


PR 2007/40 - Income tax: Rewards Group Tropical Fruits Project 2007

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Product Ruling

Income tax: Rewards Group Tropical Fruits Project 2007

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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.

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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 provision(s) 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 Rewards Group Tropical Fruits Project 2007 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.

3. The class of entities who can rely on those tax benefits are referred to as Growers. Growers will be those entities that are accepted to participate in the scheme specified below on or after the date this Product Ruling is made and who have executed the relevant Project Agreements set out in paragraph 40 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;
- other than where a 12 month Terms Option is in place, do not pay the Subscription Money in full on or before 30 June 2007; or
- enter into finance arrangements with Rewards Projects Limited, the Preferred Financier or entities associated with this Project other than those specified in paragraphs 85 to 92 of this Ruling (the word 'associate' has the meaning given in section 318 of the *Income Tax Assessment Act 1936* (ITAA 1936)).

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 40 to 99 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 2 May 2007, the date this Product Ruling is made. It therefore applies only to the specified class of entities that enter into the scheme from 2 May 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 for the income years up to 30 June 2009.

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 to the law may impact on this Product Ruling. Any such changes will take precedence over the application of this Product Ruling and, to the extent of those amendments this Product Ruling will be superseded.

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 40 to 99 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 Sub-lease and Management Agreement.

Minimum subscription

20. 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 PDS, a Grower's application will not be accepted and the Project will not proceed until the minimum subscription of 150 is achieved.

The Simplified Tax System (STS)

Division 328

21. 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*.

22. 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

23. 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 17-5

24. 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.

25. In the case of Joint Venture Growers:

- the First Joint Venturer will be assessable on 38.6%; and
- the Second Joint Venturer will be assessable on 61.4%,

of the gross sale proceeds (less any GST payable on those proceeds).

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

Trading stock

Section 70-35

27. A Grower who is not an 'STS taxpayer' will, in some years, hold Fruit 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.

29. The Responsible Entity will advise the Grower of the value of trading stock on hand at the end of the year.

Section 328-285

30. A Grower who is an 'STS taxpayer' may, in some years, hold Fruit 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)).

31. 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)).

32. The Responsible Entity will advise the Grower of the value of trading stock on hand at the end of the year.

Deductions for Management Services (Fixed Component) Fees, Rent, Harvest costs, cost of sales, Management Services (Harvest Component) Fees, optional tree insurance costs, credit card merchant fees, Interest and borrowing expenses

Section 8-1, section 25-25 and Division 27

33. A Grower may claim tax deductions for the following fees and expenses on a per Grove 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
Management Services (Fixed Component) Fees	\$4,808.91 See Notes (i), (ii) & (iii)	\$903.51 See Notes (i), (ii) & (iii)	\$758.77 See Notes (i), (ii) & (iii)
Rent	\$22 See Notes (i), (ii) & (iii)	\$115.50 See Notes (i), (ii) & (iii)	\$118.73 See Notes (i), (ii) & (iii)
Harvest costs	Nil	As incurred See Notes (i) & (ii)	As incurred See Notes (i) & (ii)
Costs of sale	Nil	As incurred See Notes (i) & (ii)	As incurred See Notes (i) & (ii)
Management Services (Harvest Component) Fee	Nil	As incurred See Notes (i), & (ii)	As incurred See Notes (i) & (ii)
Optional tree insurance costs	Nil	As incurred See Notes (i), (ii) & (iii)	As incurred See Notes (i), (ii) & (iii)
Credit card merchant fee	As incurred See Notes (i) & (ii)	As incurred See Notes (i) & (ii)	As incurred See Notes (i) & (ii)
Interest on loans with Rewards Projects Limited or the Preferred Financier	As incurred See Notes (i), (iii) & (iv)	As incurred See Notes (i), (iii) & (iv)	As incurred See Notes (i), (iii) & (iv)
Loan – Application Fee	Must be calculated See Notes (i) & (v)	Must be calculated See Notes (i) & (v)	Must be calculated See Notes (i) & (v)

Notes:

- (i) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (for example, input tax credits): Division 27.
- (ii) The Management Services (Fixed Component) Fees, Rent, Harvest costs, costs of sale, Management Services (Harvest Component) Fee, optional tree insurance costs and credit card merchant fees and charges 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 113 to 117 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 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 Rewards Projects Limited or the Preferred Financier, is outside the scope of this Ruling. Prepayments of interest to any lender, including Rewards Projects Limited 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 Application Fee, payable to either Rewards Projects Limited or to the Preferred Financier on the loan arrangements, 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 Rewards Projects Limited or the Preferred Financier is outside the scope of this Ruling.

Joint Venture Growers

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

- for the **First Joint Venturer**:
 - the Management Services (Fixed Component) Fee and Rent for the period from commencement to 30 June 2007;
 - 38.6% of the Management Services (Harvest Component) Fee;
 - 38.6% Harvest costs and costs of sale; and
 - if applicable, borrowing expenses, interest and credit card merchant fees.
- for the **Second Joint Venturer**:
 - the Management Services (Fixed Component) Fees and Rent for the Term of the Project from 1 July 2007;
 - 61.4% of the Management Services (Harvest Component) Fee;
 - 61.4% Harvest costs and costs of sale; and
 - if applicable, optional tree insurance costs and credit card merchant fees.

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

35. A Grower may claim tax deductions for the following capital expenses on a per Grove basis, as set out in the Table below.

Fee type	ITAA 1997 section	Year ended 30 June 2007	Year ended 30 June 2008	Year ended 30 June 2009
Landcare Services Fee	40-630	\$1,650 See Notes (i) & (vi)	Nil	Nil
Trellis Fee	40-25, 328-185 & 328-190	Must be calculated See Notes (i), (vii) & (viii)	Must be calculated See Notes (i), (vii) & (viii)	Must be calculated See Notes (i), (vii) & (viii)
Establishment of horticultural plants	40-515	Nil	Nil	Must be calculated See Notes (i) & (ix)
12 month Terms Option – Application Fee	40-880	Must be calculated See Notes (i) & (x)	Must be calculated See Notes (i) & (x)	Must be calculated See Notes (i) & (x)

Notes:

- (vi) Any capital expenditure incurred for a 'landcare operation' (as defined in section 40-635) is deductible in the year in which it is incurred under Subdivision 40-G, section 40-630.
- (vii) For **non-STs taxpayers** a Grower's interest in the trellising is a 'depreciating asset'. The 'cost' of each asset is the amount paid by the Grower. The decline in value of each asset is calculated using the formula in either subsection 40-70(1) (diminishing value method) or subsection 40-75(1) (prime cost method). Both formulas rely on the 'effective life' of the assets.

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

For a Grower who purchases **less than 5 Groves** in this Project, their interest in the trellising will be a 'low cost asset'. A low cost asset is an asset costing less than \$1,000 and as such can be allocated to a 'low-value pool'. Once any low-cost asset of a Grower is allocated to a low-value pool, all other low-cost assets the Grower starts to hold in that year or a later year must be allocated to that pool.

If the Grower has already allocated an asset to a low-value pool, the trellising, if low cost assets, would also have to be allocated to that pool. Otherwise, the Grower must decide whether to create a low-value pool.

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

- (viii) 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 4 Groves**, 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.

- (ix) Stone Fruit trees are a 'horticultural plant' as defined in subsection 40-525(2). As Growers hold the Land under a Sub-lease, the conditions 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 new Stone Fruit trees is determined using the formula in section 40-545 and is based on the capital expenditure of \$481.07 per Grove incurred by the Grower that is attributable to their establishment.

If the new Stone Fruit trees have an effective life of greater than 13 but fewer than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 13%. The deduction is allowable when the Stone Fruit trees enter their first commercial season (section 40-530, item 2). The Responsible Entity will inform Growers of when the Stone Fruit trees enter their first commercial season.

- (x) The Application Fee payable to Rewards Projects Limited in respect of a 12 month Terms Option is not deductible in full when it is incurred. Under section 40-880 it is deductible on a straight line basis over five income years (see paragraphs 111 and 112 of this Ruling).

Joint Venture Growers

36. The First Joint Venturer may claim the deductions for capital expenditure as listed in the Table above, being the Landcare Services Fee, Trellis Fee and 12 month Terms Option Application Fee. In addition, the First Joint Venturer is entitled to deductions for the initial planting fee of \$450.07 in accordance with the conditions given in the Table above, for 'establishment of horticultural plants'.

37. The Second Joint Venturer is entitled to deductions for the planting fee of \$31 in accordance with the conditions given in the Table above, for 'establishment of horticultural plants'.

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

Section 35-55 – exercise of Commissioner's discretion

38. 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 below, the Commissioner will exercise the discretion in paragraph 35-55(1)(b) for these Growers for the income years **30 June 2007 to 30 June 2011**. 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***

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

- expenditure by a Grower does not fall within the scope of sections 82KZME and 82KZMF (but see paragraphs 113 to 117 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

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

- Application for Product Ruling as constituted by documents received on 18 December 2006 and additional correspondence received on 4 December 2006, 13, 23, 28 and 31 March 2007 and 2, 3, 10, 11 and 13 April 2007;
- Draft **Product Disclosure Statement** for the Rewards Group Tropical Fruits Project 2007 to be issued by Rewards Projects Limited (the Responsible Entity), received 11 April 2007;
- Draft **Constitution** of the Rewards Group Tropical Fruits Project 2007 between Rewards Projects Limited (Responsible Entity) and the Grower, received 28 March 2007;
- Draft **Management Agreement** for the Rewards Group Tropical Fruits Project 2007 between the Responsible Entity and the Grower, received 11 April 2007;
- Draft Lease between Rewards Land Pty Ltd and the Responsible Entity for the Land located near Childers in Queensland, received on 18 December 2006;
- Draft Lease between Rewards Land Pty Ltd and the Responsible Entity for the Land located near Mareeba in Queensland, received on 18 December 2006;

- Draft Lease between Rewards Land Pty Ltd and the Responsible Entity for the Land located near Dandaragan in Western Australia, received on 18 December 2006;
- Draft **Sub-lease** for the Rewards Group Tropical Fruits Project 2007 between the Responsible Entity (as 'Sub-Lessor') and the Grower, received 18 December 2006;
- Draft Rewards Group Tropical Fruits Project 2007 **Finance Package**, received 2 April 2007;
- Draft Indicative Compliance Plan for the Rewards Group Tropical Fruits Project 2007, received 18 December 2006;
- Tropical Fruits 2007 Management Plan Childers, dated October 2006, received 18 December 2006;
- Tropical Fruits 2007 Management Plan Dandaragan, dated October 2006, received 18 December 2006;
- Tropical Fruits 2007 Management Plan for the Mareeba Land, dated November 2005, received 18 December 2006;
- Draft Operations Agreement for the Rewards Group Tropical Fruits Project 2007 between the Responsible Entity and Rewards Management PTY Ltd (as 'Manager'), received 11 April 2007;
- Independent Experts Report dated 13 October 2006;
- Draft Heads of Agreement Fruit Marketing Services, received 18 December 2006;
- Draft Heads of Agreement Fruit Packaging Services, received 18 December 2006;
- Draft Australian Mango and Stone Fruit: Independent Market Report, dated October 2007; received 18 December 2006; and
- Draft **Application Guide** for the Rewards Group Tropical Fruits Project 2007, received 18 December 2006.

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

41. The documents highlighted are those that a Grower 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.

Overview

42. The main features of the Tropical Fruits Project 2007 are as follows:

Location	Near Dandaragan in Western Australia and Childers and Mareeba in Queensland
Type of business each participant will be carrying on	Commercial growing and cultivation of Fruit Trees for producing mango and stone fruit
The term of the Project	20 years
Number of hectares offered for cultivation	119 hectares
Size of each Grove	0.05 hectares
Minimum allocation per Grower	2 Groves
Minimum subscription	150 Groves
Initial cost	\$14,300
Initial cost per hectare	\$143,000
Ongoing costs	Management Services (Fixed Component) Fees, Rent, Planting Fee, Trellis Fee, Harvest costs, costs of sale, Management Services (Harvest Component) Fee, optional insurance, credit card merchant fees and charges.

43. The Project will be a registered Managed Investment Scheme under the *Corporations Act 2001*. Rewards Projects Limited has been issued with an Australian Financial Service Licence (number 224000) and will be the Responsible Entity for the Project.

44. The Project will involve the planting and cultivating of new Stone Fruit Trees as well as the cultivating of established Mango and Stone Fruit Trees. The produce from the Trees will be harvested and sold by the Responsible Entity on behalf of the Growers in the Project.

45. An offer to participate in the Project will be made through a Product Disclosure Statement (PDS). The offer under the PDS is for 119 hectares, which corresponds to 2,380 Groves in the Project. The Term of the Project is a minimum of 20 years.

46. A Grower that participates in the Project will do so by acquiring an interest in the Project which will consist of a minimum of 2 Groves each of 0.05 hectares in size at a cost of \$7,150 per Grove.

47. Upon application, Applicants execute a Power of Attorney contained in the PDS. The Power of Attorney irrevocably appoints Rewards Projects Limited to enter into, on behalf of the Grower, a Sub-lease Agreement, a Management Agreement and any other documents required to hold an interest in the Project.

48. For the purposes of this Ruling, Applicants who are accepted to participate in the Project and who execute the Sub-lease and the Management Agreement and who have been allotted Groves on or before 15 June 2007 will become Growers.

49. Under terms of the PDS, the interests in the Grower's Groves will be issued after a minimum subscription of 150 Groves has been achieved by 15 June 2007.

50. The Responsible Entity is currently leasing Land from Rewards Land Pty Ltd, the head Lessor, for use in the Project. This Land will be divided into 0.05 hectare lots and sub-leased to the Growers accepted in the Project.

51. Each Grower will use their Groves for the purpose of carrying on a business of cultivating and harvesting mangoes and stone Fruit and the sale of harvested produce.

52. Sufficient water is available for all plantations. Irrigation water from the Mareeba-Dimbulah Irrigation Area will be used to irrigate the established Mango Orchard near Mareeba. Water from the Leederville Parmelia aquifer will be used for the Stone Fruit Orchards near Dandaragan. Irrigation water from the Burnett River Irrigation Scheme will be used to irrigate the Stone Fruit Orchard near Childers.

Constitution

53. The Constitution establishes the Project and operates as a deed binding all Growers and Rewards Projects Limited. The Constitution sets out the terms and conditions under which Rewards Projects Limited 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.

54. In order to acquire an interest in the Project, the Grower must make an application for Groves in accordance with clause 3.2. 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 Subscription Money in a form acceptable to the Responsible Entity.

55. Under clause 8.2 of the Constitution, Rewards Projects Limited holds the Subscription Money on bare trust. Rewards Projects Limited will deposit all Subscription Moneys received from applicants in a Subscription Fund (clause 8).

56. Once Rewards Projects has accepted the application, all of the project documents have been executed and remain in force and the Responsible Entity is satisfied that certain specified criteria in the Constitution have been met (clauses 3.3, 3.4 and 3.8 of the Constitution) the Subscription Money may be transferred and applied against the fees due to Rewards Projects Limited (clause 3.6).

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

- the Responsible Entities powers in relation to acceptance and refusal of Applications and release and application of Subscription Monies (clause 3);
- the consideration payable by each Grower in respect to their participation in the Project (clause 4);
- conditions under which Rewards Projects Limited agrees to act as Responsible Entity of the Project (clause 5);
- the Responsible Entities powers in relation to the management of the Project (clause 6);
- the Responsible Entities power to delegate its functions under the Constitution (clause 7);
- the creation of the Subscription Fund, the Project Fund and the Proceeds Fund(s) (clause 8);
- procedures relating to the payment of Project Fees by Growers and action to be taken regarding defaulting Growers (clause 9);
- the right of the Responsible Entity to be indemnified out of Receipts (clause 10);
- procedures relating to payment from Receipts and distributions from the Proceeds Fund (clause 11);
- resolution of complaints made by the Grower in relation to the Responsible Entity (clause 12);
- commencement of the Project and termination of the Project (clause 14);
- the rights and liabilities of the Growers and the relationship between each Grower (clause 15);
- the rights of the Responsible Entity to protection and indemnity in respect to the management of the Project (clause 16);
- the destruction or partial destruction of the of the Grower's Grove (clause 18);
- the election by Growers to insure take out insurance of the Grower's Trees and the application of insurance proceeds (clause 19); and

- the entitlements and obligations of Joint Venturers (clause 20).

Compliance Plan

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

Head Leases

59. The Responsible Entity will enter into a of number head Leases with Rewards Land Pty Ltd in respect of Land required for the Project. The Land is located on three sites. One site is near the township of Dandaragan in Western Australia. The other sites are near Childers and Mareeba in Queensland.

60. The Responsible Entity must use the Land only for the purpose of mango and stone Fruit farming.

61. The Responsible Entity may also sub-lease the Land or any part of the Land to Growers in the Rewards Group Tropical Fruits Project 2007 for a term equivalent of the term of the Lease.

Sub-lease

62. Each Grower will execute a Sub-lease with the Responsible Entity as the Sub-Lessor. The Responsible Entity will grant to the Grower the right to exclusively possess, occupy, use and enjoy the Groves, for the purpose of growing Mango and Stone Fruit Trees and harvesting Fruit. The Grower shall be entitled to the Fruit derived from the Trees on their Groves for the Term of the Sub-lease (clause 2.2).

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

64. The Sub-lease sets out the rights and obligations of the parties to the Agreement. Under the terms of the Sub-lease each Grower will lease from the Sub-Lessor a minimum of 2 Groves, each of 0.05 hectares. The Sub-lease shall operate on and from the Commencement Date until terminated in accordance with the terms under clause 7 and item 3 of the Schedule to the Sub-lease.

65. The Lessor acknowledges that the Grower's Fruit will remain the property of the Grower during the term of the Sub-lease, provided that the Sub-lease and Management Agreement have not been terminated for the non-payment of any Rent, fees, costs or expenses payable under the agreements (clause 7).

66. The Grower's obligations are set out in detail in clause 4 under which the Grower agrees to use the Groves for the purpose of establishing and maintaining Trees and harvesting Fruit in accordance with the Management Plan and principles of good agriculture.

67. Under clause 5 the Responsible Entity agrees that the Grower may enjoy the Groves without any interruption or disturbance. This is subject to the Grower paying the Rent and performing and observing all covenants in the Sub-lease.

Operations Agreement

68. Rewards Projects Pty Ltd has entered into an Operations Agreement with Rewards Management Pty Ltd. Under the Operations Agreement the Responsible Entity has agreed to appoint Rewards Management Pty Ltd to perform the Responsible Entity's obligations under the Management Agreement on the terms and conditions set out in the Operations Agreement.

Management Agreement

69. Under the Management Agreement the Grower appoints the Responsible Entity (as Manager) to manage the Groves and to carry out the management services subject to the terms and conditions of the Agreement. The Management Agreement will commence on the date the Responsible Entity accepts the Grower's application under the PDS and the Agreement is executed and shall continue until its termination under clause 3.

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

71. The Management Services that will be provided from the date of the Management Agreement to 30 June 2007, include:

- arrange for prospective Australian fruit agents and buyers to inspect the project;
- negotiate marketing and sales agreements with Australian fruit agents and purchasers;
- prepare and execute marketing and sales agreements with Australian fruit agents and purchasers;
- ensure Orchards are being managed in accordance with Australian fruit agents and purchasers requirements;

- provide strategic fruit marketing services for the Project;
- administration; and
- on the established orchards, undertake works such as, pruning, fertilising, pest control, nutrient analysis, repair roads and service machinery (clause 2.3 and Annexure A).

72. The Landcare services will be provided from the date of the Management Agreement to 30 June 2007. The Responsible Entity will arrange for Landcare operations to be performed on the new Orchard, including laser-levelling and install soil erosion preventative measures (clause 2.2 and Annexure A)

73. The Planting and Trellis Services that will be provided from the date of the Management Agreement to 30 June 2007 are:

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

74. The Planting Services that will be provided after 30 June 2007 are the planting of the Stone Fruit trees by 30 September 2007.

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

- provide an experienced and competent management team to perform the services under the Management Agreement;
- tend to the Orchard according to principles of good agriculture, including nutrient analysis, pruning, irrigating, fertilising and fumigating;
- in the five years following planting, conduct survival counts and where necessary replant trees;
- ensure that all roads, fences tracks and firebreaks in and about the Orchard are in good repair;
- ensure control on the Orchard of rabbits, rodents and other vermin;
- undertake periodic site inspections;
- provide periodic reports to the Growers; and
- manage the sale of harvested Fruit (clause 2.3 and Annexure A of the Management Agreement).

Harvesting and sale

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

Pooling of Fruit and Grower's Share of Receipts

77. The Management Agreement sets out provisions relating to the Grower's Share of Harvest Receipts. This Product Ruling only applies where the following principles apply to the pooling and distribution arrangements:

- only Growers who have contributed Fruit or insurance proceeds are entitled to benefit from distributions of proceeds from the sale of the Growers Fruit from the pool; and
- any pooled Fruit must consist only of Fruit contributed by Growers of the Rewards Group Tropical Fruits Project 2007.

78. In certain circumstances if the Grower's contribution to the pool is reduced, the Grower's Share may be reduced.

Fees

79. The subscription fee payable to the Responsible Entity on application is \$7,150 **per Grove**. This fee consists of:

- **Management Services (Fixed Component) Fees** of \$4,808.91 for services to be performed from the commencement date to 30 June 2007 (item 2 of the Schedule to the Management Agreement);
- **Rent** of \$22 for the period from the Sub-lease Commencement Date to 30 June 2007 (item 4 of the Schedule to the Sub-lease);
- **Landcare Services Fee** of \$1,650 for provision of the Landcare Services (item 3 of the Schedule to the Management Agreement);
- **Trellis Fee** of \$219.02 for installing trellis on the New Stone Fruit Orchard before 30 June 2007 (item 4 of the Schedule to the Management Agreement); and
- **Planting Fee** of \$450.07 to supply Stone Fruit trees and prepare the Land by 30 June 2007.

80. The ongoing fees **per Grove** are:
- **Annual Management Services (Fixed Component) Fees** of:
 - \$903.50 for services to be performed from 1 July 2007 to 30 June 2008, payable on or before 1 October 2007;
 - \$758.77 for services to be performed from 1 July 2008 to 30 June 2009, payable on or before 1 October 2008; and
 - for each financial year commencing after 30 June 2009, the management fee for the prior financial year indexed at 2.8% per annum, payable on or before 1 October of the relevant year until the end of the Term (Item 2 of the Schedule to the Management Agreement).
 - **Annual Rent per Grove** of:
 - \$115.50 for the period 1 July 2007 to 30 June 2008, payable on or before 1 October 2007;
 - \$118.73 for the period 1 July 2008 to 30 June 2009, payable on or before 1 October 2008; and
 - for each financial year commencing after 30 June 2009, the rent for the prior financial year indexed at 2.8% per annum, payable on or before 1 October of the relevant year until the end of the Term (Item 4 of the Schedule to the Sub-lease).
 - **Other Fees** per Grove:
 - **Planting Fee**, being \$31.00 payable on or before 1 October 2007 for Planting Services to be carried out during the period from 1 July 2007 to 31 October 2007 (item 5 of the Schedule to the Management Agreement);
 - **Harvest costs**, being the Grower's share of all costs of and incidental to the Harvest, payable out of the Grower's share of the proceeds of sale of the relevant Harvest (clause 6.2 of Management Agreement and clause 11.1 of the Constitution);

- **Costs of sale**, being the Grower's Share of all costs incidental to the sale of the Fruit harvested, payable out of the Grower's share of the proceeds of sale of the relevant Harvest (clause 7.4 of Management Agreement and clause 11.1 of the Constitution);
- **Management Services (Harvest Component) Fee**, being 11% of the Grower's share of the sale proceeds of each Harvest after deducting the Harvest costs and the costs of sale (item 6 of the Schedule to Management Agreement); and
- **Optional tree insurance costs** for the period after 30 June 2008. The Responsible Entity will be responsible for the cost of public risk insurance for the Term of the Project and will pay for tree insurance from the date of the Management Agreement to 30 June 2008 (PDS).

81. Growers who use their credit card to pay the fees for this Project will incur a merchant fee for the use of their credit card.

Joint Venture

82. 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 referred to as the First Joint Venturer and the Second Joint Venturer. The Joint Venturers are apportioned specific responsibilities, rights and entitlements under clause 20 of the Constitution.

83. Under this Joint Venture:

- the First Joint Venturer will pay the subscription fee of \$7,150 per Grove that includes the initial fees for Management Services, Rent, Landcare Fee, Planting Fee payable on Application and Trellis Fee;
- the Second Joint Venturer will pay the annual Management Services (Fixed Component) Fees, annual Rent, any insurance costs and the second period Planting Fee; and
- both Joint Venturers will pay the Harvest costs, costs of sale, Marketing Fee and any other amounts that are due to the Responsible Entity pursuant to the terms of the Constitution, Sub-lease or Management Agreement. The First Joint Venturer will pay 38.6% of those fees and the Second Joint Venturer will pay 61.4% of those fees.

84. The First Joint Venturer and the Second Joint Venturer hold their Groves and enter into the Management Agreement and Sub-lease Agreement as tenants in common. The Joint Venturers are each entitled to a share of the proceeds of selling the Fruit. The First Joint Venturer is entitled to a 38.6% share and the Second Joint Venturer is entitled to 61.4% share.

Finance

85. A Grower who does not pay the Subscription Money in full upon application can enter into a 12 month Terms Option with the Responsible Entity, borrow from Responsible Entity, 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 Rewards Projects Limited 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. Other than where a 12 month Terms Option is in place. Growers cannot rely on any part of this Ruling if the Subscription Monies are not paid in full on or before 30 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 the Responsible Entity, Growers cannot rely on this Ruling if written evidence of that approval has not been given to the Responsible Entity by the lending institution by 15 June 2007.

Finance offered by Rewards Projects Limited or the Preferred Financier

88. Subject to the terms and conditions of the Finance Agreement a Grower can finance the cost of their Subscription Money by borrowing that amount from Rewards Projects Limited or the Preferred Financier (as the Provider).

89. Upon acceptance of the Grower's finance application, the Grower will be bound by the terms and conditions of the Finance Agreement.

90. Except for the 12 month Terms Option, the interest rate is fixed at 10.95% and the repayments are due monthly in arrears over the term of the loan commencing on 29 June 2007.

91. In addition, an Application Fee of 1% of the loan amount is payable to the Lender on 29 June 2007, subject to, a minimum Application Fee of \$100 and Maximum Application Fee of \$500.

92. The 12 month Terms Option and the loans will be secured by first ranking charge over the Grower's right, title and interest in the Project Groves and the Project documents. The loans are on a full recourse basis and recovery action will be taken in respect of any default.

12 month Terms Option

93. Where Rewards Projects Limited accepts an application from a Grower to pay the Subscription Money under a Terms Payment Option a deposit of \$715 is payable upon application with the balance payable by 12 equal monthly instalments of \$536.25. The instalments are payable monthly in arrears, with the first payment commencing on 29 June 2007.

94. In addition, an Application Fee of 1% of the 12 month Terms Option amount is payable to the Rewards Projects Limited on 29 June 2007, subject to, a minimum Application Fee of \$100 and Maximum Application Fee of \$500.

95. The full amount of the Subscription Money must be paid no later than 12 month from the date the Grower is accepted to participate in the Project.

Loan arrangements

96. Growers who enter into a finance arrangement, with either Rewards Projects Limited or the Preferred Financier, are required to pay a deposit of 10% of the subscription fee. The balance after the 10% deposit is repayable together with interest, under one of the following.

Finance offered by Rewards Projects Limited

97. The loan arrangement offered by Rewards Projects Limited is a 5 years principal and interest loan with 60 monthly repayments of \$139.75 per Grove.

Finance offered by the Preferred Financier

98. The loan arrangements offered by the Preferred Financier are:

- 2 years principal & interest loan – 24 monthly repayments of \$299.77 per Grove;
- 5 years principal & interest loan – 60 monthly repayments of \$139.75 per Grove;
- 10 years principal & interest loan – 120 monthly repayments of \$88.46 per Grove; and

- 3 years interest only and then 7 years principal and interest loan – 36 interest only monthly repayments of \$58.72 followed by 84 monthly repayments of \$110.01 per Grove.

99. 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 Rewards Projects Limited, are involved or become involved in the provision of finance to Growers for the Project.

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?

100. For the amounts set out in paragraphs 33 and 35 of this Ruling to constitute allowable deductions the Grower's horticultural activities as a participant in the Rewards Group Tropical Fruits Project 2007 must amount to the carrying on of a business of primary production.

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

102. 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?

103. Taxation Ruling TR 2000/8 Income tax: investment schemes, particularly paragraph 89, is more specific to arrangements such as the Rewards Group Tropical Fruits Project 2007. 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.

104. Having applied these principles to the arrangement set out above, a Grower in the Rewards Tropical Fruits Project 2007 is accepted to be carrying on a business of growing and harvesting mangoes and stone Fruit for sale.

The Simplified Tax System

Division 328

105. 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.

106. 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 Management Services (Fixed Component) Fees, Rent, Harvest costs, cost of sale, Management Services (Harvest Component) Fees, optional tree insurance costs, credit card merchant fees and Interest on loans with Rewards Projects Limited or the Preferred Financier

Section 8-1

107. The Management Services (Fixed Component) Fees, Rent, Harvest costs, cost of sale, Management Services (Harvest Component) Fees, optional tree insurance costs, credit card merchant fees and Interest on loans with Rewards Projects Limited or the Preferred Financier 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 Management Services (Fixed Component) Fees, Rent, Harvest costs, cost of sale, Management Services (Harvest Component) Fees, optional tree insurance costs and credit card merchant fees (see paragraphs 49 to 51 of TR 2000/8).

108. 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 113 to 117 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.)

109. Some Growers may finance their participation in the Project through a Finance Agreement with Rewards Projects Limited or the Preferred Financier. Applying the same principles as that used for the Management Services (Fixed Component) Fees, Rent, Harvest costs, cost of sale, Management Services (Harvest Component) Fees, optional tree insurance costs and credit card merchant fees, interest incurred under such a loan has sufficient connection with the gaining of assessable income to be deductible under section 8-1.

110. Other than where the prepayment provisions apply (see paragraphs 113 to 117 of this Ruling), a Grower can claim a deduction for such interest in the year in which it is incurred.

Application Fee payable under a 12 month Terms Option

Section 40-880

111. Growers who elect to pay their Grower's contribution under the 12 month Terms Option must pay an Application Fee of 1% of the 12 month Terms Option amount, subject to, a minimum Application Fee of \$100 and Maximum Application Fee of \$500. This expenditure does not constitute a borrowing expense and is therefore not deductible under section 25-25. As it is capital in nature it is also not deductible under section 8-1.

112. However, section 40-880 will allow the Application Fee to be deducted on a straight line basis over five income years. Section 40-880 applies to capital expenditure that is incurred in relation to a business and which is not taken into account elsewhere or denied deductibility under another provision of income tax law.

Prepayment provisions

Sections 82KZL to 82KZMF

113. 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.

114. 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

115. Under the scheme to which this Product Ruling applies Management Services (Fixed Component) Fees, Rent, Harvest costs, cost of sale, Management Services (Harvest Component) Fees, optional tree insurance costs, credit card merchant fees are incurred annually. The interest payable to Rewards Projects Limited 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.

116. 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 Management Agreement and/or the Sub-lease, or prepays interest under a loan agreement (including loan agreements with lenders other than Rewards Projects Limited or the Preferred Financier). 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.

117. 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.

Sections 35-10 and 35-55 – deferral of losses from non-commercial business activities and the Commissioner’s discretion

118. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for the income years **30 June 2007 to 30 June 2011**. Based on the evidence supplied, 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 horticultural industry, a Grower’s business activity will satisfy one of the four tests set out in Division 35 or produce a taxation profit.

119. 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.

120. 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

121. 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 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

122. 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).

123. The Rewards Group Tropical Fruits Project 2007 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 33 and 35 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.

124. 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 Fruit. There are no facts that would suggest that Growers have the opportunity of obtaining a tax advantage other than the tax advantages identified in this Ruling. There 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:

- borrowing expenses
- carrying on a business
- commencement of business
- fee expenses
- interest expenses
- management fees
- non-commercial losses
- producing assessable income
- product rulings
- public rulings
- tax avoidance
- taxation administration

Legislative references:

- ITAA 1936 82KL
- ITAA 1936 Pt III Div 3 Subdiv H
- ITAA 1936 82KZL
- ITAA 1936 82KZM
- ITAA 1936 82KZMA
- ITAA 1936 82KZMB
- ITAA 1936 82KZMC
- ITAA 1936 82KZMD
- ITAA 1936 82KZME
- ITAA 1936 82KZMF
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
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- SISA 1993
- Copyright Act 1968
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