



PR 2007/61 - Income tax: Capricorn Timber Indian Sandalwood Project 2007

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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: Capricorn Timber Indian Sandalwood 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.

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 Capricorn Timber Indian Sandalwood 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. In this Product Ruling, those entities that can rely on the tax benefits set out in this Ruling are referred to as Growers or Investors.

3. Growers or Investors 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 28 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 Product Ruling or after 15 June 2007;
- participate in the scheme through offers made other than through the Product Disclosure Statement (PDS);
- are Electing Growers (see paragraph 42 and 47 of this Product Ruling);
- enter into finance arrangements with entities associated with this Project, other than those specified in paragraphs 85 to 89 of this Product Ruling; or
- have their application conditionally accepted by Huntley Management Limited (the Responsible Entity) subject to finance from the Preferred Financier for the payment of the Establishment Fee, Irrigation Fee and Initial Management Fees, where the funds have not been made available to the Responsible Entity by 30 June 2007.

Superannuation Industry (Supervision) Act 1993

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

Qualifications

6. The class of entities defined in this Product Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 28 to 90 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 only 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 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 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/Investor) 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 28 to 90 of this Ruling.

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

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 Constitution, a Grower's application will not be accepted and the Project will not proceed until the minimum subscription of 275 Woodlots 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 these Growers only, a reference in this Product 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 Product 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.

Deduction for fees, borrowing expenses and interest

Sections 8-1, 25-25 and 40-880 and Division 27 of the ITAA 1997 and sections 82KZMF and 82KZMG of the Income Tax Assessment Act 1936

25. A Grower may claim tax deductions for the following fees and expenses on a per Woodlot basis, as set out in the Table below.

Fee Type	Year ending 30 June 2007	Year ending 30 June 2008	Year ending 30 June 2009
Initial Management Fee	\$14,093.20 See Notes (i) and (ii)		
Establishment Fee	See Notes (i) and (iii)		
Irrigation Fee	See Notes (i) and (iii)		
Ongoing Management Fees		Nil See Notes (i), (iv), (v) and (vi)	Must be calculated See Notes (i), (iv), (v) and (vi)
Occupation Fees		Must be calculated See Notes (i), (iv), (v) and (vi)	Must be calculated See Notes (i), (iv), (v) and (vi)
Interest on loans with United Pacific Finance Pty Ltd		As incurred See Notes (vi) and (vii)	As incurred See Notes (vi) and (vii)
Loan Establishment Fee	Must be calculated See Note (viii)	Must be calculated See Note (viii)	Must be calculated See Note (viii)

Notes:

- (i) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (for example, input tax credits): Division 27.
- (ii) The Initial Management Fee is payable on the Settlement Date (the day the Responsible Entity accepts the application from the Grower and receives all funds from the Grower) for services to be provided in the Initial Period. Under section 82KZMG of the *Income Tax Assessment Act 1936* (ITAA 1936) the Initial Management Fee is expenditure for 'seasonally dependent agronomic activities' (see paragraphs 117 to 119 of this Product Ruling), and is deductible in the income year in which it is incurred.
- (iii) For Growers who take only **one** Woodlot, the Establishment Fee and the Irrigation Fee are deductible in the year in which they are incurred. They are 'excluded expenditure' and as such fall within one of the exceptions to the prepayment rules. Section 82KZMF of the ITAA 1936 applies to Growers who take **more than one** Woodlot (see paragraphs 101 to 116 of this Ruling).
- (iv) The Ongoing Management Fees and the Occupation Fees where paragraph 111 of this Ruling does not apply, are **NOT** deductible in the year in which they are incurred. Deductions for these amounts **must** be determined using the formula in subsection 82KZMF(1) of the ITAA 1936 (see paragraphs 101 to 116 of this Ruling). This section operates to apportion expenditure over the eligible service period or ten years, whichever is the lesser, unless one of the exceptions in section 82KZME of the ITAA 1936 applies. Where the Occupation Fees payable by the Grower are less than \$1,000, they may be deductible as excluded expenditure in the year incurred (see paragraph 111 of this Product Ruling).
- (v) The 'eligible service period' for the first payment of the Ongoing Management Fees and the Occupation Fees commences on 1 July 2008 and ends on 30 June 2009. Accordingly, the full amount of these fees is deductible in the year ended 30 June 2009.
- (vi) This Product Ruling does not apply to Growers who choose or who are required to prepay fees, or who choose or who are required to prepay interest under a loan agreement, other than the fees referred to above (see paragraphs 101 to 119 of this Ruling).

- (vii) The deductibility or otherwise of interest arising from agreements entered into with financiers other than United Pacific Finance Pty Ltd (the Preferred Financier), is outside the scope of this Product Ruling. Prepayments of interest to any lender, including the Preferred Financier, are also 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.
- (viii) The Loan Establishment Fee payable to the Preferred Financier is a borrowing expense and is deductible under section 25-25. It is incurred for borrowing money that is used or is to be used during that income year solely for income producing purposes. The deduction is spread over the period of the loan or 5 years, whichever is the shorter. The deductibility or otherwise of borrowing costs arising from loan agreements entered into with financiers other than the Preferred Financier is outside the scope of this Ruling.

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

Section 35-55 – exercise of Commissioner’s discretion

26. A Grower who is an individual accepted into the Project in the year ended 30 June 2007 may have losses arising from their participation in the Project that would be deferred to a later income year under section 35-10. Subject to the Project being carried out in the manner described 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 2022**. 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

Section 82KL and Part IVA

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

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

Scheme

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

- Application for a Product Ruling as constituted by documents provided on 21 March 2007, 23 March 2007, 12 April 2007, 20 April 2007, 3 May 2007, 14 May 2007, 15 May 2007, 17 May 2007, 28 May 2007, 1 June 2007, 3 June 2007, 5 June 2007;
- Draft PDS for the Capricorn Timber Indian Sandalwood Project 2007 received on 1 June 2007;
- Draft **Constitution** establishing the Capricorn Timber Indian Sandalwood Project 2007 received on 1 June 2007;
- Draft Compliance Plan for the Capricorn Timber Indian Sandalwood Project 2007 received 14 May 2007;
- Draft Lease agreement to be entered into by Capricorn Land Holdings Pty Ltd and the Responsible Entity received on 14 May 2007;
- Draft **Licence and Management Agreement** forming Schedule 1 to the Draft Constitution, to be entered into by each Grower and the Responsible Entity received 1 June 2007;
- Draft Operational Management Agreement to be entered into by the Responsible Entity and Capricorn Timber Plantations Pty Ltd received 3 June 2007;
- Draft Operations Agreement, to be entered into by Capricorn Timber Plantations Pty Ltd and Capricorn Timber Management Pty Ltd, received 3 June 2007; and
- Draft **Loan Agreement** to be entered into by a Grower and the Preferred Financier, received 20 April 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.

29. 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.

30. 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

31. The main features of the Capricorn Timber Indian Sandalwood Project 2007 are as follows:

Location	Kununurra, Western Australia
Type of business to be carried on by each Grower	Commercial growing and cultivation of Indian sandalwood (<i>Santalum album</i>) trees, for the purpose of harvesting and selling timber
Term of the Project	15 years
Number of hectares offered for cultivation	119
Size of each Woodlot	0.25 hectares
Minimum allocation per Grower	1 Woodlot
Minimum subscription	275 Woodlots
Initial cost	\$15,999.50
Ongoing costs	Ongoing Management Fees and Occupation Fees
Other costs	Harvest Fees and Marketing and Sales Fees

32. The Project will be a registered managed investment scheme under the *Corporations Act 2001*. The Australian Registered Scheme Number for the Scheme is 125 639 885. The Responsible Entity has been issued with an Australian Financial Service Licence number 229754 and will be the Responsible Entity for the Project.

33. The Project will involve establishing and maintaining an Indian sandalwood plantation. Approximately fourteen years after the Initial Period the sandalwood will be harvested, processed and then sold.

34. An offer to participate in the Project will be made through a PDS. The offer under the PDS is for 119 hectares, which corresponds to 476 Woodlots in the Project.

35. An entity that participates in the Project will do so by acquiring an interest in the Project on or before 15 June 2007, which will consist of a minimum of one Woodlot each of 0.25 hectares in size.

36. Applicants execute a Power of Attorney contained in the PDS. The Power of Attorney irrevocably appoints the Responsible Entity to enter into, on behalf of the Grower, a Licence and Management Agreement and any other documents required to hold an interest in the Project.

37. The Power of Attorney also appoints the Responsible Entity as the Grower's attorney to execute a proxy form on behalf of the Grower, appointing as proxy the chairman of a meeting of Growers called for the purposes of appointing Capricorn Timber Plantations Pty Ltd as Responsible Entity for the Project on retirement of Huntley Management Limited as Responsible Entity.

38. Under the terms of the Constitution (clause 14.2), the Project will commence when the Minimum Subscription is reached. 'Minimum Subscription' is defined in the Constitution as the Minimum Subscription referred to in the PDS. Part 2 of the PDS: 'The Project' refers to a minimum subscription requirement of 275 Woodlots. A Grower's Business is deemed to be established on the date the Responsible Entity accepts the Grower's Application Form. Application Forms will not be accepted until Minimum Subscription is reached.

39. The Responsible Entity will lease land for the Project within the Ord River Irrigation area in the Kununurra region of Western Australia. Land utilised by the Project must meet the requirements set out in the Independent Forester's report, which is included in the PDS. The land is described as Lot 605 Mulligans Lagoon Road, Kununurra, being Lot 605 on Deposited Plan 215941, being the land in Certificate of Title Volume 2170 Folio 778.

40. This land will be divided into 0.25 hectare lots and licensed to the Growers accepted into the Project.

41. Each Grower will use their Woodlots for the purpose of carrying on a business of cultivating and harvesting Indian sandalwood trees and the sale of harvested produce.

42. The Responsible Entity will harvest and process the timber. A Grower may elect to collect the Wood Produce of their own Woodlot after harvest (Electing Grower) or the Responsible Entity will sell the Wood Produce on their behalf (Non-Electing Grower). This Ruling does not apply to Electing Growers.

Constitution

43. The Constitution establishes the Project and operates as a contract binding all Growers and the Responsible Entity. The Constitution sets out the terms and conditions under which Huntley Management Ltd 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.

44. In order to acquire an interest in the Project, the Grower must make an application for Woodlots in accordance with clause 15. Among other things, the application must be completed in the form attached to the PDS, signed by the Applicant, lodged at the address nominated on the Application Form and accompanied by payment of the Application Money in a form acceptable to the Responsible Entity.

45. Under clause 15 of the Constitution, all moneys received from applications will be paid into the Applications Bank Account.

46. Once certain specified criteria in the Constitution have been met, and the Responsible Entity has accepted the application, the Responsible Entity must transfer the relevant application moneys into the Scheme Bank Account (clause 15.1, 15.3, 15.7).

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

- complaints handling (clause 6);
- winding up the Project (clause 7);
- Electing Growers (subclause 15.10);
- distribution of proceeds (clause 18);
- retirement and removal of the Responsible Entity (clause 23); and
- register of Growers (clause 17).

Compliance Plan

48. 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 Lease

49. The Responsible Entity will enter into a Head Lease with Capricorn Land Holdings Pty Ltd (the Head Lessor) in respect of land required for the Project.

50. The Responsible Entity must use the land only in accordance with the Constitution, the Compliance Plan and the Licence and Management Agreement (clause 6).

51. The Responsible Entity may also licence the land to Growers for the purposes of the Project (clause 10.2).

Licence and Management Agreement

52. Each Grower will execute a Licence and Management Agreement with the Responsible Entity. The Licence and Management Agreement forms Schedule 1 of the Constitution.

53. The Responsible Entity will grant to the Grower a licence of the Woodlot, giving the Grower the exclusive right to carry out the Grower's Business upon the Woodlot and to do all other things upon the Woodlot that may be necessary to be carried out upon the Woodlot pursuant to the Licence and Management Agreement and the Constitution.

54. The term of the licence is for the same term as the Grower's Business of cultivation of Indian Sandalwood trees, and the harvesting, marketing and sale of the wood.

55. The Grower has the right of ingress and egress to and from the Woodlot and the use of any common parts of the Land at all reasonable times as are necessary for the Grower to conduct the Grower's Business.

56. The Grower's obligations are set out in detail in clause 10, under which the Grower agrees, among other things, not to use the Land except for the purpose of the Grower's Business.

57. In addition, the Licence and Management Agreement provides that the Grower appoints the Responsible Entity as the manager of the Grower's Business to carry out for the Grower:

- (a) the Initial Management Services;
- (b) the Ongoing Management Services;
- (c) the Harvest Services; and
- (d) the Marketing and Sales Services,

and to do all things as may be necessary for the Grower to carry out the Grower's Business (clause 2.1).

58. Under clause 6 of the Licence and Management Agreement, the Grower is obliged to pay to the Responsible Entity the Establishment Fee, the Irrigation Fee, the Initial Management Fees, the Ongoing Management Fees, the Occupation Fees, the Harvest Fees and the Marketing and Sales Fees.

59. The Licence and Management Agreement will continue until its termination on 30 June 2022 or the date on which the Grower's Business Income is distributed to the Grower (clause 2.3).

60. The Establishment Services will be performed during the Initial Period (the 12 month period commencing on 1 July 2007 and concluding on 30 June 2008).

61. The Establishment Services include, amongst other things:

- management of maintenance activities conducted by subcontractors appointed by the Manager;
- maintenance of firebreaks; and
- maintenance of plant and machinery.

62. The Irrigation Services consist of irrigating the Grower's Woodlot and trees as required according to good forestry practice, and will be performed during the Initial Period.

63. The Initial Management Services will be performed during the Initial Period.

64. The Initial Management Services include:

- ploughing, ripping and other soil preparation works;
- procurement of seedlings;
- tending seedlings prior to planting;
- planting seedlings;
- applying fertiliser, herbicide or pesticide in conjunction with planting of the seedlings;
- vegetation and other pest reduction and eradication activities to the extent that they are part of the establishment of the Grower's timber plantation on the Woodlot; and
- procurement and delivery of necessary supplies and materials for these activities and supervision of the activity.

65. The Responsible Entity will commence the provision of the Ongoing Management Services after the completion of the Initial Management Services and shall continue to provide the Ongoing Management Services until the termination of the Agreement.

66. The Ongoing Management Services include, amongst other things:

- maintaining a minimum of 357 trees consisting of 90 Sandalwood trees, 89 Rosewood trees, 89 Acacia trees and 89 Cathormium trees per Woodlot from known high yielding stock in a healthy condition in the year ending 30 June 2009;
- grow and tend the trees on the Woodlot in accordance with good forestry practice;
- control weeds and pests;
- maintain existing roads, tracks and fences;
- prevent or combat land degradation on the Grower's Woodlot and surrounding land;
- replant such trees as are necessary to ensure that each Woodlot has sufficient healthy trees to enable the yield projections in the PDS to be met;
- irrigate the Grower's Woodlot and Trees; and
- monitor and review the fire prevention program.

67. The Responsible Entity will also provide Harvest Services. The Harvest Services include, amongst other things:

- testing the maturity of the Indian Sandalwood;
- harvesting the wood from the Trees grown on a Grower's Woodlot;

- delivering the Indian Sandalwood to a delivery point for processing and sale;
- storage of the Indian Sandalwood; and
- processing or procuring the processing of the Indian Sandalwood ready for sale.

68. The Responsible Entity will also provide Marketing and Sales Services. The Marketing and Sales Services include, amongst other things:

- supervising and managing the negotiation and making of sales of the Forest Produce;
- supervising and managing the writing of a marketing plan;
- maintaining an international database of all potential buyers of Indian Sandalwood in the years preceding the Harvest;
- maintaining contact with potential buyers; and
- generating interest in Indian Sandalwood as an end product.

69. According to the PDS, Harvest is expected to take place from year 14.

Operational Management Agreement

70. Under the Operational Management Agreement, the Responsible Entity will engage the Operational Manager, Capricorn Timber Plantations Pty Ltd, to manage the Project in accordance with the Constitution and Licence and Management Agreement as if the Operational Manager was the Responsible Entity, with the exception of duties that are the specific statutory responsibility of the Responsible Entity (clause 5).

71. In performing the services in the Operational Management Agreement, the Operational Manager will be subject to the supervision of the Responsible Entity (clause 5.6). The Responsible Entity remains liable to the Growers for the manner in which the services are performed.

Operations Agreement

72. Under the Operations Agreement, the Operational Manager will engage the Contractor, Capricorn Timber Management Pty Ltd, to carry out the Forestry Management Services (as defined in the Operations Agreement) from the date that Minimum Subscription is reached until the end of Year 15 of the Project or the date of termination of the Operations Agreement in the case of breach.

Pooling of Timber and Grower's Entitlement to Net Proceeds

73. The Constitution and the Licence and Management Agreement set out provisions relating to the Grower's Entitlement to Grower's Business Income (clause 18.1 and 8.1 respectively).

74. The Grower's Business Income is the amount left after deduction of the Harvest Fees and Marketing and Sales Fees 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.

75. The Product Sale Proceeds is the proportion of the Gross Sales Proceeds from sale of the Product Pool that is attributable to the Indian Sandalwood trees harvested from the Grower's Woodlot as a proportionate share of all Woodlots harvested and included in the Product Pool. The Product Pool is the Wood produce from the Woodlots of Growers in the Project including the Grower's Woodlot, with respect to which the Responsible Entity has pooled in accordance with the Licence and Management Agreement.

76. All Growers Business Income received by the Responsible Entity for a Grower must be paid by the Responsible Entity into the Scheme Bank Account (Constitution clause 18.1).

77. The Licence and Management Agreement sets out provisions relating to the pooling of Indian Sandalwood harvested from the Growers' Woodlots (clause 8.2).

78. Where pooling takes place, in working out the Grower's Business Income, the proportion of the Product Sale Proceeds applicable to the Grower is the portion of the Product Pool that is attributable to the Grower's Woodlot as a proportion of all Woodlots harvested.

79. This Product Ruling only applies where the following principles apply to the pooling and distribution arrangements:

- only Growers who have contributed to the Product Pool are entitled to benefit from distributions of Product Sale Proceeds from the pool; and
- any pooled Indian Sandalwood must consist only of Indian Sandalwood contributed by Growers who are accepted to participate in the Project on or after 13 June 2007 and on or before 15 June 2007.

Fees

80. The following amounts are payable to the Responsible Entity for each Woodlot, under clause 6 of the Licence and Management Agreement:

- **Establishment Fee** of \$982.30 payable on or before 30 June 2007 for the provision of the Establishment Services by the Responsible Entity during the Initial Period (the period commencing on 1 July 2007 and ending on 30 June 2008);

- **Irrigation Fee** of \$924 payable on or before 30 June 2007 for the provision by the Responsible Entity of Irrigation Services with respect to the Grower's Woodlots during the Initial Period;
- **Initial Management Fees** of \$14,093.20 payable on or before 30 June 2007 for the provision by the Responsible Entity of the Initial Management Services within the Initial Period;
- **Ongoing Management Fees** of \$2,062.50 for the income year commencing on 1 July 2008 payable by 30 June 2008, with an annual increase of 3% as from the income year commencing on 1 July 2009. The Ongoing Management Fee is payable for provision by the Responsible Entity of the Ongoing Management Services;
- in each income year subsequent to the income year commencing on 1 July 2008, the Ongoing Management Fees will be billed to the Grower on 1 June of the immediately preceding income year, and payable by 30 June of that year;
- **Harvest Fees** equal to 5.5 % of the Product Sale Proceeds; and
- **Marketing and Sales Fees** equal to 2.75% of the Product Sale Proceeds for the provision of the Marketing and Sales Services.

81. For the Term of the Project, **Occupation Fees**:

- for the period from the date of acceptance of a Grower's Application up to and including 30 June 2008 – nil;
- for each income year thereafter commencing on 1 July 2008 \$412.50 per Woodlot, to be increased annually by 3% in each respective income year for the term of the Project; and
- the Occupation Fees are payable in advance. They will be billed to the Grower on 1 June and payable by 30 June of the income year immediately preceding the income year they relate to.

Finance

82. A Grower who does not pay the Establishment Fee, Irrigation Fee and Initial Management Fee (the Initial Fees) in full upon application can borrow from the Preferred Financier, or borrow from an independent lender external to the Project.

83. 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 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.

84. Growers cannot rely on any part of this Ruling if the Initial Fees are not paid in full on or before 15 June 2007 by the Grower or, on the Grower's behalf, by a lending institution.

Finance offered by the Preferred Financier

85. A Grower can finance the cost of their Initial Fees by borrowing that amount from the Preferred Financier (as the Lender).

86. Subject to the Preferred Financier accepting the Grower's application, the Grower will be bound by the terms and conditions of the Loan Agreement.

87. The minimum loan amount is \$5,000. The maximum loan amount is \$500,000. The terms and conditions are as follows:

- terms available are:
 - ten years principal and interest;
 - 2 years interest only followed by 5 years principal and interest; or
 - 3 years interest only followed by 7 years principal and interest;
- no minimum deposit;
- application fee of \$250 plus 0.60% of the amount financed, to a maximum of \$1,250.00, plus stamp duty of 0.40%;
- repayments to be made monthly in arrears by equal monthly repayments;
- the first repayment will be due on 15 July 2007; and
- interest rates will be fixed at the rate of 10.25% for the term of the loan.

88. The amount borrowed from the Preferred Financier will be paid into the Applications Bank Account (Constitution clause 15.1).

89. The Preferred Financier will offer the finance on a full recourse basis. Security for the loan will be a charge over the Grower's interest in the Project.

90. 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 the Preferred Financier, are involved or become involved in the provision of finance to Growers for the Project.

Commissioner of Taxation

13 June 2007

Appendix 1 – Explanation

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

Is the Grower carrying on a business?

91. For the amounts set out in paragraph 25 of this Ruling to constitute allowable deductions the Grower's afforestation activities as a participant in the Project must amount to the carrying on of a business of primary production.

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

93. 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?

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

95. Having applied these principles to the arrangement set out above, a Grower in the Project is accepted to be carrying on a business of growing and harvesting Indian sandalwood for sale.

The Simplified Tax System

Division 328

96. 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.

97. 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 Establishment Fee, Irrigation Fee, Initial Management Fee, Ongoing Management Fees, Occupation Fees and interest on loans with the Preferred Financier***Section 8-1***

98. The Establishment Fee, Irrigation Fee, Initial Management Fee, Ongoing Management 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 fees (see paragraphs 49 to 51 of TR 2000/8).

99. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply. Subject to the prepayment provisions (see paragraphs 101 to 119 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.)

100. Some Growers may finance their participation in the Project through a Loan Agreement with the Preferred Financier. Applying the same principles as that used for the fees referred to in paragraph 98 of this Ruling, interest incurred under such a loan has sufficient connection with the gaining of assessable income to be deductible under section 8-1.

Prepayment provisions***Sections 82KZL to 82KZMG***

101. 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 income year, then it is not expenditure to which the prepayment rules apply.

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

Application of the prepayment provisions to this Project

Sections 82KZME and 82KZMF

103. Other than the Establishment Fee, Irrigation Fee, Initial Management Fee, Occupation Fees and Ongoing Management Fees (see below) the fees payable under the scheme to which this Product Ruling applies are payable out of harvest proceeds, and the interest payable to the Preferred Financier is incurred monthly in arrears. The prepayment provisions in sections 82KZME and 82KZMF of the ITAA 1936 have no application to that expenditure.

104. Under the Licence and Management Agreement, a Grower incurs the following fees on application per Woodlot:

- \$982.30 Establishment Fee for Establishment Services to be done within the Initial Period;
- \$924 Irrigation Fee for Irrigation Services to be done in the Initial Period; and
- \$14,093.20 Initial Management Fee for Initial Management Services to be provided in the Initial Period.

105. The Grower is also required to pay Ongoing Management Fees on an annual basis for the Ongoing Management Services. These fees are payable by 30 June of the income year preceding the income year in which the services are to be provided, commencing with a payment due on 30 June 2008 in respect of Ongoing Management Services to be provided in the period from 1 July 2008 to 30 June 2009.

106. The Grower is also required to pay Occupation fees on an annual basis in respect of the licence of their Woodlot. These fees are payable by 30 June of the income year preceding the income year in which the services are to be provided, commencing with a payment due on 30 June 2008 in respect of Ongoing Management Services to be provided in the period from 1 July 2008 to 30 June 2009.

107. The fee of \$14,093.20 for the Initial Management Services is a fee to which section 82KZMG of the ITAA 1936 applies. This is discussed in paragraphs 117 to 119 of this Ruling.

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

109. Where a Grower takes only one Woodlot, the Establishment Fee and Irrigation Fee payable for the income year commencing on 1 July 2007 fall within the exception in subsection 82KZME(7) of the ITAA 1936, as the expenditure is for an amount of less than \$1,000 and the fees are therefore deductible in the year they are incurred – that is, the income year ending 30 June 2007.

110. Where a Grower takes more than one Woodlot, the amount of the Establishment Fees and Irrigation Fees respectively incurred by the Grower is more than \$1,000. As none of the other exceptions to section 82KZME of the ITAA 1936 apply, the deductions for the relevant income years are calculated using the formula in subsection 82KZMF(1) of the ITAA 1936.

111. Where a Grower takes up to two Woodlots, the Occupation Fees payable in an income year may amount to less than \$1,000. Where that is the case, the expenditure will fall within the exception in subsection 82KZME(7) of the ITAA 1936, and will be deductible in the year in which it is incurred.

112. The Ongoing Management Fees, and the Occupation Fees where paragraph 111 of this Ruling does not apply, do not fall within any of the five exceptions in section 82KZME of the ITAA 1936. Therefore, the deductions for the relevant income years are calculated using the formula in subsection 82KZMF(1) of the ITAA 1936.

113. The eligible service period for the expenditure in respect of the Ongoing Management Fees commences on 1 July 2008 and ends on 30 June 2009. Application of the formula in subsection 82KZME(1) of the ITAA 1936 results in no amount being deductible in the year ended 30 June 2008, and a deduction of \$2,062.50 being allowable in the income year ended 30 June 2009.

114. The eligible service period for the expenditure in respect of the Occupation Fee payable on 30 June 2008 commences on 1 July 2008 and ends on 30 June 2009. Application of the formula in subsection 82KZME(1) of the ITAA 1936 results in no amount being deductible in the income year ended 30 June 2008, and a deduction of the full amount of the Occupation Fees payable by the Grower on 30 June 2008 being allowable in the income year ended 30 June 2009.

115. Sections 82KZME and 82KZMF of the ITAA 1936 may also have relevance if a Grower in this Project prepays all or some of the expenditure payable under the Licence and Management Agreement (other than the expenditure referred to in paragraphs 104 to 114 of this Ruling), or prepays interest under a loan agreement (including loan agreements with lenders other than the Preferred Financier). Where such a prepayment is made these prepayment provisions will also apply to 'STS taxpayers' because there is no specific exclusion in section 82KZME that excludes them from the operation of section 82KZMF.

116. As noted in the Ruling part above, Growers who prepay interest or fees other than the fees discussed in paragraphs 104 to 114 of this Ruling, are not covered by this Product Ruling and may instead request a private ruling on the tax consequences of their participation in this Project.

Section 82KZMG

117. Expenditure that meets the requirements of section 82KZMG of the ITAA 1936 is excluded from the application of the prepayment rules in sections 82KZME and 82KZMF of the ITAA 1936 that would otherwise apply. Section 82KZMG provides a '12 month rule' that, in effect, facilitates an immediate deduction for certain prepaid expenditure incurred under a plantation forestry managed agreement. The 12 month rule applies to expenditure for 'seasonally dependent agronomic activities' that will be carried out during the establishment period of a particular planting of trees. Seasonally dependent agronomic activities are explained in Taxation Determination TD 2003/12. Whilst the establishment period itself may exceed 12 months, each seasonally dependent agronomic activity must be completed within 12 months of commencement of its eligible service period (as defined in subsection 82KZL(1) of the ITAA 1936), and by the end of the following income year.

118. Under the Licence and Management Agreement each Grower incurs an Initial Management Fee of \$14,093.20 per Woodlot for 'seasonally dependent agronomic activities' that will be carried out during the 'establishment period' of the Indian sandalwood Trees.

119. The expenditure for 'seasonally dependent agronomic activities' meets all other requirements of section 82KZMG of the ITAA 1936 and, therefore, a deduction is allowable in the income year ended 30 June 2007 for the full amount of expenditure incurred by the Grower for the Initial Management Fee.

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

120. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for the years ended 30 June 2007 to 30 June 2022, 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.

121. 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.

122. 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

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

Part IVA – general tax avoidance provisions

124. 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).

125. The Project will be a 'scheme'. A Grower will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraph 25 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.

126. 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 Indian sandalwood. 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; TD 2003/12

Subject references:

- carrying on a business
- commencement of business
- fee expenses
- interest expenses
- management fees
- non-commercial business activities
- primary production
- primary production expenses
- producing assessable income
- product rulings
- public rulings
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters
- tax shelters project
- taxation administration

Legislative references:

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

- ITAA 1936 82KZME(1)
- ITAA 1936 82KZME(2)
- ITAA 1936 82KZME(3)
- ITAA 1936 82KZME(7)
- ITAA 1936 82KZMF
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- ITAA 1936 177A
- ITAA 1936 177C
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- ITAA 1936 177D(b)
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 17-5
- ITAA 1997 25-25
- ITAA 1997 Div 27
- ITAA 1997 Div 35
- ITAA 1997 35-10
- ITAA 1997 35-10(2)
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