


# ***PR 2007/69 - Income tax: Macquarie Forestry Investment 2007 (post 30 June 2007 Growers)***

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## Product Ruling

### Income tax: Macquarie Forestry Investment 2007 (post 30 June 2007 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**

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The Tax Office **does not** sanction or guarantee this product. Further, we give no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. We recommend a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out in the **Ruling** part of this document are available, **provided that** the scheme is carried out in accordance with the information we have been given, and have described below in the **Scheme** part of this document. If the scheme is not carried out as described, participants lose the protection of this Product Ruling.

## **Terms of use of this Product Ruling**

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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 Macquarie Forestry Investment 2007 (post 30 June 2007 Growers) Project or simply as 'the Project'.

### Class of entities

2. This part of the Product Ruling specifies which entities can rely on the tax benefits set out in the Ruling section of this Product Ruling and which entities cannot rely on those tax benefits.

3. The class of entities who can rely on those tax benefits are referred to as Growers. Growers will be those entities that are accepted to participate in the scheme specified below on or after the date this Product Ruling is made and who have executed the relevant Project Agreements set out in paragraph 30 of this Ruling after 30 June 2007 and on or before 30 June 2008. 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 30 June 2008;
- only acquire Units in the Macquarie Timber Land Trust 2007;
- participate in the scheme through offers made other than through the Product Disclosure Statement; or
- do not take out insurance against the loss or destruction of their Trees (refer to paragraph 34 of this Ruling).

**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 30 to 99 of this Ruling.

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

- this Product Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Product Ruling may be withdrawn or modified.

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**Date of effect**

9. This Product Ruling applies prospectively from 4 July 2007, the date this Product Ruling is made. It therefore applies only to the specified class of entities that enter into the scheme from 4 July 2007 until 30 June 2008. 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 2010.

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

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

- the relevant provisions are not amended.

11. If this Product Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

12. If this Product Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Product Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

13. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

## **Changes in the law**

14. Although this Product Ruling deals with the laws enacted at the time it was issued, later amendments to the law may impact on this Product Ruling. Any such changes will take precedence over the application of this Product Ruling and, to the extent of those amendments this Product Ruling will be superseded.

15. Entities who are considering participating in the scheme are advised to confirm with their taxation adviser that changes in the law have not affected this Product Ruling since it was issued.

## **Note to promoters and advisers**

16. Product Rulings were introduced for the purpose of providing certainty about tax consequences for entities in schemes such as this. In keeping with that intention the Tax Office suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Product Ruling is issued.

## **Goods and Services Tax**

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

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## Ruling

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### 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 30 to 99 of this Ruling.

19. The Grower's participation in the Project must constitute the carrying on of business of primary production. Provided the Project is carried out as described below, the Grower's business of primary production will commence at the later of the time that the Constitution of the Macquarie Eucalypt Project 2007 has been declared or a Grower's Interest has been issued.

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.

### The Simplified Tax System

#### ***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 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****Section 6-5 and section 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 Plantation Establishment Fee, Interest expense and Terms Payment Application Fee****Section 8-1, section 25-25 and Division 27 of the ITAA 1997 and section 82KZMG of the Income Tax Assessment Act 1936**

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

Fee Type	Year ending 30 June 2008	Year ending 30 June 2009	Year ending 30 June 2010
<b>Plantation Establishment Fee</b>	\$9,185 See Notes (i) & (ii)		
<b>Interest on loans with MBL</b>		As incurred See Notes (i) & (iii)	As incurred See Notes (i) & (iii)
<b>Borrowing cost for loans with Macquarie Bank Limited or its assigns (MBL)</b>	Must be calculated – see Note (iv)	Must be calculated – see Note (iv)	Must be calculated – see Note (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) Under section 82KZMG of the *Income Tax Assessment Act 1936* (ITAA 1936) the Plantation Establishment Fee is expenditure for 'seasonally dependent agronomic activities' (see paragraphs 116 to 118 of this Ruling) and is deductible in the income year in which it is incurred.
- (iii) The deductibility or otherwise of interest arising from agreements entered into with financiers other than MBL, is outside the scope of this Ruling. Prepayments of interest to any lender, including MBL, 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.

- (iv) The Application Fee payable to MBL is a borrowing expense and is deductible under section 25-25. It is incurred for borrowing moneys that are used or are 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. However, where the total amount of the borrowing expense is \$100 or less, the full amount of the borrowing expense may be deducted in the year in which it is incurred and/or paid. The deductibility or otherwise of borrowing costs arising from loan agreements entered into with financiers other than MBL is outside the scope of the Ruling.

## **Units**

### ***Part 3-1***

26. The Units in the Macquarie Timber Land Trust 2007 are CGT assets (section 108-5) and the amount paid by a Grower or Land Investor to acquire these assets is an outgoing of capital and not allowable as a deduction.

27. The amount paid for each Unit will represent the first element of the cost base of the Unit (subsection 110-25(2)). Any disposal of the Units by a Grower or Land Investor will be a CGT event and may give rise to a capital gain or loss.

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

### ***Section 35-55 – exercise of Commissioner’s discretion***

28. A Grower who is an individual accepted into the Project in the year ended 30 June 2008 may have losses arising from their participation in the Project that would be deferred to a later income year under section 35-10. Subject to the Project being carried out in the manner described above, the Commissioner will exercise the discretion in paragraph 35-55(1)(b) for Growers for the income years ended **30 June 2008 to 30 June 2018**. 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***

29. 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;
- 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**

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

- Application for a Product Ruling dated 3 October 2006 as constituted by documents provided on 19 October 2006 and 7 June 2007 and additional correspondence dated 18 December 2006, 30 January 2007, 7 June 2007 and 25 June 2007;
- Product Disclosure Statement of the Macquarie Forestry Investment 2007 received by the Tax Office on 7 June 2007;
- Draft Macquarie Eucalypt Project 2007 Constitution, dated 22 September 2006;
- Draft Macquarie Eucalypt Project 2007 Compliance Plan, dated September 2006;
- Copy of Agreement for Ground Lease and Forest Property Agreement between Macquarie Bank Limited (Landlord) and Macquarie Alternative Assets Management Limited (Responsible Entity of the Macquarie Eucalypt Project 2007) received with the Application for a Product Ruling on 7 June 2007;
- Draft Form of Forest Property Agreement between Macquarie Bank Limited (Grantor) and Macquarie Alternative Assets Management Limited (Grantee) received with the Application for a Product Ruling on 7 June 2007;

- Draft Form of Lease between Macquarie Bank Limited (Lessor) and Macquarie Alternative Assets Management Limited (Lessee) received by the Tax Office on 7 June 2007;
- Draft MFSPL Management Agreement 2007 between Macquarie Forestry Services Pty Limited and Macquarie Alternative Assets Management Limited received by the Tax Office on 19 October 2006;
- Copy of the Midway Management Agreement 2007 between Midway Pty Limited, Macquarie Forestry Services Pty Ltd, Macquarie Alternative Assets Management Limited and Macquarie Bank Limited, undated, received by the Tax Office on 7 June 2007;
- Copy of the McEwens Management Agreement 2007 between McEwens Contracting Pty Limited, Macquarie Forestry Services Pty Limited, Macquarie Alternative Assets Management Limited and Macquarie Bank Limited, dated 4 October 2006, received by the Tax Office on 7 June 2007;
- Draft Midway Off-Take Agreement 2007 (incorporating the Draft Pricing and Payment Schedule 2007) between Midway Pty Limited and Macquarie Alternative Assets Management Limited (the Manager) received by the Tax Office on 19 October 2006;
- Eucalypt Pulpwood Agreement between Macquarie Alternative Assets Management Limited and Paper Australia Pty Limited dated 24 August 2005;
- Draft Greening Australia Services Deed 2007 between Greening Australia Limited (Service Provider), Macquarie Forestry Services Pty Limited, Macquarie Alternative Assets Management Limited and Macquarie Financial Products Management Limited received with the Application for a Product Ruling on 19 October 2006;
- Custody Agreement (Macquarie Eucalypt Project 2007) between Macquarie Alternative Assets Management Limited (Manager) and Bond Street Custodians Limited (Custodian) received with the Application for a Product Ruling on 19 October 2006;
- Draft Notice of Addition to the Custody Agreement (Macquarie Eucalypt Project 2007) between Macquarie Alternative Assets Management Limited and Bond Street Custodians Limited received with the Application for a Product Ruling on 19 October 2006;
- Macquarie Timber Land Trust 2007 Constitution dated 22 September 2006;

- Draft Macquarie Timber Land Trust 2007 Compliance Plan, dated September 2006;
- Custody Agreement (Macquarie Timber Land Trust 2007) between Macquarie Financial Products Management Limited (Manager) and Bond Street Custodians Limited (Custodian) received with the Application for a Product Ruling on 19 October 2006;
- Draft Notice of Addition to the Custody Agreement (Macquarie Timber Land Trust 2007) between Macquarie Financial Products Management Limited and Bond Street Custodians Limited received with the Application for a Product Ruling on 19 October 2006;
- Draft Agreement for Sale and related Contracts of Sale of land between Macquarie Bank Limited (Owner) and Macquarie Financial Products Management Limited (Transferee) received with the Application for a Product Ruling on 19 October 2006; and
- Draft Loan & Security Agreement and Notice of Mortgage between Macquarie Bank Limited (the Bank) and the Borrower, which forms part of the PDS.

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

31. 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 below.

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

### Overview

33. The salient features of the Macquarie Forestry Investment 2007 are as follows:

Location	The land will be located within an economic haulage distance of a log processor's mill gate in Victoria eg Midway's log processing facilities at the port of Geelong Victoria.
Type of business to be carried on by each participant in the Timber Project	Commercial growing and cultivation of varieties of eucalyptus trees including <i>Eucalyptus globulus</i> and <i>Eucalyptus nitens</i> for the purpose of harvesting and selling trees for woodchips and other timber products.

Number of hectares offered for cultivation	Up to 7,000 hectares
Size of each interest	1 hectare
Minimum allocation	1 Interest for the Timber Project; and 1 Unit for the Land Project.
Number of trees per hectare	Approximately 1,000
Term of the Project	Approximately 11.5 years
Initial cost	\$9,185 Plantation Establishment Fee for an Interest in the Timber Project and/or \$1,950 application fee for a Unit in the Land Project.
Ongoing costs	Deferred Management Fee of 5.5% of Net Sale Proceeds or any Tree Insurance Proceeds; and Licence Fee of 11% of Net Sale Proceeds or any Tree Insurance Proceeds.
Other costs	Annual Tree Insurance premiums payable by the Growers; and Productivity Performance Fee of 16.5% of Net Sale Proceeds in excess of \$13,500 (GST exclusive) per Interest, if the average amount of all Timber from the region produced is greater than 240 GMT per hectare for the Plantation Lots for that region.

34. The scheme is called the Macquarie Forestry Investment 2007. The Project consists of the Macquarie Eucalypt Project 2007 (the Timber Project) and the Macquarie Timber Land Trust 2007 (the Land Project). This Ruling only applies to participants in the Timber Project who take out insurance in respect of the trees, at or before the time of planting, against damage or destruction in terms of clause 5.1(b) of Schedule 1 of the Constitution of the Macquarie Eucalypt Project 2007. The Ruling does not address the tax consequences of disposing of Units in the Land Project.

35. Under the Product Disclosure Statement (PDS), Macquarie Alternative Assets Management Limited (MAAML) is offering Interests in the Timber Project at an application price of \$9,185 per Interest and Macquarie Financial Projects Management Limited (MFPML) is offering Units in the Land Project at an application price of \$1,950 per Unit. The Timber Project and the Land Project are not stapled securities and investors may apply for Interests in the Timber Project (Growers), Units in the Land Project (Land Investors) or both. The minimum application for each Grower and Land Investor is one Interest in the Timber Project and/or one Unit in the Land Project. In this Ruling, reference to 'Growers' includes reference to investors who invest in the Timber Project.

36. MAAML will act as the Responsible Entity for the Timber Project and MFPML will act as the Responsible Entity for the Land Project. An Interest in the Timber Project is comprised of one Plantation Lot having a total area of one hectare which will be licensed by the Grower from the Timber Project Responsible Entity to carry on the business of growing eucalypt trees.

37. At the termination of the Project, on or around 31 December 2018, Midway Pty Limited (Midway) will harvest and purchase the Grower's trees in the Geelong and Portland regions and Paper Australia Pty Limited (Australian Paper) will harvest and purchase the Grower's trees in the Gippsland region.

38. The Sale Period, being the period during which the Timber Project trees will be harvested or otherwise sold, as defined in the PDS is expected to be 1 January 2018 to 31 December 2018. The Growers will receive their Net Sale Proceeds (this term is defined in paragraph 54 of this Ruling) in instalments, which are expected to be on a monthly basis, throughout the Sale Period. The Sale Period is not expected to be longer than 12 months. It is envisaged that upon purchase by Midway or Australian Paper the trees will be harvested in accordance with the Midway Off-Take Agreement or Eucalypt Pulpwood Agreement as applicable.

39. Under the Midway Management Agreement and McEwens Management Agreement, Midway and McEwens Contracting Pty Limited (McEwens) respectively will select land in Victoria for the Project which satisfies a detailed protocol for land selection which has been developed by MBL. The protocol employs a site classification system based on climate and soils that correlates with plantation productivity predictions.

40. MBL will purchase suitable land recommended by Midway (in respect of the Gippsland and Geelong regions) or McEwens (in respect of the Portland region). Once it has acquired the land, MBL will, pursuant to the Agreement for Lease and Forestry Property Agreement enter the Lease and Forest Property Agreement with MAAML for the term of the Project. MAAML will grant each Grower a Licence to access and conduct their afforestation business on their Plantation Lot. The Macquarie Timber Land Trust 2007 will then enter into an Agreement to acquire the land from MBL and the land will be transferred to the Macquarie Timber Land Trust 2007 subject to the Lease and the Forest Property Agreement. The Licence and Forestry Rights granted to the Grower under the Constitution will not be affected by the transfer of the land.

41. The land will be acquired and the Lease and Forest Property Agreement granted before the first of:

- (a) the expiry of 9 months after the grant of the Interest to the Grower; and
- (b) the date that is three months before the end of the Initial Term for that Interest.

42. MFPML, as the Macquarie Timber Land Trust 2007 Responsible Entity, will hold the land on behalf of the Land Investors. The Macquarie Timber Land Trust 2007 will derive rental income and proceeds from the sale of the Project land at the termination of the Project. The Unit holders will receive distributions from the Macquarie Timber Land Trust 2007.

### **Constitution of the Macquarie Eucalypt Project 2007**

43. The Constitution establishes the Scheme known as the Macquarie Eucalypt Project 2007 and operates as a deed declared to be for the benefit of and binding on the Growers. It sets out the terms and conditions under which MAAML agrees to act as the Manager of the Scheme.

44. Following entry into a Lease or the issuance of Interests (whichever occurs later):

- (a) Plantation Lots shall be granted to Growers in the order in which Interests were issued;
- (b) a Plantation Lot granted to a Grower may be in any region and, where a Grower has multiple Interests, Plantation Lots may be granted across the regions as determined by the Manager in its absolute discretion and on the basis that the allocation to Growers of Plantation Lots between regions may be different as between Growers; and
- (c) a Licence and Forest Property Right in respect of the Grower's Plantation Lots on the Land shall, by virtue of the issuance of the Interests and allocation of Plantation Lots, be granted to the Grower.

45. Under the Constitution the Manager must hold any Scheme Property on trust for Growers or cause it to be held by a Custodian.

46. An applicant for Interests must complete the Application Form attached to the PDS issued by the Manager in connection with the Scheme. Payment in a form acceptable to the Manager, of the part (if any) of the Plantation Establishment Fee which is not being provided by MBL as Lender for the applicant, must:

- (a) accompany the Grower's Application; or
- (b) be received by or made available to the Manager or the Custodian within such period before or after the Manager receives the Grower's Application as the Manager determines from time to time.

47. The balance (if any) of the Plantation Establishment Fee which is being provided by MBL as Lender for the applicant must also be received by the Manager before an Interest will be issued.

48. Money paid with or in relation to a Grower's Application for an Interest is to be held by the Manager in a trust account in accordance with the Corporations Act pending the issue of the Interest. Once the Interest is issued the Manager may retain the Plantation Establishment Fee on its own account (clause 6.7).

49. MAAML grants each Grower a Licence to access and conduct their afforestation business on their Plantation Lot. MAAML also grants each Grower certain Forestry Rights in relation to their Plantation Lot, which include the vesting in the Grower of ownership of the Trees, Carbon Sequestration Rights and Environmental Credits (clause 3.2 and as defined in clause 25 of the Timber Project Constitution) in respect of the Grower's Plantation Lot.

50. The Constitution states the various fees and expenses to which the Manager is entitled during the term of the Project and the Amending Deed clarifies the payment of the Productivity Performance Fee. Clauses 4.1, 4.2 and 4.3 of Schedule 1 of the Constitution list the Manager's obligations in respect of each Grower during both the Initial Term and the period following the Initial Term.

51. The activities in respect of an Interest shall commence no earlier than the start of the Initial Term for that Interest. The only activities to be carried out during the Initial Term are those associated with the planting of seedling trees (including ordering and receiving seed and seedlings, preparing the Plantation Lots for planting, weed control in conjunction with planting, cultivation and planting), which, excluding refilling, are to be completed during the Initial Term for that Interest (clause 4.4 of Schedule 1).

52. The Initial Term for an Interest, which will be for a period of no more than 12 months, will vary depending on the date on which a Grower's Interest is allotted. The Initial Term will be for an Interest issued after 1 July 2007 – the period commencing on the later of:

- (i) the Allotment Date for that Interest (being the date of allotment of Interests to Growers); and
- (ii) 30 June 2008,

and ending on the first anniversary of that date.

53. The Manager will distribute or retain the Net Sale Proceeds and Other Income of each Grower in the following order of priority:

- (a) retain an amount representing any liabilities incurred by the Manager in respect of that Grower for the account of the Manager;
- (b) pay any provision for Environmental Debts to the Responsible Entity of the Macquarie Timber Land Trust 2007;
- (c) retain the Deferred Management Fee as set out in clause 18.2 of the Constitution for the account of the Manager;

- (d) distribute the Licence Fee in accordance with clause 7.1 of the schedule to the MAAML;
- (e) when the Net Sale Proceeds received by the Manager for the Grower and all other Growers from that region exceed \$13,500 (GST exclusive) per Plantation Lot if the average yield of All Timber is greater than 240 GMT per Plantation Lot in that Region (or the average mean annual increment of All Timber is greater than 24.0), retain the Productivity Performance Fee; and
- (f) distribute the balance to the Grower.

54. The Net Sale Proceeds in relation to a Grower is defined as the Grower's Proportional Interest of the proceeds of sale of All Timber of the Scheme less the cost of harvest, handling, loading, transport, processing, shipping and delivery costs which are received by the Manager.

55. A Grower's Proportional Interest is the proportion which the aggregate Interests issued to that Grower bears to all Interests issued to all the Growers in the Scheme at that time. If a Plantation Lot is affected by an Event (being destruction or damage to any of the Trees) then the Grower's Proportional Interest will be as determined by the Manager. In this situation the Manager will determine the proportion of that Grower's Trees which remain, and the relative market value of those remaining Trees, as they relate to the Trees which would have been expected on the Plantation Lot licensed to that Grower.

56. If an Event occurs and Tree Insurance has been arranged by the Manager for a Grower, the Manager will use the proceeds of the claim to replant the affected parts of that Grower's Plantation Lot, if so directed by the Grower before 30 June 2009. If the Manager is not so directed by the Grower, the Manager must determine whether the proceeds are to be used to replant the affected parts of that Grower's Plantation Lot or the proceeds shall accrue to the Manager on behalf of the Grower.

57. The Scheme terminates on the earlier of:

- (a) the termination or expiration of every Lease and the last payment of the Net Sale Proceeds and Other Income; or
- (b) such later date in accordance with any extensions of time as determined by agreement by at least:
  - (i) a resolution or written agreement of Growers with at least 75% of all Interests;
  - (ii) the unit holders who have at least 75% of the Units in the Macquarie Timber Land Trust 2007; or



- (iii) the Off-Takers, to the extent that the Off-Take Agreements have not been terminated and are affected by the determination.

## Form of Lease

58. Under clause 1.1 of the Lease, MBL grants a lease to MAAML who takes a lease of the Land for the Term of the Project, on and subject to the terms of the Lease.

59. At clause 1.2 MBL also grants to MAAML a licence to access and use the Other Land for all purposes having regard to the Permitted Use (as defined in clause 21 of the Lease) of the Land. This right is contractual, non-exclusive and irrevocable for the duration of the Term of the Project.

60. At clause 5.1 MAAML may:

- (a) sub-let any part of the Land for the Permitted Use if it sees fit without the consent of MBL;
- (b) grant non-exclusive licences or sub licences for the use of the Land and non-exclusive licences for the use of the Other Land for the Permitted Use as it sees fit; or
- (c) assign the Lease in accordance with the Scheme Constitution without the consent of MBL.

61. The Term of the Lease is the period commencing on the Commencement Date and expiring on the Termination Date. The Termination Date is 30 June 2023; however MBL may terminate the Lease by notice to MAAML at any time in its absolute discretion after the later to occur of:

- (a) 31 December 2018; and
- (b) the final payment of the Net Sale Proceeds and the final payment of Other Income under the Scheme Constitution.

62. The Rent payable by the MAAML to the Landlord in relation to the Lease is the amount which is \$1 plus 10% of:

- (a) Net Sale Proceeds in arrears when the Net Sale Proceeds in respect of the Land are distributed by the Tenant to Growers of the Scheme; or
- (b) Upon the occurrence of an Event, any Tree Insurance Proceeds (that are not applied in replanting the affected parts of the Land) when Tree Insurance Proceeds in respect of the Land are received by the Tenant (whether on its own behalf or for others).

63. If a Grower's trees are destroyed or damaged and there is no replanting of the affected parts of the Grower's Plantation Lot, at MAAML's election, MAAML may surrender that part of the Plantation Lot over which those trees were planted, by notice to the Landlord.

**Form of Forest Property Agreement**

64. Under this Agreement, MBL, in consideration of MAAML paying the Rent under the Lease, vests ownership to MAAML of the Forest Property, Carbon Sequestration Rights and Environmental Credits in the Land for the Term of the Lease. MBL also acknowledges it has no interest in the Forest Property, Carbon Sequestration Rights and Environmental Credits for the Term of the Lease.

65. Clause 13.1 states that Forest Property Rights means the right to ownership of the Forest Property on the Land, the Carbon Sequestration Rights and any Environmental Credits.

**Agreement for Ground Lease and Forest Property Agreement**

66. MBL agrees to grant, or procure the grant, and MAAML agrees to accept the grant of the Lease and the Forest Property Agreement from and including the Commencement Date, being the settlement date under the relevant contract for the purchase of Project Land.

67. Under the Agreement, MAAML must deliver to MBL with this Agreement the Form of Lease and the Form of Forest Property Agreement in duplicate executed by MAAML to be held in escrow by MBL.

**MFSPL Management Agreement 2007**

68. Under this Agreement MAAML engages Macquarie Forestry Services Pty Limited (MFSPL) to undertake certain of its obligations under the Constitution for the Term of the Project.

69. MAAML grants to MFSPL a licence to access and use (and to allow its subcontractors and agents to access and use) the Land and Other Land for all purposes necessary to carry out its obligations under this Agreement.

70. This Agreement commences on the Commencement Date and continues until the Termination Date. In terms of clause 12.4, the Termination Date is the same as that for the Scheme Constitution.

**Midway Management Agreement 2007**

71. Under this Agreement MFSPL sub-contracts some of its obligations under the MFSPL Management Agreement to Midway in respect of the Geelong and Gippsland regions.

72. MFSPL and Midway agree and acknowledge that the Growers are to sell Timber from Plantation Lots in the Geelong region to Midway and Timber from Plantation Lots in the Gippsland region to Australian Paper, in accordance with the terms of the Off-Take Agreements.

## **McEwens Management Agreement 2007**

73. Under this Agreement MFSPL sub-contracts some of its obligations under the MFSPL Management Agreement to McEwens in respect of the Portland region.

74. MFSPL and McEwens agree and acknowledge that the Growers are to sell Timber from Plantation Lots in the Portland region to Midway in accordance with the terms of the Off-Take Agreement. McEwens agrees to provide access at least annually for representatives of Midway to inspect the Plantation Lots in the Portland region. Such access will be granted at a mutually agreeable time.

## **Midway Off-Take Agreement 2007**

75. Under the Midway Off-Take Agreement, Midway agrees to buy and the Manager, on behalf of the Growers, agrees to sell the Timber located in the Geelong and Portland regions at stump for the Selling Price. The Selling Price for All Timber at stump will be calculated and paid in accordance with the Pricing and Payment Schedule. This Schedule forms part of the Midway Off-Take Agreement and establishes the pricing and payment mechanisms for the Off-Take Agreement. Midway will pay to the Manager the Selling Price on behalf of each of the Growers.

76. Midway agrees with the Grower that it will, at its own cost and expense:

- (a) harvest the Timber by 31 December 2018 or such later date agreed in writing by Midway and the Manager but no later than 31 December 2023;
- (b) transport the Timber from the Land to Midway's Facility, Australian Paper's Maryvale Mill facility near Morwell, Victoria or to any other agreed place between Midway and the Manager prior to the end of the Sale Period (being the year in which all Standing Timber is to be harvested, currently expected to be 2018);
- (c) unless otherwise agreed, produce wood chips or other timber products from the Timber for sale to its Customers; and
- (d) unless otherwise agreed, market the wood chips to its Customers for sale.

77. MAAML grants to Midway a licence to access and use the Land and Other Land for all purposes necessary to carry out its obligations under this Agreement.

**Eucalypt Pulpwood Agreement**

78. Under this Agreement, MAAML has agreed to use its reasonable endeavours to establish projects on an annual basis under which MAAML, as agent for and on behalf of the Growers, establishes and maintains Plantations and agrees to make those Plantations available for harvest by Australian Paper. Australian Paper has agreed to purchase Eucalypt Pulpwood in accordance with the terms of the Agreement.

79. MAAML must irrevocably grant to Australian Paper a licence to access and use the Land for all purposes required for Australian Paper to harvest the Standing Timber and haul the Eucalypt Pulpwood.

80. The Agreement commenced on 24 August 2005 and will terminate on the later of:

- (a) 31 December 2037; or
- (b) the Wood Availability Expiry Date (being 31 December 2037 or any agreed extended expiry date).

81. In selecting the Land on which to establish Plantations under the Schedule of Establishment as set out in Schedule 5 of the Agreement, MAAML will comply with the Land Selection Protocol as set out in Schedule 6.

82. In establishing the Plantations, MAAML must:

- (a) use good forestry practices with the aim that the Standing Timber can meet the Eucalypt Pulpwood Specifications; and
- (b) engage a suitably qualified and experienced Forestry Contractor in accordance with Clause 3.10 to perform the Plantation establishment.

83. By 1 October of each year the parties will meet to calculate the price to be paid for the following year's Project using a worksheet which bases the calculation on factors such as CPI, green density, volume, the percentage value of projected future pulpwood per hectare payable as lease payments to Land owners and as management fees to MAAML and contractors, the expected average age that the plantation will be harvested, the costs of planting and establishment and harvesting and transport costs, tax and stamp duty effects, the term of the agreement and the targeted internal rate of return for investors. As well as price to be paid for the following years Project, this pricing formula also determines the estimated final delivered cost of Eucalypt Pulpwood to the Australian Paper Maryvale Mill. There are procedures in the Agreement for adjusting prices, based on prices paid for Eucalypt pulpwood by Australian Paper and the price of export pulpwood in Victoria.

84. In addition, a 'take or pay' concept has been incorporated, such that, in the event that Australian Paper's requirements are less than 80% of the contract quantity of Eucalypt Pulpwood under the agreement, MAAML and Australian Paper will work together to identify an Alternative Purchaser for the Eucalypt Pulpwood not required by Australian Paper. Further, Australian Paper may be liable to pay a penalty at the stumpage price determined under the Agreement.

85. Before 1 October each year, Australian Paper must provide MAAML with schedules of its expected Eucalypt Pulpwood requirements for the forthcoming calendar year and subsequent two calendar years. As soon as reasonably practicable after receipt of this information, but in any case not later than 90 days prior to the commencement of each calendar year, MAAML must deliver to Australian Paper a plan of operation in respect of making Standing Timber available for Eucalypt Pulpwood for the forthcoming calendar year and subsequent two calendar years. These plans of operation must in good faith specify Eucalypt Pulpwood quantities planned to be harvested and specific site details of each area to be harvested.

86. No later than 30 days prior to the commencement of each calendar year, Australian Paper must provide a harvesting plan to MAAML setting out the approximate dates on which Australian Paper intends to harvest each Plantation.

## **Custody Agreements**

87. Under the Custody Agreement between MAAML and Bond Street Custodians Limited, MAAML appoints Bond Street Custodians Limited as the Custodian for the Macquarie Eucalypt Project 2007 and Bond Street Custodians Limited accepts the appointment as the Custodian of the Assets of the Macquarie Eucalypt Project 2007 on the terms and conditions of the Agreement.

88. Under the Custody Agreement between MFPML and Bond Street Custodians Limited MFPML appoints Bond Street Custodians Limited as the Custodian for the Macquarie Timber Land Trust 2007 and Bond Street Custodians Limited accepts the appointment as the Custodian of the Assets of the Macquarie Timber Land Trust 2007 on the terms and conditions of the Agreement.

## **Constitution of the Macquarie Timber Land Trust 2007**

89. The Constitution establishes the Trust known as the Macquarie Timber Land Trust 2007 and operates as a deed under which the Manager holds assets on trust for the Land Investors. It sets out the terms and conditions under which MFPML agrees to act as the Manager of the Trust.

90. The beneficial interest in the Trust is divided into Units and each Unit confers an equal undivided interest. The Application Price for the Units is \$1,950 per Unit. Units will be issued to applicants where the Manager has accepted their application and received their application money.

### **Fees**

91. The fees payable under the Constitution of the Macquarie Eucalypt Project 2007, on an Interest basis, are as follows:

- Plantation Establishment Fee of \$9,185 payable on application for the maintenance and management of each Grower's Plantation Lot during the Initial Term;
- Deferred Management Fee for the maintenance and management of each Grower's Plantation Lot for the period commencing after the Initial Term and ending on the Termination Date being an amount equal to either 5.5% of the Net Sale Proceeds of each Grower or where an Event has occurred 5.5% of any Tree Insurance Proceeds (see clause 18.2 of the Constitution);
- Productivity Performance Fee payable in respect of each Grower, being an amount equal to 16.5% of Net Sale Proceeds for a region in excess of \$13,500 (GST exclusive) per Plantation Lot if the average yield of All Timber from the region is greater than 240 GMT per Plantation Lot (or the average mean annual increment of All Timber is greater than 24.0) per Plantation Lot in the region. This Fee is payable for the maintenance and management of each Grower's Plantation Lot for the period commencing after the Initial Term and ending on the Termination Date;
- Licence Fee is payable by the Growers for the Licence. The Licence Fee is an amount equal to 11% of either Net Sale Proceeds or where an Event occurs, any Tree Insurance Proceeds; and
- Handling Fee for arranging Tree Insurance will be invoiced to the Growers as soon as practicable (but within thirty days). The invoiced amount will be payable by the Growers within thirty days of the invoice date.

92. The Application Fee payable under the Constitution of the Macquarie Timber Land Trust 2007 is \$1,950 per Unit.

### **Finance**

93. Growers can fund their involvement in the Project themselves, borrow from MBL (a lender associated with the Responsible Entity) or borrow from an independent lender.

94. 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 MBL 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 may request a private ruling on the deductibility or otherwise of interest incurred under finance arrangements not covered by this Product Ruling.

95. Growers cannot rely on any part of this Ruling if the Plantation Establishment Fees are not paid in full on or before 30 June 2008 by the Grower or, on the Grower's behalf, by a lending institution.

### **MBL Finance**

96. Where Growers borrow from MBL, all application monies received (both from Growers directly and from MBL) will be paid to the Managers to be held in separate trust accounts for the Timber Project and the Land Project in accordance with the *Corporations Act 2001*. Such application monies will be paid into the respective trust accounts on or before the issue date of the Interests or Units.

The finance made available by MBL is offered on the following terms contained in the Loan and Security Agreement:

<b>Term</b>	<b>1 year</b>	<b>5 years</b>	<b>8 years</b>
<b>Investment amount able to be borrowed</b>	100%	100%	100%
<b>Indicative Interest Rate</b>	No interest	8.80%	8.80%
<b>Interest Rate Set Date</b>	N/A	Interest rates will be set on the day the loan is approved.	Interest rates will be set on the day the loan is approved.
<b>Amortisation Profile</b>	1 year of equal monthly principal repayments	5 years of equal monthly payments <sup>1</sup>	8 years of equal monthly payments <sup>2</sup>
<b>Interest Payments</b>	N/A	Monthly in arrears	Monthly in arrears
<b>Application Fee</b>	1% of the total Application Price less any cash contributions	\$0	\$0

<sup>1</sup> Monthly payments of principal and interest will commence in the month following the Drawdown Date. The amount of monthly principal repayable will increase and the amount of monthly interest will decrease over the term of the Facility.

<sup>2</sup> See footnote 1.

97. In each case:

- maximum amount allowed to be borrowed is \$11,135 plus the Application Fee for every one Interest in the Timber Project and one Unit in the Land Project;
- the borrowing includes the GST payable in relation to the Plantation Establishment Fee (\$835);
- the above repayments must be paid irrespective of the amount of any distribution from the Macquarie Eucalypt Project 2007 or the Macquarie Timber Land Trust 2007;
- the interest rate payable on the loan facility will be determined by MBL on the day the loan is approved, and will be published on the Macquarie Forestry website. This indicative interest rate will be set on an arm's length commercial basis; and
- Growers who borrow from MBL are obliged to obtain and maintain Tree Insurance at all times during the term of any financial accommodation provided by MBL, except that Tree Insurance is not required before the Trees are planted and is not required if the term of any finance provided is not greater than one year.

98. Growers cannot rely on this Product Ruling if a different finance arrangement is entered into with MBL or if application monies otherwise remain unpaid after 30 June 2008.

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

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' are or will be granted to the borrowers for the purpose of section 82KL of the ITAA 1936 or the funding arrangements transform the Project into a 'scheme' to which Part IVA of the ITAA 1936 may apply;
- the loan or rate of interest is non-arm's length;
- repayments of the principal and payments of interest are linked to the derivation of income from the Project;
- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender or any associate of the lender;



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- 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 MBL, are involved or become involved in the provision of finance to Growers for the Project.

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**Commissioner of Taxation**

4 July 2007

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## Appendix 1 – Explanation

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

### **Is the Grower carrying on a business?**

100. For the amounts set out in paragraph 25 of this Ruling to constitute allowable deductions the Grower's afforestation activities as a participant in the Macquarie Forestry Investment 2007 Project must amount to the carrying on of a business of primary production.

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

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

103. Taxation Ruling TR 2000/8 Income tax: investment schemes, particularly paragraph 89, is more specific to arrangements such as the Macquarie Forestry Investment 2007 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.

104. Having applied these principles to the arrangement set out above, a Grower in the Macquarie Forestry Investment 2007 Project is accepted to be carrying on a business of growing and harvesting timber for sale.

### **The Simplified Tax System**

#### ***Division 328***

105. Subdivision 328-F sets out the eligibility requirements that a Grower must satisfy in order to enter the STS and Subdivision 328-G sets out the rules for entering and leaving the STS.

106. Changes to the STS rules apply from 1 July 2005. The question of whether a Grower is eligible to be an 'STS taxpayer' is outside the scope of this Product Ruling (but refer to Taxation Ruling TR 2002/6 and Taxation Ruling TR 2002/11). Therefore, any Grower who relies on those parts of this Ruling that refer to the STS will be assumed to have correctly determined whether or not they are eligible to be an 'STS taxpayer'.

## **Deductibility of the Plantation Establishment Fee and interest on loans with MBL**

### ***Section 8-1***

107. The Plantation Establishment 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 Plantation Establishment Fees (see paragraphs 49 to 51 of TR 2000/8).

108. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply. Subject to the prepayment provisions (see paragraphs 111 to 118 of this Ruling) a deduction for these amounts can be claimed in the year in which they are incurred. (Note: the meaning of incurred is explained in Taxation Ruling TR 97/7.)

109. Some Growers may finance their participation in the Project through a Loan Agreement with MBL. Applying the same principles as that used for the Plantation Establishment Fees, interest incurred under such a loan has sufficient connection with the gaining of assessable income to be deductible under section 8-1.

110. Other than where the prepayment provisions apply (see paragraphs 111 to 118 of this Ruling), a Grower can claim a deduction for such interest in the year in which it is incurred.

## **Prepayment provisions**

### ***Sections 82KZL to 82KZMG***

111. 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.

112. For this Project, the only prepayment provisions that are relevant are section 82KZL of the ITAA 1936 (an interpretive provision) and section 82KZMG of the ITAA 1936 (an operative provision). References to sections 82KZME and 82KZMF of the ITAA 1936 are made only in respect their interaction with section 82KZMG and to confirm that these provisions have no application to expenditure incurred by Growers who participate in the scheme set out in this Ruling.

**Application of the prepayment provisions to this Project*****Sections 82KZME and 82KZMF***

113. Other than the Plantation Establishment Fee (see below) the fees payable under scheme to which this Product Ruling applies are payable out of harvest proceeds and the interest payable to MBL is incurred monthly in arrears. Accordingly, the prepayment provisions in sections 82KZME and 82KZMF of the ITAA 1936 have no application to expenditure incurred by Growers under this scheme.

114. However, sections 82KZME and 82KZMF of the ITAA 1936 may have relevance if a Grower in this Project prepays interest under a loan agreement (including loan agreements with lenders other than MBL). 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.

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

***Section 82KZMG***

116. 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.

117. Under the Constitution each Grower incurs a Plantation Establishment Fee of \$9,185 per Plantation Lot for 'seasonally dependent agronomic activities' that will be carried out during the 'establishment period' of the Trees.

118. 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 2008 for the full amount of expenditure incurred by the Grower for the Plantation Establishment Fee.

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

119. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for the income years ended 30 June 2008 to 30 June 2018, 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.

120. 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.

121. 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**

122. 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**

123. 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).

124. The Macquarie Forestry Investment 2007 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.

125. 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 timber. 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

126. The following is a detailed contents list for this Ruling:

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## References

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### *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:*

- advance deductions and expenses for certain forestry expenses
- carrying on a business
- commencement of a business
- fee expenses
- forestry agreement
- interest expenses
- management fees
- non-commercial losses
- producing assessable income
- product rulings
- public rulings
- seasonally dependent agronomic activities
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters
- tax shelters project
- taxation administration

- ITAA 1936 82KZMB
- ITAA 1936 82KZMC
- ITAA 1936 82KZMD
- ITAA 1936 82KZME
- ITAA 1936 82KZMF
- ITAA 1936 82KZMG
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 17-5
- ITAA 1997 25-25
- ITAA 1997 Div 27
- ITAA 1997 Div 35
- ITAA 1997 35-10
- ITAA 1997 35-10(2)
- ITAA 1997 35-55
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- ITAA 1936 82KZL
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