's Vineyard Lot.

94. 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.

95. The activities that will be regularly carried out during the term of the Project demonstrate a significant commercial purpose. Based on reasonable projections, a Grower in the Project will derive assessable income from the sale of its grapes that will return a before-tax profit, which is a profit in cash terms that does not depend in its calculation on the fees in question being allowed as a deduction.

96. The pooling of grapes grown on the Grower's Vineyard Lot with the grapes of other Growers is consistent with general viticulture practices. Each Grower's proportionate share of the sale proceeds of the pooled grapes will reflect the proportion of the grapes contributed from their Vineyard Lot.

97. The Responsible Entity's services and the installation of assets on the Grower's behalf are also consistent with general viticultural practices. The assets are of the type ordinarily used in carrying on a business of viticulture. While the size of a Vineyard Lot is relatively small, it is of a size and scale to allow it to be commercially viable.

98. 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 Vineyard Lot 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.

99. The viticulture 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' viticulture activities in the Barossa Vines Project 2006 will constitute the carrying on of a business.

The Simplified Tax System

Division 328

100. 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.

101. 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 project fees

Section 8-1

102. Consideration of whether the Management Fees, Licence Fees and Vineyard Operating Costs (the 'project fees') are deductible under section 8-1 begins with the first limb of the section. This view proceeds on the following basis:

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

103. The project fees associated with the viticulture activities will relate to the gaining of income from the Grower's business of viticulture, and hence have a sufficient connection to the operations by which income (from the regular sale of grapes) 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 fees is identifiable from the scheme. The project fees appear to be reasonable. There is no capital component of the project fees. 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***

104. 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 licencing 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.

105. For this Project only section 82KZL of the ITAA 1936 (an interpretative provision) and sections 82KZME and 82KZMF of the ITAA 1936 are relevant. Where the requirements of sections 82KZME and 82KZMF are met, taxpayers determine deductions for prepaid expenditure under section 82KZMF using the formula in subsection 82KZMF(1). These provisions also apply to STS taxpayers because there is no specific exclusion contained in section 82KZME that excludes STS taxpayers from the operation of section 82KZMF.

Sections 82KZME and 82KZMF

106. 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 (see paragraph 110) will apply to apportion expenditure that is otherwise deductible under section 8-1 of the ITAA 1997. The requirements of subsection 82KZME(2) be met if expenditure is incurred by a taxpayer in return for the doing of a thing that is not to be wholly done within the year the expenditure is made. The year in which such expenditure is incurred is called the 'expenditure year' (subsection 82KZME(1)).

107. The requirements of subsection 82KZME(3) of the ITAA 1936 will be met where the agreement (or arrangement) has the following characteristics:

- the taxpayer's allowable deductions under the agreement for the expenditure year exceed any assessable income attributable to the agreement for that year;
- the taxpayer does not have effective day to day control over the operation of the agreement. That is, the significant aspects of the arrangement are managed by someone other than the taxpayer; and
- either:
 - (a) there is more than one participant in the agreement in the same capacity as the taxpayer; or

- (b) the person who promotes, arranges or manages the agreement (or an associate of that person) promotes similar agreements for other taxpayers.

108. For the purpose of these provisions, the agreement referred to includes all activities that relate to the agreement (subsection 82KZME(4) of the ITAA 1936). This has particular relevance for a Grower in this Project who, in order to participate in the Project may borrow funds from a financier. Although undertaken with an unrelated party, that financing would be an element of the arrangement. The funds borrowed and the interest deductions are directly related to the activities under the arrangement. If a Grower prepays interest under such financing arrangements, the deductions allowable will be subject to apportionment under section 82KZMF of the ITAA 1936.

109. 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.

110. 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.

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

111. 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

112. The prepaid expenditure for Vineyard Operating Costs incurred by a Grower in the Project as part of the initial fees on application 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 tax deductions for those fees are determined under section 82KZMF of the ITAA 1936.

113. Under Exception 3 (subsection 82KZME(7) of the ITAA 1936) 'excluded expenditure' is specifically excluded from the operation of section 82KZMF of the ITAA 1936. The prepaid Vineyard Operating Costs, being amounts of less than \$1,000 in each expenditure year, constitute excluded expenditure as defined in subsection 82KZL(1) of the ITAA 1936. A Grower can claim an immediate deduction for the prepaid Vineyard Operating Costs in the income year in which they are incurred.

114. However, where a Grower acquires more than the minimum allocation of one interest in the Project and the quantum of the prepaid Vineyard Operating Costs is \$1,000 or more, the deduction allowable for those amounts will be subject to apportionment according to the formula in subsection 82KZMF(1) of the ITAA 1936.

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

115. Where a Grower chooses to prepay fees under the agreements for a period beyond the income year in which the expenditure is incurred, the prepayment provisions (see paragraphs 104 to 114) will apply to determine the amount and timing of the deductions regardless of whether the Grower is an STS taxpayer or not.

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

117. 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***Division 40 and Division 328***

118. 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, irrigation and the establishment of the Grapevines is of a capital nature. This expenditure falls for consideration under Division 40 or Division 328.

119. 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.

120. The tax treatment of capital expenditure has been dealt with in a representative way in paragraphs 80 to 82.

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

121. The Commissioner has applied the principles set out in Taxation Ruling TR 2001/14 Income tax: Division 35 – non-commercial business losses, in deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for the income years ending **30 June 2007 to 30 June 2009** (Applicant Group 2).

122. 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 2009:

- it is because of its nature the business activity of a Grower 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 viticulture 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.

123. 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

124. The operation of section 82KL of the ITAA 1936 depends, among other things, on the identification of a certain quantum of 'additional benefits(s)'. Insufficient additional benefits will be provided to trigger the application of section 82KL. It will not apply to deny the deduction otherwise allowable under section 8-1 of the ITAA 1997.

Part IVA – general tax avoidance provisions

125. 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).

126. The Barossa Vines Project 2006 will be a scheme. A Grower will obtain a tax benefit from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 79 to 82 that would not have been obtained but for the scheme. However, it is not possible to conclude the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

127. 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 grapes. There are no facts that would suggest that Growers have the opportunity of obtaining a tax advantage other than the tax advantages identified in this Ruling. There is no non-recourse financing or round robin characteristics, and no indication that the parties are not dealing at arm's length or, if any parties are not dealing at arm's length, that any adverse tax consequences result. Further, having regard to the factors to be considered under paragraph 177D(b) of the ITAA 1936 it cannot be concluded, on the information available, that participants will enter into the scheme for the dominant purpose of obtaining a tax benefit.

Appendix 2 – Detailed contents list

128. The following 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	20
The Project	21
Constitution	33
Compliance Plan	37
Leases	38
Licence Agreements	39
Management Agreement	41
<i>Harvesting</i>	48
<i>Sale of Grapes</i>	51
Vineyard Management Agreement	52
Fees	54
<i>Initial Fees on Application</i>	55
<i>Annual Management Fees</i>	57
<i>Annual Licence Fees</i>	58
<i>Vineyard Operating Costs</i>	60
<i>Reimbursement of Insurance Costs</i>	61
<i>Harvesting Costs</i>	62
<i>Fees and costs that are deducted from Gross Proceeds</i>	63
Shares	65
Finance	66
<i>Terms Payment Option</i>	67

<i>Other qualifications relating to finance arrangements</i>	69
Ruling	70
Application of this Ruling	70
Minimum subscription	72
The Simplified Tax System (STS)	73
<i>Division 328</i>	73
<i>Qualification</i>	75
25% entrepreneurs tax offset	76
<i>Subdivision 61-J</i>	76
Assessable income	77
<i>Sections 6-5 and 328-105</i>	77
Deductions for Management Fees, Licence Fees and Vineyard Operating Costs	79
<i>Sections 8-1 and 328-105</i>	79
Deductions for capital expenditure	80
<i>Division 40 and Subdivision 328-D</i>	80
<i>Non-STs taxpayers</i>	80
<i>STs taxpayers</i>	81
Shares	83
Division 35 – deferral of losses from non-commercial business activities	85
<i>Section 35-55 – Commissioner’s discretion</i>	85
Section 82KL and Part IVA	86
Appendix 1 – Explanation	87
Is the Grower carrying on a business?	87
The Simplified Tax System	100
<i>Division 328</i>	100
Deductibility of Project Fees	102
<i>Section 8-1</i>	102
Prepayment provisions	104
<i>Sections 82KZL to 82KZMF</i>	104
<i>Sections 82KZME and 82KZMF</i>	106
<i>Application of the prepayments provisions to this Project</i>	112
<i>Growers who <u>choose</u> to pay fees for a period in excess of that required by the Project’s agreements</i>	115
Expenditure of a capital nature	118

<i>Division 40 and Division 328</i>	118
Division 35 – deferral of losses from non-commercial business activities	121
Section 82KL – recouped expenditure	124
Part IVA – general tax avoidance provisions	125
Appendix 2 – Detailed contents list	128

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

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:

- 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(1)
- ITAA 1936 82KZME(2)
- ITAA 1936 82KZME(3)
- ITAA 1936 82KZME(4)
- ITAA 1936 82KZME(7)
- ITAA 1936 82KZMF
- ITAA 1936 82KZMF(1)
- 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 Div 27
- ITAA 1997 Div 35
- ITAA 1997 35-10
- ITAA 1997 35-10(2)
- ITAA 1997 35-55
- ITAA 1997 35-55(1)(b)
- ITAA 1997 Div 40
- ITAA 1997 Subdiv 40-F
- ITAA 1997 40-25
- ITAA 1997 40-70(1)
- ITAA 1997 40-75(1)
- ITAA 1997 40-100
- ITAA 1997 40-105
- ITAA 1997 40-440
- ITAA 1997 40-515
- ITAA 1997 40-515(1)(a)
- ITAA 1997 40-515(1)(b)
- ITAA 1997 40-520(1)
- ITAA 1997 40-525(2)
- ITAA 1997 40-530
- ITAA 1997 40-535
- ITAA 1997 40-540
- ITAA 1997 40-545
- ITAA 1997 Subdiv 61-J
- ITAA 1997 108-5
- ITAA 1997 Div 110
- ITAA 1997 110-25(2)
- ITAA 1997 Div 328
- ITAA 1997 328-105
- ITAA 1997 328-185
- ITAA 1997 328-190
- ITAA 1997 Div 328-D
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- IT(TP)A 1997 Div 328
- IT(TP)A 1997 328-120
- IT(TP)A 1997 328-125
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968
- Corporations Act 2001

Case references:

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

ATO references

NO: 2005/17655

ISSN: 1441-1172

ATOLaw topic: Income Tax ~~ Product ~~ vineyards & wineries