



PR 2007/60 - Income tax: Alpine Meadows Olive & Walnut Project No. 1 (Early Growers)

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 This document has changed over time. This is a consolidated version of the ruling which was published on *13 June 2007*



Product Ruling

Income tax: Alpine Meadows Olive & Walnut Project No. 1 (Early Growers)

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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 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 Alpine Meadows Olive & Walnut Project No. 1 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 Growers.

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 32 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
- do not acquire a minimum of two Groves.

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 32 to 65 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 13 June 2007, the date this Product Ruling is made. It therefore applies to the specified class of entities that enter into the scheme from 13 June 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.

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 32 to 65 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 Agreements.

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 364 Groves 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.

Deductions for Initial Management Fees, Ongoing Management Fees, Initial Occupation Fees and Occupation Fees***Section 8-1 of the ITAA 1997 and sections 82KZME and 82KZMF of the Income Tax Assessment Act 1936***

25. A Grower who acquires a minimum of two Groves in the Project may claim tax deductions under section 8-1 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
Initial Management Fees	\$1756 See Notes (i) & (iii)		
Ongoing Management Fees		\$358 See Notes (i) & (iv)	\$220 See Notes (i) & (iv)
Initial Occupation Fees	Must be calculated See Notes (i), (ii) & (iii)		
Occupation Fees (Grower acquires two Groves)	\$440 See Notes (i) & (iv)		
Occupation Fees (Grower acquires more than two Groves)		\$220 See Notes (i) & (iv)	\$220 See Notes (i) & (iv)

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 Occupation Fee will be a proportion of \$220 where the numerator is the number of days from the date of acceptance of a Grower's application up to 30 June 2007 and the denominator is 365 days. DDRFM will notify Growers of the proportion of the \$220 which is the Occupation Fee for the year ended 30 June 2007.

- (iii) The Initial Management Fees (less the establishment costs of Trees) and the Initial Occupation Fees are deductible in full in the year that they are incurred (where the Grower is not an STS Taxpayer or is an STS Taxpayer using the accruals accounting method) or in the year in which they are paid (where the Grower is an STS Taxpayer using the cash accounting method).
- (iv) The deductibility of the Ongoing Management Fees and Occupation Fees for the period from 1 July 2007 to 30 June 2009 will be subject to the prepayment provisions in sections 82KZME and 82KZMF of the *Income Tax Assessment Act 1936* (ITAA 1936) and is discussed in paragraphs 75 to 83 of this Ruling.
- (v) This Ruling does not apply to Growers who choose to prepay fees other than the Ongoing Management Fees and the Occupation Fees referred to in Note (iv). 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.

Deductions for capital expenditure (non-STS taxpayers)

Division 40

26. A Grower who is not an 'STS taxpayer' will also be entitled to tax deductions for fees relating to the provision of water facilities, carrying out the landcare operations, installation of the trellis and trellis structure and the planting of olive and walnut trees. All deductions shown in the following Table are determined under Division 40.

Fee Type	ITAA 1997 Section	Year ended 30 June 2007	Year ended 30 June 2008	Year ended 30 June 2009
Water Facility Fee	40-515	\$220 See Notes (i) & (vi)	\$220 See Notes (i) & (vi)	\$220 See Notes (i) & (vi)
Landcare Fee	40-630	\$330 See Notes (i) & (vii)		

Trellis Fee	40-25	Amount must be calculated See Notes (i) & (viii)	Amount must be calculated See Notes (i) & (viii)	Amount must be calculated See Notes (i) & (viii)
Establishment of olive and walnut trees	40-515	Nil See Notes (i) & (ix)	Nil See Notes (i) & (ix)	Nil See Notes (i) & (ix)

Notes:

- (vi) Any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. A deduction is available under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one-third of the capital expenditure incurred by each Grower on the installation of the 'water facility' in the year in which it is incurred and one-third in each of the next 2 years of income (section 40-540).
- (vii) Capital expenditure incurred for a 'landcare operation' (as defined in section 40-635) is fully deductible in the year it is incurred under Subdivision 40-G, section 40-630.
- (viii) A deduction is available commencing from the year in which the trellis and trellis structure is 'installed ready for use' of an amount equal to the decline in value for an income year pursuant to section 40-25(1). The 'cost of the asset' is the amount paid by the Grower, that is, the Trellis Fee. The decline in value of the asset is calculated using the formula in either section 40-70(1) (diminishing value method) or section 40-75(1) (prime cost method). Both formulas rely on the 'effective life' of the depreciating asset. Growers can either self-assess the effective life (section 40-105) or use the Commissioner's determination of effective life (section 40-100).

- (ix) Both olive and walnut 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 olive trees is determined using the formula in section 40-545 and is based on the capital expenditure of \$1,186 per Grove incurred by the Grower that is attributable to their establishment (including the costs of the plants). Both olive and walnut trees have an 'effective life' of over 30 years and for the purposes of section 40-545, this results in a straight-line write-off at a rate of 7%. The deduction is allowable when the olive and walnut trees enter their first commercial season (section 40-530, item 2). DDRFM will inform Growers of when the olive and walnut trees enter their first commercial season.

Deductions for capital expenditure (STS taxpayers)

Division 40 and Division 328

27. A Grower who is an 'STS taxpayer' will also be entitled to tax deductions for fees relating to the provision of water facilities, carrying out the landcare operations, installation of the trellis and trellis structure and the planting of olive and walnut trees. An STS taxpayer may claim deductions in relation to water facilities under Subdivision 40-F and in relation to a 'landcare operation' under Subdivision 40-G. If the 'water facility' or 'landcare operation' expenditure is on a 'depreciating asset' used to carry on the business, they may choose to claim deductions under Division 328. The deduction for the installation of trellising and trellising structure must be determined under Division 328. Deductions for the olive and walnut trees must be determined under Subdivision 40-F.

28. The deductions shown in the following Table assume, for representative purposes only, that a grower has either chosen to or can only claim deductions for expenditure on water facilities and 'landcare operation' under Subdivisions 40-F or 40-G and not under Division 328. If the expenditure has been incurred on 'depreciating assets' and is claimed under Division 328, the deduction is determined as discussed in Notes (x) and (xi) at paragraph 29 of this Ruling

29. Under Division 328, if the 'cost' of a 'depreciating asset' at the end of the income year is less than \$1,000 (a 'low-cost asset'), it can be claimed as an immediate deduction when first used or 'installed ready for use'. This is so 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.

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Fee Type	ITAA 1997 section	Year ended 30 June 2007	Year ended 30 June 2008	Year ended 30 June 2009
Water Facility Fee	40-515	\$220 See Notes (i) & (x)	\$220 See Notes (i) & (x)	\$220 See Notes (i) & (x)
Landcare Fee	40-630	\$330 See Notes (i) & (vii)	Nil	Nil
Trellis Fee	Div 328	Amount must be calculated See Notes (i) & (xi)	Amount must be calculated See Notes (i) & (xi)	Amount must be calculated See Notes (i) & (xi)
Establishment of Olive and Walnut Trees	See table at paragraph 26 of this Ruling			

Notes:

- (x) Any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. If the expenditure is on a 'depreciating asset' (the underlying asset), the Grower may choose to claim a deduction under either Division 328 or Subdivision 40-F. For the purposes of Division 328, each Grower's interest in the underlying asset is deemed to be a 'depreciating asset'. If the 'cost' apportionable to that deemed 'depreciating asset' is less than \$1,000, the deemed asset is treated as a 'low-cost asset' and that amount is deductible in full when the underlying asset is first used or 'held' ready for use. This is so 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.

A Grower accepted into this Project must acquire a minimum of two interests to rely on this Ruling. Accordingly, the deemed asset will be greater than \$1000 and will not be treated as a 'low-cost asset', the tax deduction allowable in the year ended 30 June 2007 will then be determined by multiplying its 'cost' by half the relevant STS pool rate. At the end of

the year, it is allocated to the relevant STS pool and in subsequent years the full pool rate will apply.

If they choose to use Subdivision 40-F, Growers must claim deductions under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one-third of the capital expenditure incurred by each Grower on the installation of the 'water facility' in the year in which it is incurred and one-third in each of the next 2 years of income (section 40-540).

- (xi) A deduction equal to the amount of the Grower's expenditure for the trellis and trellis structure 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 3 interests, the Grower's interest in the trellis and trellis structure may not be a low cost asset. A low cost asset is an asset costing less than \$1,000. An asset that is not a low cost asset can be allocated to a 'general STS pool'.

Where the trellis and trellis structure is 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%.

The part of the cost of the trellis and trellis structure not deducted in the year ended 30 June 2007 is added to the pool balance and in subsequent years, the full pool rate of 30% will apply.

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

Section 35-55 – exercise of Commissioner's discretion

30. 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 Growers for the income years ended **30 June 2007 to 30 June 2009**. 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

31. For a Grower who commences participation in the Project and incurs expenditure as required by the 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 75 to 83 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

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

- Application for a Product Ruling received on 29 March 2007 as constituted by documents provided on 29 March 2007, 14 May 2007, 23 May 2007 and 30 May 2007 and additional correspondence received from the Applicant on 14 May 2007, 23 May 2007 and 30 May 2007;
- Draft Product Disclosure Statement for the Alpine Meadows Olive & Walnut Project No. 1 (PDS) received on 30 May 2007;
- **Draft Constitution** of the Alpine Meadows Olive & Walnut Project No. 1 received on 30 May 2007;
- Draft Compliance Plan for the Alpine Meadows Olive & Walnut Project No. 1 received on 29 March 2007;
- **Draft Licence and Management Agreement** between each Grower and DDR Funds Management Limited (DDRFM) received on 30 May 2007;
- Draft Custodial Agency Agreement – Alpine Meadows olive & Walnut Project No. 1 between DDRFM and the Custodian received on 29 March 2007; and
- Draft Lease Agreement between the land owner and the Custodian as agent for the Responsible Entity (DDRFM) of the Alpine Meadows Olive & Walnut Project No. 1 received 14 May 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.

33. 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.

34. All Australian Securities and Investment Commission (ASIC) requirements are, or will be, complied with for the term of the agreements. The effect of these agreements is summarised as follows.

Overview

35. The main features of the Alpine Meadows Olive & Walnut Project No. 1 are as follows:

Location	Beloka & Paupong Rd, Beloka
Type of business to be carried on by each Grower	Commercial growing, cultivation and harvesting Olive and Walnuts for sale
Term of the Project	50 years
Number of hectares offered for cultivation	800 hectares
Size of each Grove	0.1 hectares
Number of Trees per Grove	40 Olive Trees and 20 Walnut Trees
Minimum allocation per Grower	Two
Minimum subscription	364 Groves
Initial cost	\$5,500 per Grove (subject to apportionment of Initial Occupation Fee for the 2006-07 income year)
Ongoing costs	Ongoing Management and Occupation Fees and Harvest Fees.

36. The Project will be a registered managed investment scheme under the *Corporations Act 2001*. DDR Funds Management Limited (DDR FM) has been issued with an Australian Financial Service Licence 247367 and will be the Responsible Entity for the Project.

37. The Project will involve the commercial growing, cultivation and harvesting of Olives and Walnuts or Product therefrom for sale.

38. An offer to participate in the Project will be made through a Product Disclosure Statement (PDS). The offer under the PDS is for up to 800 hectares, which corresponds to 8,000 Groves in the Project.

39. A Grower that participates in the Project will do so by acquiring an interest in the Project which will consist of a minimum of two Groves each of 0.1 hectares in size.

40. Applications to participate in the Project must be made on the application form shown in the PDS. There is a minimum amount of \$2,002,000 that must be raised under the PDS. A Custodian will be appointed under the Custody Agreement to protect the interests of the Growers in their dealings with DDRFM.

41. For Applicants, who are accepted as Growers in the Project, DDRFM will allocate Groves, place their details in a Register and enter into Licence and Management Agreements in relation to the Groves allocated to the Grower with DDRFM.

42. Under terms of the PDS, the interests in the Grower's Groves will be issued after a minimum subscription of 364 Groves has been achieved.

43. The Responsible Entity will enter into a Lease with the Land Owner for the Land for the Project within the Snowy River catchment. Specifically, it is described as Sec 2 of Deposited Plan 749653 and Sec 3, 7, 8, 18, 27, 28, 35, 41, 81, 90, 107 & 108 of Deposited Plan 756730 in the Parish of Wilson in the County of Wallace in the Local Government Area of the Snowy Mountains in the Land District of Cooma.

44. This Land will be divided into 0.1 hectare lots and licenced to the Growers accepted in the Project. DDRFM will establish the Grower's Grove in accordance with the terms of the Licence and Management Agreement.

45. Each Grower will use their Groves for the purpose of carrying on a business of cultivating and harvesting olives and walnuts and the sale of harvested produce.

Constitution

46. The Constitution establishes the Project and operates as a deed binding all Growers and DDRFM. The Constitution sets out the terms and conditions under which DDRFM 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 Groves in accordance with clause 15. 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 15.1 of the Constitution, DDRFM holds the Application Money on bare trust. DDRFM will deposit all Application Moneys received from applicants in a Project Account (clause 15.1).

49. Once DDRFM has accepted the application and all of the Project Documents have been executed and remain in force (clause 15.3(b)) the Application Money may be transferred and applied against the fees due to DDRFM (clause 15.8).

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

- Consideration payable by Growers (clause 4);
- Fees payable to DDRFM (clause 8);
- Acceptance of applications (clause 15);
- Duties of DDRFM (clause 22) which includes ensuring that the Scheme's Constitution meets the requirements of the *Corporations Act 2001* and ensuring that the Scheme Property is clearly identified and held separately from DDRFM's property or any property of another Scheme; and
- Retirement and removal of DDRFM (clause 23).

Compliance Plan

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

Lease

52. The Land for the Project will be leased by DDRFM in its capacity as responsible entity for the Project under the Lease from the land owner (Lessor). The Lease sets out the terms and conditions under which the Lessor will lease the Land including all Lessor's fixtures and improvements to DDRFM to use and exploit during the Term of the Project.

53. The Land on which the Project is to be established is located at Beloka & Paupong Rd, Beloka.

Licence and Management Agreement

54. Growers participating in the arrangement will enter into a Licence and Management Agreement with DDRFM.

55. Pursuant to clause 3.1 of the Licence and Management Agreement, DDRFM grants to the Grower the exclusive right to carry out the Grower's Business upon the Grove and to do all other things upon the Grove that may be necessary to be carried out upon the Grove pursuant to the Licence and Management Agreement and the Constitution.

56. Pursuant to clause 2.1 of the Licence and Management Agreement Growers participating in the arrangement appoint the Responsible Entity as the manager of the Grower's Business to carry out for the Grower:

- the Initial Management Services;
- the Ongoing Management Services; and
- the Harvest Services.

57. The Initial Management Services are to be carried out in the Initial Period being from the date that a Grower's application is accepted until 30 June 2007.

58. The Initial Management Services include:

- preparation of the land on the Grower's Grove such that the land will be suitable in the reasonable opinion of the Responsible Entity for the planting of Olive Trees and Walnut Trees;
- procuring the supply of a minimum of 40 Olive trees and 20 Walnut Trees per Grove from known high yielding stock in a healthy condition for planting out in the Grower's Grove;
- planting all healthy Olive Trees into the Grower's Grove;
- carry out any other activity of a revenue and not a capital nature that may be required to generally maintain the Groves in accordance with good horticultural practice;
- carry out any other obligation to be performed by Responsible Entity pursuant to the terms of any agreement entered into by Responsible Entity that is of a revenue and not of a capital nature;
- procure on behalf of the Grower and keep current with a reputable insurer the insurance policies required to be maintained by the Responsible Entity under the Constitution and Management Agreement and all other activities in respect of arranging insurance other than crop insurance;
- prepare the reports and statements required to be provided to Growers and provide the administrative services required to perform the above services; and

- undertake all marketing activities in respect of the future sale of the Grower's Olives and Walnuts, including without limitation entering into forward sales agreements in respect of the Grower's Olives and Walnuts and foreign exchange hedging agreements, as required, and monitor and supervise the performance of all contractors in that regard.

59. The Ongoing Management Services will be performed during each subsequent year beginning 1 July 2007.

60. The Ongoing Management Services includes:

- planting all healthy Walnut Trees into the Grower's Grove in the 2007-08 income year;
- managing the Grower's Groves in a commercial manner in keeping with generally accepted industry standards;
- caring and maintaining the Olive Trees and Walnut Trees according to principles of good horticulture;
- caring and maintaining the Olive trees and Walnut Trees prior to the commencement of harvesting according to principles of good horticulture;
- care and maintenance of the Olive Trees and Walnut Trees including cultivating, fertilising and mulching as required to ensure that approximately 40 Olive Trees and 20 Walnut Trees are maintained in a healthy condition of a suitable size and quality to be available for harvest;
- irrigating and applying water and nutrients to the Grower's Grove to maintain the Olive Trees and Walnut Trees on the Grove in a healthy condition;
- pruning the Olive Trees and Walnut Trees as required from time to time in order to promote the growth and production of Olives from the Olive Trees and Walnuts from the Walnut Trees in accordance with the good horticulture practice for the growing of Olives and Walnuts;
- taking such reasonable measures as may be required to control the growth of weeds and other vegetable pests on the Grower's Grove and the land surrounding the Grower's Grove including the cultivation of the Grower's Grove between the rows of Olive Trees and Walnut Trees;

- taking all reasonable measures in accordance with the principles of good horticulture and to the extent reasonably possible to deter and eradicate any insect, bird or animal pests from the Grower's Grove which may detract from the health and vigour of the Olive Trees and Walnut Trees or the yield Olives and Walnuts therefrom;
- applying manure, fertiliser, mulch and such other materials as is necessary in accordance with good agricultural practice to encourage growth of the Olive Trees and Walnut Trees;
- repairing and maintaining in a good condition all fences, access ways and other structural improvements and irrigation plant and equipment on the Grower's Grove;
- effecting the insurance referred to in the Constitution;
- employing such staff and labour as are necessary for the aforesaid purposes;
- carrying out the accounting, financial control and reporting needs and functions of the Project;
- keeping of proper books of account for the Project and preparing and filing of income tax returns;
- attending meetings of the Growers and maintaining minutes of those meetings;
- performing any of its duties under the Licence and Management Agreement; and
- doing all other things that are necessary or incidental to the carrying out of the Grower's business constituted by the Grower's Scheme Interest to produce a viable business growing, marketing and sale of the Grower's Olives and Walnuts.

61. The Responsible Entity must provide to the Grower the Harvesting Services when the Olive and Walnut Trees are ready to be removed for production of the Olives and Walnuts therefrom in accordance with good horticultural practice for the harvesting of the Olives and Walnuts.

62. The Grower is entitled to the Grower's Business Income. The Grower's Business Income is the amount left after deduction of the Ongoing Management Fee, Occupation Fee and Harvest Fee from the Product Sale Proceeds together with any other amounts which would be included in the Grower's taxable income from the carrying on of the Grower's Business. The Product Sale Proceeds consists of the total amount received for the sale of Olives and Walnuts which has been harvested from the Grower's Grove or where the Olives and Walnuts from the Grower's Grove forms part of the Product Pool, then the proportion of the Product Pool that is attributable to the Olives and Walnuts harvested from the Grower's Grove.

63. The Licence and Management Agreement set out provisions relating to the pooling of amounts from the sale of the Growers Olives and Walnuts or Product. This Product Pool only applies where the following principles apply to those pooling and distribution arrangements:

- only Growers who have contributed to the Product Pool or, if applicable, insurance proceeds to the Product Pool making up the Product Sale Proceeds are entitled to benefit from distributions from those Product Sale Proceeds; and
- any Product Pool must consist only of Olives and Walnuts contributed by Growers in the Alpine Meadows Olive & Walnut Project No. 1.

Fees

64. The fees payable under the Licence and Management Agreement per Grove are as follows:

- a Plant Fee of \$330 for the Olive and Walnut Trees;
- an Initial Management Fee of \$2,420 for the initial management services;
- a Ongoing Management fee of \$770 for the Ongoing management services;
- a Water Facility Fee of \$660 for the water facilities;
- a Landcare Fee of \$330 for the landcare operations;
- a Trellising Fee of \$330 for the trellis and trellising structure;
- an Occupation Fee of \$220 per annum to be apportioned for the period from the date of the application to the 30 June 2007; and
- an Occupation Fee of \$440 for the period 1 July 2007 to 30 June 2009,

payable to the Responsible Entity on application; and:

- an annual Occupation Fee of seven and a half per centum (7.5%) of Product Sales Proceeds for the year commencing 1 July 2009;
- an Ongoing Management Fee of twenty per centum (20%) of Product Sales Proceeds for the year commencing 1 July 2009; and
- a Harvest Fee of the seventeen and a half per centum (17.5%) of Product Sales Proceed for the year commencing 1 July 2009.

Finance

65. 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 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?

66. For the amounts set out in paragraphs 25, 26 and 29 of this Ruling to constitute allowable deductions the Grower's commercial olive and walnut growing activities as a participant in the Alpine Meadows Olive & Walnut Project No. 1 must amount to the carrying on of a business of primary production.

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

68. 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?

69. Taxation Ruling TR 2000/8 Income tax: investment schemes, particularly paragraph 89, is more specific to arrangements such as the Alpine Meadows Olive & Walnut Project No. 1. 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.

70. Having applied these principles to the arrangement set out above, a Grower in the Alpine Meadows Olive & Walnut Project No. 1 is accepted to be carrying on a business of growing and harvesting olives and walnuts and produce therefrom for sale.

The Simplified Tax System

Division 328

71. 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.

72. 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 Initial Management Fees, Ongoing Management Fees, Initial Occupation Fees and Occupation Fees

Section 8-1

73. The Initial Management Fees, Ongoing Management Fees, Initial Occupation Fees and Occupation 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, Ongoing Management Fees, Initial Occupation Fees and Occupation Fees (see paragraphs 49 to 51 of TR 2000/8).

74. 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 75 to 83 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.)

Prepayment provisions

Sections 82KZL to 82KZMF

75. 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.

76. 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

77. The prepaid expenditure for Ongoing Management Fees and Occupation Fees incurred by a Grower in the Project as part of the initial fees on application meets the requirements of subsections 82KZME(1) and (2) of the ITAA 1936 and is incurred under an 'agreement' as described in subsection 82KZME(3). Therefore, unless one of the exceptions to section 82KZME applies, the amount and timing of tax deductions for those fees are determined under section 82KZMF of the ITAA 1936.

78. As a Grower in this Project acquires at least a minimum allocation of two interests in the Project the quantum of the prepaid Ongoing Management Services is \$1,000 or more, therefore the deduction allowable for those amounts will be subject to apportionment according to the formula in subsection 82KZMF(1) of the ITAA 1936.

79. Under Exception 3 (subsection 82KZME(7) of the ITAA 1936) 'excluded expenditure' is specifically excluded from the operation of section 82KZMF of the ITAA 1936. The prepaid Occupation Fees, being amounts of less than \$1,000 in each expenditure year, constitute 'excluded expenditure' as defined in subsection 82KZL(1) of the ITAA 1936. This applies for Growers who acquire the minimum of two Groves.

80. Where Growers acquire more than two Groves the prepaid Occupation Fees, being amounts of more than \$1,000 in each expenditure year, will not constitute 'excluded expenditure' as defined in subsection 82KZL(1) of the ITAA 1936. Therefore the deduction allowable for those amounts will be subject to apportionment according to the formula in subsection 82KZMF(1) of the ITAA 1936.

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

81. Where a Grower chooses to prepay fees under the agreements for a period beyond the income year in which the expenditure is incurred, the prepayment provisions (see paragraphs 75 to 83 of this Ruling) will apply to determine the amount and timing of the deductions regardless of whether the Grower is an 'STS taxpayer' or not. These provisions apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME of the ITAA 1936 that excludes 'STS taxpayers' from the operation of section 82KZMF of the ITAA 1936.

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

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

Expenditure of a capital nature

Division 40 and Division 328

84. Any part of the expenditure of a Grower that is attributable to acquiring an asset or advantage of an enduring kind is generally capital or capital in nature and will not be an allowable deduction under section 8-1. In this Project, expenditure attributable to water facilities, trellising and the establishment of the trees is of a capital nature. This expenditure falls for consideration under Division 40 or Division 328.

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

86. The tax treatment of capital expenditure has been dealt with in a representative way in the Table(s) and accompanying notes in paragraphs 26 and 29 of this Ruling.

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

Section 35-55 – exercise of Commissioner's discretion

87. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for the 2006-07 to 2008-09 income years, 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 afforestation industry, a Grower's business activity will satisfy one of the four tests set out in Division 35 or produce a taxation profit.

88. 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.

89. 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

90. 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

91. 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).

92. The Alpine Meadows Olive & Walnut Project No. 1 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 25, 26 and 29 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.

93. 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 olives, walnuts and produce therefrom. 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.

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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
- fee expenses
- interest expenses
- management fees
- non commercial losses
- producing assessable income
- product rulings
- public rulings
- taxation administration
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters
- tax shelters project

Legislative references:

- ITAA 1936 82KL
- ITAA 1936 Pt III Div 3 Subdiv H
- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZM
- ITAA 1936 82KZMA
- ITAA 1936 82KZMB
- ITAA 1936 82KZMC
- ITAA 1936 82KZMD
- ITAA 1936 82KZME
- ITAA 1936 82KZME(1)
- ITAA 1936 82KZME(2)
- ITAA 1936 82KZME(3)
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