



PR 2007/34 - Income tax: Great Southern 2007 Almond Income Project

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 This document has changed over time. This is a consolidated version of the ruling which was published on *11 April 2007*



Product Ruling

Income tax: Great Southern 2007 Almond Income Project

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! 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. 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.

Terms of use of this Product Ruling

This Product Ruling has been given on the basis that the entity(s) who applied for the Product 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 Product Ruling.

What this Ruling is about

1. This Product Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified in the Ruling section (below) apply to the defined class of entities, who take part in the scheme to which this Ruling relates. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated. In this Product Ruling this scheme is referred to as the Great Southern 2007 Almond Income Project or simply as 'the Project'.

Class of entities

2. This part of the Product Ruling specifies which entities can rely on the tax benefits set out in the Ruling section of this Product Ruling and which entities cannot rely on those tax benefits. In this Product Ruling, those entities that can rely on the tax benefits set out in this Ruling are referred to as Grower.

3. The class of entities who can rely on those tax benefits consists of entities that are accepted to participate in the scheme specified below on or after the date this Product Ruling is made and which execute relevant Project Agreements mentioned in paragraph 33 of this Ruling on or before 15 June 2007. They must 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.

4. The class of entities who can rely on the tax benefits set out in the Ruling section of this Product Ruling 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;
- are accepted into this Project before the date of this Ruling or after 15 June 2007;
- participate in the scheme through offers made other than through the Product Disclosure Statement; or
- enter into finance arrangements with Great Southern Finance Pty Ltd that do not comply with the written undertaking given to the Tax Office by Great Southern Managers Australia Limited (GSMAL) dated 7 March 2007 and 29 March 2007.

Superannuation Industry (Supervision Act) 1993

5. This Product Ruling does not address the provisions of the *Superannuation Industry (Supervision) Act 1993* (SISA 1993). The Tax Office gives no assurance that the product is an appropriate investment for a superannuation fund. The trustees of superannuation funds are advised that no consideration has been given in this Product ruling as to whether investment in this product may contravene the provisions of SISA 1993.

Qualifications

6. The class of entities defined in this Product Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 33 to 94 of this Ruling.

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

- this Product 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 Product Ruling may be withdrawn or modified.

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Date of effect

9. This Product Ruling applies prospectively from 11 April 2007, the date this Product Ruling is made. It therefore applies to the specified class of entities that enter into the scheme from 11 April 2007 until 15 June 2007, being the closing date for entry into the scheme. This Product Ruling provides advice on the availability of tax benefits to the specified class of entities up to 30 June 2009. This Product Ruling will continue to apply to those entities even after its period of application for schemes entered into during the period of application.

10. However the Product Ruling only applies to the extent that:

- there is no change in the scheme or in the entity's involvement in the scheme;
- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

11. 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)).

12. 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.

13. 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).

Changes in the law

14. Although this Product Ruling deals with the laws enacted at the time it was issued, later amendments may impact on this Product Ruling. Any such changes will take precedence over the application of this Product Ruling and, to that extent, this Product Ruling will have no effect.

15. Entities who are considering participating in the scheme 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

16. Product Rulings were introduced for the purpose of providing certainty about tax consequences for entities in schemes 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 Product Ruling is issued.

Goods and Services Tax

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

Ruling**Application of this Ruling**

18. Subject to the stated qualifications, this part of the Product Ruling sets out in detail the taxation obligations and benefits for a Grower in the defined class of entities who enters into the scheme described at paragraphs 33 to 94 of this Ruling.

19. The Grower's participation in the Project must constitute the carrying on of business of primary production. Provided the Project is carried out as described below, the Grower's business of primary production will commence at the time of execution of their Licence and Management Agreement (LMA).

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

20. 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 depending on whether the Grower was an 'STS taxpayer' prior to 1 July 2005 and 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*.

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

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

22. 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 section 17-5***

23. That part of the gross sales proceeds from the Project attributable to the Grower's produce, less any GST payable on those proceeds (section 17-5), will be assessable income of the Grower under section 6-5.

Deductions for Initial Management Fee, Ongoing Management Fees, Licence Fees, Interest, Borrowing Expenses and Almond Trees***Section 8-1, section 25-25, Division 27 and section 40-515 of the ITAA 1997 and sections 82KZME and 82KZMF of the Income Tax Assessment Act 1936***

24. A Grower who is accepted to participate in the Project on or before 15 June 2007 may claim tax deductions for the following fees and expenses on a per Almondlot basis, as set out in the Table below.

Fee Type	Year ending 30 June 2007	Year ending 30 June 2008	Year ending 30 June 2009
Initial Management Fee	\$5,500 See Notes (i), (ii) & (iii)		
Ongoing Management Fees		\$1,509 See Notes (i), (ii) & (iii)	\$1,296 See Notes (i), (ii) & (iii)
Licence Fees	Nil	\$891 See Notes (i), (ii) & (iii)	\$1,104 See Notes (i), (ii) & (iii)
Interest on loans with Great Southern Finance or the Preferred Financier	As incurred See Notes (iii) & (iv)	As incurred See Notes (iii) & (iv)	As incurred See Notes (iii) & (iv)

Loan Establishment Fee	Must be calculated See Note (v)	Must be calculated See Note (v)	Must be calculated See Note (v)
Establishment of Almond Trees	Nil See Note (vi)	Nil See Note (vi)	Nil See Note (vi)

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, Ongoing Management Fees and the Licence Fees are deductible under section 8-1 in the income year that the relevant fee is incurred.
- (iii) This Ruling does not apply to Growers who choose to prepay fees or who choose, or who are required to prepay interest under a loan agreement (see paragraphs 106 to 110 of this Ruling). Subject to certain exclusions, amounts that are prepaid for a period that extends beyond the income year in which the expenditure is incurred may be subject to the prepayment provisions in sections 82KZME and 82KZMF of the *Income Tax Assessment Act 1936* (ITAA 1936). Any Grower who prepays such amounts may request a private ruling on the taxation consequences of their participation in the Project.
- (iv) The deductibility or otherwise of interest arising from agreements entered into with financiers other than Great Southern Finance Pty Ltd or ABL Nominees Pty Ltd (the 'Preferred Financier'), is outside the scope of this Ruling. Prepayments of interest to any lender, including Great Southern Finance Pty Ltd and the Preferred Financier, are not covered by this Product Ruling. Growers who enter into agreements with other financiers and/or prepay interest may request a private ruling on the deductibility of the interest incurred.
- (v) The Loan Establishment Fee payable to either Great Southern Finance Pty Ltd or 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 Pty Ltd

or the Preferred Financier is outside the scope of this Ruling.

- (vi) Almond Trees are a 'horticultural plant' as defined in subsection 40-520(2). As Growers hold the land under a licence, one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. The deduction for the almond trees is determined using the formula in section 40-545 and is based on the capital expenditure incurred that is attributable to their establishment. If the almond trees have an 'effective life' of greater than 13 but fewer than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 13%. The deduction is allowable when the almond trees enter their first commercial season (section 40-530, item 2). The Responsible Entity will inform Growers when the Almond Trees enter their first commercial season and the amount that may be claimed.

25. A Joint Venture Grower may claim deductions, on a per Almondlot basis, for the following expenditure set out in the Table and Notes in paragraph 24 of this Ruling.

First Joint Venture Grower

- In the year ended 30 June 2007, \$5,500 for the Initial Management Fee.

A First Joint Venture Grower who borrows from Great Southern Finance Pty Ltd or the Preferred Financier to finance participation in the Project can also claim:

- a deduction for the interest incurred, under section 8-1 as outlined in Note (iv) to the Table above; and
- the borrowing costs payable to Great Southern Finance Pty Ltd or the Preferred Financier, under section 25-25, as outlined in Note (v) to the Table above.

Second Joint Venture Grower

- 100% of the Ongoing Management Fee and Licence Fees in the 2008 and 2009 Financial Years.

A Second Joint Venture Grower who borrows from Great Southern Finance Pty Ltd or the Preferred Financier to finance participation in the Project can also claim:

- a deduction for the interest incurred, under section 8-1 as outlined in Note (iv) to the Table above; and
- the borrowing costs payable to Great Southern Finance Pty or the Preferred Financier, under section 25-25, as outlined in Note (v) to the Table above.

26. The First Joint Venturer and Second Joint Venturer can also claim deductions for their Fractional Interest (40% and 60% respectively) in the horticultural plant write-off as explained in Note (vi) to the Table above.

Trading stock

Section 70-35

27. A Grower who is not an 'STS taxpayer' will, in some years, hold almonds 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 Grower must include the amount of that excess in assessable income.

28. 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 Grower may claim the amount of that excess as an allowable deduction.

Section 328-285

29. A Grower who is an 'STS taxpayer' may, in some years, hold almonds that will constitute trading stock on hand. Where, for such a Grower, for an income year, the difference between the value of all their trading stock at the start and a reasonable estimate of it at the end, 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)).

30. Alternatively, a Grower 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)).

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

Section 35-55 – exercise of Commissioner's discretion

31. A Grower who is an individual accepted into the Project by 15 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 Growers for the income years ended **30 June 2007 to 30 June 2012**. 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.

Prepayment provisions and anti-avoidance provisions

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

32. For a Grower who commences participation in the Project and incurs expenditure as required by the LMA, the following provisions of the ITAA 1936 have application as indicated:

- expenditure by a Grower does not fall within the scope of sections 82KZME and 82KZMF (but see paragraphs 106 to 110 of this Ruling);
- 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.

Scheme

33. The scheme that is the subject of this Ruling is identified and described in the following documents:

- Application for a Product Ruling received on 22 December 2006 as constituted by documents provided on 22 December 2006, and additional documents, correspondence, emails and telephone conversations dated 29 December 2007, 2 January 2007, 8 January 2007, 9 January 2007, 19 January 2007, 23 January 2007, 5 February 2007, 20 February 2007, 27 February 2007, 1 March 2007, 7 March 2007, 8 March 2007, 12 March 2007, 19 March 2007, 20 March 2007, 26 March 2007, 28 March 2007, 29 March 2007 and 2 April 2006;
- Draft **Product Disclosure Statement** for the Great Southern 2007 Almond Income Project, received on 26 March 2007;
- Draft **Constitution** of the Great Southern 2007 Almond Income Constitution, received on 12 December 2006;
- Draft Compliance Plan for the Great Southern 2007 Almond Income Project, received on 22 December 2006;
- Draft **Licence and Management Agreement** between Great Southern Managers Australia Ltd (the Responsible Entity) as Licensor, Great Southern Managers Australia Ltd (the Responsible Entity) as Manager and the Grower, received on 19 March 2007;

- Draft Lease Agreement between Great Southern Almond Holding Pty Ltd (Head-Lessee) and Great Southern Managers Australia Ltd (Lessee), received on 19 March 2007;
- Draft Lease Agreement between Australian Executor Trustees Ltd as custodian of RFM Riverbank (as Lessor) and Great Southern Almond Holdings Pty Ltd (as Lessee), received on 19 March 2007;
- Draft Lease Agreements for the Moral land and Yilgah land between Lachlan Farming Ltd (as Lessor) and Australian Executor Trustees Ltd as Custodian of RFM Riverbank (Lessee), received on 23 February 2007 and 19 March 2007;
- Draft contract for sale of land between Lachlan Farming Ltd and Australian Executor Trustees Ltd as custodian of RFM Riverbank, received 23 February 2007;
- Draft Initial Management Services Agreement between Great Southern Managers Australia Ltd and RFM Farming Pty Ltd, received on 19 January 2007;
- Draft Ongoing Management Services Agreement between Great Southern Managers Australia Ltd and RFM Farming Pty Ltd, received on 19 January 2007;
- Crop Supply Agreement between Great Southern Managers Australia Ltd and Almondco Australia Ltd, received on 19 January 2007;
- Finance letters from Great Southern Managers Australia Ltd, received on 12 March 2007 and 29 March 2007; and
- Draft **Application for Term Finance** and the Terms of Loan Deed to be entered into by each Grower and Great Southern Finance Pty Ltd or ABL Nominees Pty Ltd the Preferred Financier, received on 20 March 2007.

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

34. The documents highlighted are those that a Grower/Investor may enter into. For the purposes of describing the scheme to which this Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower, or any associate of a Grower, will be a party to, which are a part of the scheme. The effect of these agreements is summarised as follows.

35. All Australian Securities and Investment Commission (ASIC) requirements are, or will be, complied with for the term of the agreements.

Overview

36. The main features of the Great Southern 2007 Almond Income Project are as follows:

Location	Hillston, New South Wales
Type of business to be carried on by each Grower	Commercial growing, cultivation and harvesting almonds for sale
Term of the Project	20 years
Number of hectares offered for cultivation	500 hectares
Number of Almondlots	2,000
Size of each Almondlot	0.25 hectares
Number of Almond trees per hectare	280 Almond Trees
Minimum allocation per Grower	One Almondlot
Initial cost per Grove	\$5,500
Ongoing costs	Annual Management Fees Annual Licence Fees Administration Fees Performance Fees Operating Costs and Expenses

37. The Project will be a registered managed investment scheme under the *Corporations Act 2001*. Great Southern Managers Australia Limited (GSMAL) has been issued with Australian Financial Service Licence No 240787 and will be the Responsible Entity for the Project.

38. The Project will involve the commercial growing, cultivation and harvesting of almonds for sale.

39. An offer to participate in the Project will be made through a Product Disclosure Statement (PDS). The offer under the PDS is for 500 hectares, which corresponds to 2,000 Almondlots in the Project. GSMAL has the right to accept oversubscriptions.

40. A Grower that participates in the Project will do so by acquiring an interest in the Project, which will consist of a minimum of one Almondlot, of 0.25 hectares in size.

41. Applicants execute a Power of Attorney contained in the PDS. The Power of Attorney irrevocably appoints GSMAL to enter into, on behalf of the Grower, a LMA and any other documents required to hold an interest in the Project.

42. The Responsible Entity will act as Custodian of the scheme property.

43. The Responsible Entity will lease the land from Great Southern Almond Holdings Pty Ltd (GSAH) the Head Lessee who has entered into a lease with the lessee of the land, Australian Executor Trustees Limited as custodian of RFM Riverbank for use in the Project. The land is located in the Riverina Region of New South Wales. Specifically, the Moorah land is described as parts of Lot 44 DP 1098339 and Lot 45 DP 1098339 and the Yilgah land is described as Lot 4682 DP 767846.

44. GSAH will be responsible for the construction and installation of all almond grove infrastructure and the planting of all almond trees on that part of the Leased Land by 15 June 2007 as required by the Responsible Entity. The established almond grove will be divided into 0.25 hectare lots and licenced to the Growers accepted into the Project. The Responsible Entity guarantees that 12 months after the Commencement of the Project, there will be an average of 280 Almond trees per hectare on the Almond Lot.

45. Each Grower will enter into a LMA for the purpose of carrying on a business of cultivating and harvesting almonds and the sale of harvested produce. This Agreement grants a licence over one or more Almondlots, and appoints the Responsible Entity to manage the Grower's almond business on their behalf. The Responsible Entity will undertake the initial and ongoing management services, which includes the harvesting and marketing of the Grower's almonds.

Constitution

46. The Constitution establishes the Project and operates as a deed binding all Growers and GSMAL. The Constitution sets out the terms and conditions under which GSMAL agrees to act as Responsible Entity and thereby manage the Project. Upon acceptance into the Project, Growers are bound by the Constitution by virtue of their participation in the Project.

47. In order to acquire an interest in the Project, the Grower must make an application for Almondlots in accordance with clause 4. Among other things, the application must be completed in a form approved by the Responsible Entity, signed by or on behalf of the Applicant, lodged at the registered office of the Responsible Entity and accompanied by payment of the Application Money in a form acceptable to the Responsible Entity.

48. Under clause 5 of the Constitution, GSMAL holds the Application Money on bare trust. GSMAL will deposit all Application Moneys received from applicants in the Application Fund Account. The Application Moneys will be released by the Responsible Entity when it is reasonably satisfied that specified criteria in the Constitution have been met (clause 8).

49. Once GSMAL has accepted the application and all of the Project Documents have been executed (clause 8) the Application Money may be transferred and applied against the fees due to GSMAL (clause 9).

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

- the functions, powers and duties of the Responsible Entity (clause 13);
- the complaints procedure (clause 14);
- the compliance plan (clause 15);
- the provision of an Independent Almond Expert's Report to Growers by specific dates (clause 19);
- transfer of Grower's interest (clause 21);
- retirement or removal of Responsible Entity (clause 26);
- the issue of a Certificate to each Grower, setting out the name of the Grove and the number and description of the Grower's Almondlots (clause 28);
- the requirement for the Responsible Entity to keep an up-to-date register of Growers (clause 29);
- distributions from the Proceeds Fund (clause 32); and
- termination of the Project (clauses 36 and 37).

Schedule 1 to the Constitution – LMA

Licence (Part 1 of the LMA)

51. The terms of the LMA are set out in Schedule 1 of the Constitution.

52. Growers are granted a licence to their Almondlot together with all improvements on the Almondlots, which includes the Almond Trees, Almond Grove Infrastructure and Water for the Term of the Project (clause 2).

53. The licence gives the Grower a licence over an identifiable area of land for a period commencing on 15 June 2007 and ending 20 years from the date of expiration of the Initial Management Period or the date the Project is terminated pursuant to the Constitution or the date of payment to the Grower of the final distribution of the Proceeds Fund, whichever date is the earlier.

54. On or before 15 June 2007 the Licensor will:

- procure the construction and installation of the Almond Grove Infrastructure; and
- ensure that all Almond Trees have been planted and associated irrigation and trellising has been installed.

55. Under the Licence Agreement the Grower must:

- pay the Licence Fee payable;
- pay annual insurance premiums;
- only use the Almondlot for the purpose of conducting the Grower's almond growing business;
- maintain and develop the Almondlot for the long term commercial cultivation of almonds; and
- not install or remove anything from the Almondlot.

Management Services (Part 2 of the LMA)

56. Each Grower appoints GSMAL to perform the Initial Management Services and the Ongoing Management Services from the Commencement Date of the Project. GSMAL will supervise and manage all horticultural activities on behalf of the Grower. The services to be performed are set out in Schedule 1 and 2 of the LMA.

57. The Initial Management Services will be performed during the Initial Management Period, being the period from 15 June 2007 to 30 June 2007. The services include but are not limited to:

- all inspection, supervision and management activities as necessary from the Commencement Date in respect of the Initial Management Services that are carried out by subcontractors;
- obtaining formal verification by 30 June 2007 from an Almond Expert that the Almondlots are of an appropriate standard and all required services have been performed to an appropriate standard; and
- cultivation, watering, weeding, fertilising, spraying and doing all things necessary for the purpose of maintaining the Almond Trees in accordance with proper agricultural practices.

58. Ongoing Management Services will commence on 1 July 2007. Ongoing Management Services means all commercial activities required to manage and maintain the Almond Trees according to good agronomy practice, including but not limited to:

- all inspection, supervision and management activities as necessary from the Commencement Date in respect of the Ongoing Management Services that are carried out by subcontractors;
- cultivation, watering, weeding, fertilising, spraying, pest control and doing all things necessary for the purpose of maintaining the Trees in accordance with proper agricultural practices;

- acquiring and planting Almond Trees to replace any Almond Trees pursuant to the Stocking Guarantee; and
- harvesting, processing, marketing and selling the Almonds in such a manner as to achieve the maximum reasonable price.

Compliance Plan

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

Harvesting and sale

60. Commencing from the date of the first harvestable almond crop, or at such other time or times as the Responsible Entity in its absolute discretion considers appropriate, the Responsible Entity will harvest, or arrange for the harvest of the Almond Produce of Growers in the Project (clause 17 of LMA).

61. Each Grower has appointed GSMAL, as agent, to sell their Almond Produce for the maximum practicable price available (clause 18 of LMA). At all times the Grower has full right, title and interest in the Almond Produce and the right to have the Almond Produce sold for their benefit (clause 10.3 of LMA).

62. GSMAL will ensure that the Gross Proceeds of Sale are paid into the Proceeds Fund trust bank account (clause 20.1 of LMA). The Grower's Proportional Share of Costs and Expenses and any other payments made by the Responsible Entity in accordance with clause 31.2 of the Constitution will be paid from Gross Proceeds of Sale by GSMAL (clause 20.2 of LMA). GSMAL will pay the Licence Fee, Ongoing Management Fee and Insurance Premiums from the Net Proceeds of Sale (clause 20.3 of LMA). On or before each Distribution date, GSMAL will notify each Grower of their Grower's Proportional Share of the Net Proceeds of Sale for that Financial Year (clause 21.7 of LMA).

63. Where there is partial damage or destruction of a Grower's Almondlot, GSMAL will assess the damage and determine whether the Almondlot is to be terminated (clause 9.8 of LMA). Where the Almondlot is not to be terminated, GSMAL may determine the percentage of the Almondlot that is no longer commercially viable. The Grower's Proportional Interest will be reduced accordingly (clause 12.3 of LMA).

Pooling of Crops and Grower's Entitlement to Net Proceeds

64. The Produce from each Almondlot will be pooled with that of other Growers in the Project. Each Grower is entitled to receive a share of the sale proceeds proportional to their interest in the Project.

65. The LMA sets out provisions relating to the Grower's Entitlement to Harvest Proceeds. This Product Ruling only applies where the following principles apply to the pooling and distribution arrangements:

- only Growers who have contributed Almond Produce or insurance proceeds are entitled to benefit from distributions of Harvest Proceeds from the pool; and
- any pooled Almond Produce must consist only of Almond Produce contributed by Growers of Great Southern 2007 Almond Income Project.

66. In certain circumstances if the Grower's contribution to the Almond pool for that particular harvest is reduced, the Grower's Proportional Interest may be reduced.

Joint Venture

67. As an alternative to participation by a single entity as a Grower, the terms of the Constitution provide that two entities may enter into a Joint Venture. Joint Venturers are known as First Joint Venturer and Second Joint Venturer, and are apportioned specific responsibilities, rights and entitlements under clause 6 of the Constitution.

68. The First Joint Venturer is solely responsible for:

- 100% of the Initial Management Fee for 2007 Financial Year; and
- 40% of the Ongoing Management Fee, Licence Fee, Performance Fee and Operating Costs in all Financial Years commencing from and including the 2013 Financial Year.

69. The Second Joint Venturer is responsible for:

- 100% of the Ongoing Management Fee and Licence Fees for 2008 and 2009 Financial Year;
- 100% of Ongoing Management Fee, Licence Fee, Performance Fee and Operating Costs for 2010 to 2012 Financial Year; and
- 60% of the Ongoing Management Fee, Licence Fee, Performance Fees and Operating Costs in all Financial Years commencing from and including the 2013 Financial Year.

70. The First Joint Venturer and the Second Joint Venturer hold their Almondlot and enter into the LMA as tenants in common, with the First Joint Venturer entitled to a 40% share and the Second Joint Venturer entitled to a 60% share.

Crop Supply Agreement

71. GSMAL the Responsible Entity for the Project has entered into a 20 year agreement with Almondco Australia Limited (Almondco) for the marketing and sale of Almonds supplied by GSMAL. Subject to the almonds produced being of a suitable condition, Almondco has agreed to market and sell all available almonds supplied by GSMAL.

Head Lease Agreement

72. Australian Executor Trustees Limited as custodian of RFM Riverbank as Lessor will lease the Land, Water Rights, Trees and Irrigation System for the Project to Great Southern Almond Holdings Pty Ltd (GSAH) (Lessee) for the term of the Project. The Lessee accepts from the Lessor, the lease of the Land, Water Rights, Trees and the Irrigation System, subject to clause 22 of the Lease Agreement.

73. Land for the Project is described in Item 3 of the Reference Schedule to the Lease as:

- those parts of Lot 44 DP 1098339 in the proposed plans of subdivision;
- Lot 45 DP 1098339; and
- Lot 4682 DP 767846.

74. Under the Lease Agreement the Lessor has agreed to supply up to a maximum 15 megalitres of Water per annum for each hectare planted.

75. The Lessee will plant approximately 290 Trees per hectare on the Land, and install the Irrigation System. The ownership of the Trees and Irrigation System shall remain with the Lessee during the term of the Lease until the Trees and Irrigation System have been purchased by the Lessor in accordance with clause 22 of the Lease Agreement. The Lessee must only use the land for the purpose of primary production.

76. The approval of the Lessor is not required for the Lessee to sublease the lessee's interest in the land to GSMAL for the purpose of growing almonds or to grant any sublease or licence by GSMAL to a Grower.

77. The Lease will terminate on 30 June 2027, the date the Project is terminated.

Sublease Agreement

78. The Responsible Entity, GSMAL, will enter into a Lease with the Head Lessee GSAH in respect of the Land leased by GSAH from Australian Executor Trustees Limited as custodian of RFM Riverbank.

79. The Head-Lessee will at its own cost on or before 15 June 2007:

- construct and install all almond grove infrastructure including fences, trellising, irrigation, dams and firebreaks required for the establishment and operation of a commercial almond grove; and
- procure and complete the planting of the Almond trees,

on that part of the Leased land required by the Lessee.

80. The Responsible Entity must all at all times during the term of the Project manage, cultivate and work the Almond Grove to maintain and develop the Almond Grove Land for the purpose of long term commercial cultivation of almonds. The Responsible Entity must at all times keep the Almond Trees and Almond Grove infrastructure in good condition.

Agreements between GSMAL and RFM Farming Pty Ltd

81. GSMAL have entered into two agreements with RFM Farming Pty Ltd (RFMF) to carry out the day to day farm management of the Almond Grove.

82. RFMF will carry out the cultivation, maintenance, management and activities related to harvesting of the almonds from the Almond Grove as specified under Schedule 2 of the Initial Management Services Agreement and Schedule 2 of the Ongoing Management Services Agreement.

Fees

83. Under the terms of the LMA, a Grower will make payments as described below on a per Almondlot basis.

84. Fees payable under the LMA are as follows:

- on application, \$5,500 for Initial Management Services to be provided from date of entry into the Project up to 30 June 2007;
- \$1,509 for Ongoing Management Services to be provided the financial year ending 30 June 2008;
- \$1,296 for Ongoing Management Services to be provided in the financial year ending 30 June 2009;
- \$891 for Licence Fees for the financial year ending 30 June 2008;

- \$1,104 for Licence Fees for the financial year ending 30 June 2009;
- in consideration for ongoing management services to be provided in the financial year ended 30 June 2010 and each financial year thereafter, 4.95% of Gross Revenue;
- the Grower's Proportional Share of the Costs and Expenses commencing in the financial year ending 30 June 2010;
- performance fees commencing in the financial year ending 30 June 2010;
- annual licence fees commencing in the financial year ending 30 June 2010;
- insurance premiums payable to the Responsible Entity commencing in the financial year ending 30 June 2010; and
- any other payments made by the Responsible Entity in accordance with clause 31.2 of the Constitution.

Finance

85. A Grower who does not pay the Application Moneys in full upon application can borrow from Great Southern Finance Pty Ltd (a lender associated with GSMAL), borrow from ABL Nominees Pty Ltd (the 'Preferred Financier'), or from an independent lender external to the Project.

86. Only the finance arrangements set out below are covered by this Product Ruling. A Grower cannot rely on this Product Ruling if they enter into a finance arrangement with Great Southern Finance Pty Ltd or with the Preferred Financier that materially differs from that set out in the documentation provided to the Tax Office with the application for this Product Ruling. A Grower who enters into a finance arrangement with an independent lender external to the Project other than the Preferred Financier may request a private ruling on the deductibility or otherwise of interest incurred under finance arrangements not covered by this Product Ruling.

87. A Grower cannot rely on this Product Ruling if the Application Moneys, including all loan moneys, are not paid in full to GSMAL on or before 15 June 2007 by the Grower or, on the Grower's behalf by a lending institution. Where an application is accepted subject to finance approval by any lending institution, other than Great Southern Finance Pty Ltd, Growers cannot rely on this Ruling if written evidence of that approval has not been given to GSMAL by the lending institution by 15 June 2007.

88. Details of the loans that will be offered by Great Southern Finance Pty Ltd and the Preferred Financier are set out in the PDS and Application for Term Finance form and the Terms of Loan Deed. Normal debt recovery procedures, including legal action, will be taken in the case of defaulting borrowers.

Finance offered by Great Southern Finance Pty Ltd or the Preferred Financier

89. Subject to the terms and conditions of the Loan Agreement and PDS a Grower can finance the cost of their Application Money by borrowing that amount from Great Southern Finance Pty Ltd or the Preferred Financier (as the Lender).

Option A – 12 Month Interest Free Finance offered by Great Southern Finance Pty Ltd

90. Subject to Great Southern Finance Pty Ltd accepting the Grower's application, the Grower will be bound by the terms of the Loan conditions stated in the PDS. Interest free finance option is only available for the Initial Management Fee payable on application.

91. The interest free loan arrangement offered by Great Southern Finance Pty Ltd are:

- equal monthly principal instalments over a period of 12 months;
- instalments paid by direct debit commencing 15 July 2007;
- the GST component is not part of the finance arrangement and is payable by the applicant on execution of the LMA;
- no interest is payable; and
- lender can at its sole discretion require security to be provided over the Almondlot.

Option B – Principal and Interest Finance offered by Great Southern Finance Pty Ltd or the Preferred Financier

92. Subject to Great Southern Finance Pty Ltd or the Preferred Financier accepting the Grower's application, the Grower will be bound by the terms and conditions of the Loan Agreement.

93. The Loan Arrangements offered by Great Southern Finance Pty Ltd and the Preferred Financier are:

- principal and interest loans from 3 years to 10 years will be offered by Great Southern Finance Pty Ltd and the Preferred Financier;
- principal and interest loans from 3 years to 10 years with interest only periods will only be offered by the Preferred Financier;
- for loans with no interest only period, equal monthly principal and interest repayments over the term of the loan, commencing July 2007; and
- for loans with an interest only period, equal monthly instalments of interest commencing in July 2007 during the interest only period, followed by equal monthly principal and interest repayments for the remainder of the term of the loan.

For loans under Option B, the following will apply:

- the GST component is not part of the finance arrangement and is payable by the applicant on execution of the LMA;
- a Loan Establishment Fee, an Application Fee and a fee to cover legal costs and expenses may be charged; and
- the security for the loan is taken over the Grower's interest under the LMA.

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

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' are or will be granted to the borrowers for the purpose of section 82KL of the ITAA 1936 or the funding arrangements transform the Project into a 'scheme' to which Part IVA of the ITAA 1936 may apply;
- the loan or rate of interest is non-arm's length;
- repayments of the principal and payments of interest are linked to the derivation of income from the Project;

- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender or any associate of the lender;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- entities associated with the Project, other than Great Southern Finance Pty Ltd or the Preferred Financier are involved or become involved in the provision of finance to Growers for the Project.

Commissioner of Taxation11 April 2007

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?

95. For the amounts set out in paragraph 24 of this Ruling to constitute allowable deductions the Grower's almond growing activities as a participant in the Great Southern 2007 Almond Income Project must amount to the carrying on of a business of primary production.

96. Two Taxation Rulings are relevant in determining whether a Grower will be carrying on of a business of primary production.

97. The general indicators used by the Courts are set out in Taxation Ruling TR 97/11 Income tax: am I carrying on a business of primary production?

98. Taxation Ruling TR 2000/8 Income tax: investment schemes, particularly paragraph 89, is more specific to arrangements such as the Great Southern 2007 Almond Income Project. As Taxation Ruling TR 2000/8 sets out, the relevant principles have been established in court decisions such as *Commissioner of Taxation v. Lau* (1984) 6 FCR 202; 84 ATC 4929; (1984) 16 ATR 55.

99. Having applied these principles to the arrangement set out above, a Grower in the Great Southern 2007 Almonds Income Project is accepted to be carrying on a business of growing and harvesting almonds for sale.

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. Changes to the STS rules apply from 1 July 2005. The question of whether a Grower is eligible to be an 'STS taxpayer' is outside the scope of this Product Ruling (but refer to Taxation Ruling TR 2002/6 and Taxation Ruling TR 2002/11). 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 the Initial Management Fee, Ongoing Management Fees, Licence Fees and interest on loans with Great Southern Finance Pty Ltd or the Preferred Financier

Section 8-1

102. The Initial Management Fee, Ongoing Management Fees and Licence Fees are deductible under section 8-1 (see paragraphs 43 and 44 of TR 2000/8). A 'non-income producing' purpose (see paragraphs 47 and 48 of TR 2000/8) is not identifiable in the arrangement and there is no capital component evident in the initial management fees and licence fees (see paragraphs 49 to 51 of TR 2000/8).

103. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply. Provided that the prepayment provisions do not apply (see paragraphs 106 to 110 of this Ruling) a deduction for these amounts can be claimed in the year in which they are incurred (Note: The meaning of incurred is explained in Taxation Ruling TR 97/7).

104. Some Growers may finance their participation in the Project through a Loan Agreement with Great Southern Finance Pty Ltd or the Preferred Financier. Applying the same principles as that used for the Initial Management Fee, Ongoing Management Fees and the Licence Fees, interest incurred under such a loan has sufficient connection with the gaining of assessable income to be deductible under section 8-1.

105. Other than where the prepayment provisions apply (see paragraphs 106 to 110 of this Ruling), a Grower can claim a deduction for such interest in the year in which it is incurred.

Prepayment provisions

Sections 82KZL to 82KZMF

106. 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.

107. For this Project, the only prepayment provisions that are relevant are section 82KZL of the ITAA 1936 (an interpretive provision) and sections 82KZME and 82KZMF of the ITAA 1936 (operative provisions).

Application of the prepayment provisions to this Project

108. Under the scheme to which this Product Ruling applies Management Fee, Ongoing Management Fees, Licence Fees and other fees are incurred annually and the interest payable to Great Southern Finance Pty Ltd or the Preferred Financier is incurred monthly in arrears. Accordingly, the prepayment provisions in sections 82KZME and 82KZMF of the ITAA 1936 have no application to this scheme.

109. However, sections 82KZME and 82KZMF of the ITAA 1936 may have relevance if a Grower in this Project prepays all or some of the expenditure payable under the LMA, or prepays interest under a loan agreement. Where such a prepayment is made these prepayment provisions will also apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes them from the operation of section 82KZMF.

110. As noted in the Ruling section above, Growers who prepay fees or interest are not covered by this Product Ruling and may instead request a private ruling on the tax consequences of their participation in this Project.

Deferral of losses from non-commercial business activities and the Commissioner's discretion

Sections 35-10 and 35-55

111. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for income years ending 30 June 2007 to 30 June 2012, the Commissioner has determined that for those income years:

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

112. 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.

113. 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

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

Part IVA – general tax avoidance provisions

115. 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).

116. The Great Southern 2007 Almond Income Project will be a 'scheme'. A Grower will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraph 24 of this Ruling 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.

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

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 97/7; TR 97/11; TR 98/22;
TR 2000/8; TR 2002/6;
TR 2002/11

Subject references:

- carrying on a business
- commencement of business
- non-commercial losses
- primary production
- producing assessable income
- product rulings
- public rulings
- tax benefit under tax avoidance schemes
- tax shelters project
- taxation administration

Legislative references:

- ITAA 1936 82KL
- ITAA 1936 Pt III Div 3 Subdiv H
- ITAA 1936 82KZL
- ITAA 1936 82KZM
- ITAA 1936 82KZMA
- ITAA 1936 82KZMB
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- ITAA 1936 82KZMD
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- ITAA 1936 Pt IVA
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- Commissioner of Taxation v. Lau (1984) 6 FCR 202 84 ATC 4929 (1984) 16 ATR 55

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