


# ***PR 2007/75 - Income tax: Gunns Plantations Limited Winegrape Project 2007 - Late Growers***

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## Product Ruling

### Income tax: Gunns Plantations Limited Winegrape Project 2007 – Late Growers

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#### **❗ This publication provides you with the following level of protection:**

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## No guarantee of commercial success

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

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

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

## Terms of use of this Product Ruling

This Product Ruling has been given on the basis that the entity(s) who applied for the Product Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Product Ruling.

## What this Ruling is about

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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 'Gunns Plantations Limited Winegrape Project 2007 – Late Growers' or simply as 'the Project'.

### Class of entities

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

3. The class of entities who can rely on those tax benefits consists of entities that are accepted to participate in the scheme specified below on or after the date this Product Ruling is made and which execute relevant Project Agreements mentioned in paragraph 19 of this Ruling on or before 15 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 22 August 2007 or after 15 June 2008;
- participate in the scheme through offers made other than through the Product Disclosure Statement; or
- finance their participation in the Project with loans other than from Gunns Finance Pty Ltd or Allco Managed Investments Limited, or other than as described at paragraphs 69 to 77 of this Ruling.

**Superannuation Industry (Supervision) Act 1993**

5. This 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 paragraph 31 to 77 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**

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9. This Product Ruling applies prospectively from 22 August 2007, the date this Product Ruling is made. It therefore applies only to the specified class of entities that enter into the scheme from 22 August 2007 until 15 June 2008, 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 2010. This Product Ruling will continue to apply to those entities even after its period of application for schemes entered into during the period of application.

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

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

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

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

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

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

## Changes in the law

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

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

## Note to promoters and advisers

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

## Goods and Services Tax

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

## **Ruling**

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### **Application of this Ruling**

18. Subject to the stated qualifications in paragraph 4 of this Ruling, 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 in paragraph 31 to 77 of this Ruling.

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

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.

### **Small business concessions**

21. From the 2007-08 income year, a range of concessions previously available under the Simplified Tax System (STS), will be available to an entity if it carries on a business and satisfies the \$2 million aggregated turnover test (a 'small business entity').

22. A small business entity can choose the concessions that best suit its needs. Eligibility for some small business concessions is also dependent on satisfying some additional conditions. Accordingly unless otherwise stated, application of the small business concessions to Growers who qualify as a 'small business entity' is not able to be dealt with in this Ruling.

### **Assessable income**

#### ***Sections 6-5 and 17-5***

23. That part of the 'Gross Proceeds Entitlement' 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. Growers should note that the retention of the 'Gross Proceeds Entitlement' by Gunns Plantations Ltd (GPL) in any income year constitutes a receipt of assessable income by the Grower. The retention of the 'Gross Proceeds Entitlement' may occur if there is a Harvest in the year ending 30 June 2009 and 30 June 2010. In those income years GPL proposes to offset that assessable income against fees otherwise payable.

**Deductions for the 'Initial Services Fee', the 'Maintenance and Harvest Fee', the 'Vine Right Fee', Interest and Loan Establishment Fee**

***Sections 8-1 and 25-25 and Division 27 of the ITAA 1997 and sections 82KZME and 82KZMF of the Income Tax Assessment Act 1936***

24. A Grower may claim tax deductions on a per 'Vinelot' basis, as set out in the Table below.

<b>Fee Type</b>	<b>Year ended 30 June 2008</b>	<b>Year ended 30 June 2009</b>	<b>Year ended 30 June 2010</b>
<b>'Initial Services Fee'</b>	\$10,269 See Notes (i) & (ii)	Nil	Nil
<b>'Year 1 Harvest Fee'</b>	Nil	As incurred See Note (iii)	Nil
<b>'Maintenance and Harvest Fee'</b>	Nil	\$2,035 See Notes (i), (iv) & (v)	\$2,035 See Notes (i), (iv), (v) & (vi)
<b>'Vine Right Fee'</b>	\$46 See Notes (i), (iv) & (v)	\$550 See Notes (i), (iv) & (v)	\$550 See Notes (i), (iv) & (v)
<b>Interest on loans with Gunns Finance or Allco</b>	As incurred See Note (vii)	As incurred See Note (vii)	As incurred See Note (vii)
<b>Loan Establishment Fee</b>	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 'Application Fee' of \$17,325 per 'Vinelot' payable on or before 15 June 2008 is **not** deductible in full in the year ended 30 June 2008. The 'Application Fee' consists of some prepaid amounts for things to be done in the years ended 30 June 2009 and 30 June 2010 and some amounts deductible under the capital allowances provisions. For the year ended 30 June 2008 that part of the 'Application Fee' referred to as the 'Initial Services Fee' is deductible only to the extent shown in the table above as it includes an amount of \$316 relating to landcare operations, which is capital in nature (see paragraph 25 or 26 of this Ruling). The prepaid 'Vine Right Fee' and the prepaid 'Maintenance and Harvest Fee' which form part of the 'Application Fee' are deductible in the income years shown in the Table above (see Note (v) below).
- (iii) The 'Year 1 Harvest Fee' will only be payable in the event of a harvest being conducted in the year ended 30 June 2009. It will be deductible under section 8-1 in the year that the fee is incurred.
- (iv) Other than the prepaid 'Maintenance and Harvest Fee' and the prepaid 'Vine Right Fee' in the 'Application Fee' (see Note (ii) above) this Ruling does not apply to Growers who choose to prepay any other fees or who choose, or who are required to prepay interest under a loan agreement (see paragraph 97 of this Ruling). Subject to certain exclusions, amounts that are prepaid for a period that extends beyond the income year in which the expenditure is incurred may be subject to the prepayment provisions in sections 82KZME and 82KZMF of the *Income Tax Assessment Act 1936* (ITAA 1936). Any Grower who prepays such amounts may request a private ruling on the taxation consequences of their participation in the Project.
- (v) The prepaid 'Maintenance and Harvest Fee' and the prepaid 'Vine Right Fee' payable on application are **not** deductible in full in the year incurred. Deductions for these amounts must be determined using the formula in subsection 82KZMF(1) of the ITAA 1936 (see paragraphs 90 to 96 of this Ruling). This provision operates to apportion expenditure over the eligible service period. The eligible service period for the prepaid 'Maintenance and Harvest Services' extends from 1 July 2008 to 30 June 2010. Therefore an amount of \$2,035 per 'Vinelot' is deductible for 'Maintenance and Harvest Fee' for each of the years ending 30 June 2009 and 30 June 2010. The eligible service period for the prepaid 'Vine Right Fee' extends from 15 June 2008 to 30 June 2010. Therefore, an amount of \$46 per 'Vinelot' is deductible for 'Vine Right



Fee' in the year ending 30 June 2008 and \$550 per 'Vinelot' is deductible for 'Vine Right Fee' for each of the years ending 30 June 2009 and 30 June 2010.

- (vi) For the year ending 30 June 2010, each Grower will be invoiced for an additional amount equal to 10% of any 'Gross Proceeds Entitlement' being the GST on that component of the 'Maintenance and Harvest Fee'. The 'Gross Proceeds Entitlement' retained by GPL is assessable income of the Grower and must be returned by the Grower in the year it is derived. The additional 'Maintenance and Harvest Fee' offset against that amount is fully deductible under section 8-1 in the year that the fee is incurred. The amount invoiced for the GST component is dealt with under Division 27 (see Note (i) above) and will not be deductible for Growers who are registered or required to be registered for GST.
- (vii) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Gunns Finance Pty Ltd (Gunns Finance) or Allco Managed Investments Ltd (Allco) is outside the scope of this Ruling. Prepayments of interest to any lender, including Gunns Finance and Allco, are not covered by this Product Ruling. Growers who enter into agreements with other financiers and/or prepay interest may request a private ruling on the deductibility of the interest incurred.
- (viii) The Loan Establishment Fee payable to either Gunns Finance or Allco 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.

### **Deductions for capital expenditure (non-'small business entities')**

#### ***Division 40***

25. A Grower who is not a 'small business entity' will also be entitled to tax deductions relating to vineyards, water facilities (for example, irrigation), a 'landcare operation' and grapevines. All deductions shown in the following Table are determined under Division 40.

<b>Fee Type</b>	<b>Year ended 30 June 2008</b>	<b>Year ended 30 June 2009</b>	<b>Year ended 30 June 2010</b>
<b>Vineyards</b>	Nil	Amount must be calculated See Notes (ix) & (x)	Amount must be calculated See Notes (ix) & (x)
<b>Water facility (eg dam, irrigation)</b>	\$178 See Notes (ix) & (xi)	\$178 See Notes (ix) & (xi)	\$178 See Notes (ix) & (xi)
<b>Landcare Operation</b>	\$316 See Notes (ix) & (xii)	Nil	Nil
<b>Establishment of horticultural plants (Vines)</b>	Nil See Notes (ix) & (xiii)	Nil See Notes (ix) & (xiii)	Nil See Notes (ix) & (xiii)

**Notes:**

- (ix) If the Grower is registered or required to be registered for GST, amounts of capital expenditure would need to be adjusted for GST (for example input tax credits): Division 27.
- (x) A vineyard is a 'depreciating asset'. Each Grower holds an interest in each vineyard which is a 'low-cost asset' and can be allocated to a 'low-value pool'. Once any 'low-cost asset' of a Grower is allocated to a 'low-value pool', all other 'low-cost assets' the Grower starts to 'hold' in that year or a later year must be allocated to that pool. If the Grower has already allocated an asset to a 'low-value pool', the vineyard assets must also be allocated to that pool. Otherwise, the Grower must decide whether to create a 'low-value pool'. If the assets are allocated to a 'low-value pool', the capital expenditure on the vineyards will be deducted under the diminishing value methodology of the pool based on a rate of 18.75% in the year the vineyards are first used and a rate of 37.5% in subsequent years (section 40-440).

If the assets are not allocated to a 'low-value pool', they can be written off based on the 'effective life' of the vineyards. As there has been no determination of the 'effective life' of a vineyard by the Commissioner, Growers must self-assess an 'effective life'.

Vineyards are not installed until after the 'Vines' are planted and no deduction for the decline in value is available until this installation occurs. The Manager will advise Growers of that date to enable them to calculate the deduction.

- (xi) Any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. A deduction is available under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one third of the capital expenditure of \$534 per 'Vinelot' incurred by each Grower on the installation of the 'water facility' in the year in which it is incurred and one third in each of the next 2 years of income (section 40-540).
- (xii) Any capital expenditure incurred for a 'landcare operation' (as defined in section 40-635) is fully deductible in the year it is incurred under Subdivision 40-G, section 40-630.
- (xiii) 'Vines' are a 'horticultural plant' as defined in subsection 40-520(2). As Growers hold a 'Vine Right' over the land, one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. The deduction for the 'Vines' is determined using the formula in section 40-545 and is based on the capital expenditure of \$598 per 'Vinelot' incurred by the Grower that is attributable to their establishment. If the 'Vines' have an 'effective life' of greater than 13 years but fewer than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 13%. The deduction is allowable when the 'Vines' enter their first commercial season (section 40-530, item 2). The Manager will inform Growers of when the 'Vines' enter their first commercial season.

**Deductions for capital expenditure (small business entities)*****Subdivisions 40-F, 40-G and 328-D***

26. A Grower who is a 'small business entity' will also be entitled to tax deductions relating to vineyards, water facilities (for example, irrigation), a 'landcare operation' and grapevines. Deductions relating to the 'cost' of vineyards must be determined under Division 328. A 'small business entity' may claim deductions in relation to water facilities under Subdivision 40-F and in relation to a 'landcare operation' under Subdivision 40-G. If the 'water facility' or 'landcare operation' expenditure is on a 'depreciating asset' used to carry on the business, they may choose to claim deductions under Division 328. Deductions for the grapevines must be determined under Subdivision 40-F.

27. The deductions shown in the following Table assume, for representative purposes only, that a Grower has either chosen to or can only claim deductions for expenditure on water facilities or a 'landcare operation' under Subdivisions 40-F or 40-G and not under Division 328. If the expenditure has been incurred on 'depreciating assets' and is claimed under Division 328, the deduction is determined as discussed in Notes (xvi) and (xviii) below.

28. Under Division 328, if the 'cost' of a 'depreciating asset' at the end of the income year is less than \$1,000 (a 'low-cost asset'), it can be claimed as an immediate deduction when first used or 'installed ready for use'. This is so provided the Grower is a 'small business entity' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income.

<b>Fee Type</b>	<b>Year ended 30 June 2008</b>	<b>Year ended 30 June 2009</b>	<b>Year ended 30 June 2010</b>
<b>Vineyards</b>	Nil	\$392 See Notes (xiv) & (xv)	Nil
<b>Water facility</b>	\$178 See Notes (xiv) & (xvi)	\$178 See Notes (xiv) & (xvi)	\$178 See Notes (xiv) & (xvi)
<b>Landcare operations</b>	\$316 See Notes (xiv) & (xvii)	Nil	Nil
<b>Establishment of horticultural plant</b>	Nil See Notes (xiv) & (xviii)	Nil See Notes (xiv) & (xviii)	Nil See Notes (xiv) & (xviii)

**Notes:**

- (xiv) If the Grower is registered or required to be registered for GST, amounts of capital expenditure would need to be adjusted for GST (for example input tax credits): Division 27.
- (xv) A vineyard is a 'depreciating asset'. Each Grower holds an interest in each vineyard which is a 'low-cost asset' as defined in subsection 40-425(2). It cannot be allocated to a 'general small business pool' (section 328-180). A deduction equal to the amount of the Grower's expenditure for the vineyards is available in the income year in which they are used or 'installed ready for use'. This is so provided the Grower is a 'small business entity' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income. Vineyards are not installed until after the grapevines are planted. The Project Manager will advise when that has occurred.
- (xvi) Any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. If the expenditure is on a 'depreciating asset' (the underlying asset), the Grower may choose to claim a deduction under either Division 328 or Subdivision 40-F. For the purposes of Division 328, each Grower's interest in the underlying asset is deemed to be a 'depreciating asset'. The irrigation fee is \$534 per Vinelot. If the 'cost' apportionable to that deemed 'depreciating asset' is less than \$1,000, the deemed asset is treated as a 'low-cost asset' and that amount is deductible in full when the underlying asset is first used or 'held' ready for use. This is so provided the Grower is a 'small business entity' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income. If the deemed asset is not treated as a 'low-cost asset', the tax deduction allowable in the year ended 30 June 2008 is determined by multiplying its 'cost' by half the relevant small business pool rate. At the end of the year, it is allocated to the relevant small business pool and in subsequent years the full pool rate will apply.  
  
If the expenditure is not on a 'depreciating asset', or if they choose to use Subdivision 40-F, Growers must claim deductions under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one-third of the capital expenditure incurred by each Grower on the installation of the 'water facility' in the year in which it is incurred and one-third in each of the next 2 years of income (section 40-540).

- (xvii) Any capital expenditure incurred for a 'landcare operation' (as defined in section 40-635) is fully deductible in the year it is incurred under Subdivision 40-G, section 40-630. If the expenditure is on a 'depreciating asset' (the underlying asset), the Grower may choose to claim a deduction under either Division 328 or Subdivision 40-G (although expenditure on some items of plant can only be deducted under Division 328). For the purposes of Division 328, each Grower's interest in the underlying asset is deemed to be a 'depreciating asset'. If the 'cost' apportionable to that deemed 'depreciating asset' is less than \$1,000, the deemed asset is treated as a 'low-cost asset' and that amount is deductible in full when the underlying asset is first used or 'held' ready for use. This is so provided the Grower is a 'small business entity' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income. If the deemed asset is not treated as a 'low-cost asset', the tax deduction is determined by multiplying its 'cost' by half the relevant small business pool rate. At the end of the year, it is allocated to the relevant small business pool and in subsequent years, the full pool rate will apply. If the expenditure is not on a 'depreciating asset', the expenditure is fully deductible under Subdivision 40-G.
- (xviii) 'Vines' are a 'horticultural plant' as defined in subsection 40-520(2). As Growers hold a 'Vine Right' over the land, one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. The deduction for the 'Vines' is determined using the formula in section 40-545 and is based on the capital expenditure of \$598 per 'Vinelot' incurred by the Grower that is attributable to their establishment. If the 'Vines' have an 'effective life' of greater than 13 years but fewer than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 13%. The deduction is allowable when the 'Vines' enter their first commercial season (section 40-530, item 2). The Manager will inform Growers of when the 'Vines' enter their first commercial season.

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

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

29. A Grower who is an individual accepted into the Project by 15 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 2011**. This conditional exercise of the discretion will allow those losses to be offset against the Grower’s other assessable income in the income year in which the losses arise.

## **Anti-avoidance provisions**

### ***Section 82KL and Part IVA***

30. For a Grower who commences participation in the Project and incurs expenditure as required by the ‘Management Agreement’ and the ‘Vine Right 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**

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

- Application for a Product Ruling, received on 16 October 2006; and additional correspondence, emails, facsimiles and telephone conversations dated 18 and 26 October, 9, 14, 20, 23, 24, 27, 28 and 29 November, and 7, 8, 11, 12 and 13 December 2006;
- Draft Product Disclosure Statement (PDS) for the Project, received 16 October 2006;
- Draft **Constitution** for the Project, received 16 October 2006;
- Compliance Plan for the Project adopted by GPL (as ‘Responsible Entity’), received 16 October 2006;

- Draft Initial and Additional Services Sub-contracting Agreement between GPL and Gunns Limited (as 'Sub-contractor') for the Project, received 16 October 2006;
- Draft Maintenance and Harvesting Sub-contracting Agreement between GPL and Gunns Limited (as 'Sub-contractor') for the Project, received 16 October 2006;
- **Draft 'Management Agreement'** between GPL and a Grower for the Project, received 16 October 2006;
- Draft Grape Sale Agreement between GPL (as 'Manager') and a Purchaser for the Project, received 16 October 2006;
- **Draft 'Vine Right Agreement'** between GPL and a Grower for the Project, received 16 October 2006;
- Lease Agreement between Gunns Limited (as 'Landowner') and GPL in relation to land at 'Coombend' and Draft Extension or Variation of Lease in respect to land at 'Coombend', received 16 October 2006;
- Draft Lease Agreement between Gunns Limited (as 'Landowner') and GPL in relation to land at 'Coombend', received 16 October 2006;
- Draft Custody Agreement entered into by Gunns Plantations Limited, as Trustee, and Gunns Limited, as Custodian, and Variation of Custody Agreement to be entered into for the Project by GPL, as Trustee, and Gunns Limited, as Custodian, received 16 October 2006;
- **Draft Finance Package** for the Project between Gunns Finance and Growers entering into the Project, received 16 October 2006;
- **Draft Finance Application** for the Project between Allco as trustee for the Gateway Momentum Funding Trust No. 1 and Growers entering into the Project, received 16 October 2006; and
- **Draft Terms Arrangement** for the Project between GPL and Growers, received 16 October 2006.

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



32. 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.

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

### Overview

34. The main features of the 'Gunns Plantations Limited Winegrape Project 2007 - Late Growers' are as follows:

Location – existing vineyard	'Coombend', Eastern Tasmania
Location – new vineyard	'Coombend', Eastern Tasmania
Type of business to be carried on by each entity	Commercial growing of wine grapes for the purpose of harvesting and selling the produce
Term of the Project	20 years
Number of hectares offered for cultivation	120 hectares
Size of each 'Vinelot'	0.20 hectares, 'Vinelot', of which 0.06 hectares will be of 'Existing Vineyard' and 0.14 hectares will be of 'New Vineyard'
Minimum allocation per Grower	One 'Vinelot'
Initial cost	\$17,325
Ongoing costs	<ul style="list-style-type: none"> <li>• 'Management &amp; Harvest Fees';</li> <li>• 'Vine Right Fee'; and</li> <li>• 'Sales Commission' of 2.2% of 'Grape Sale Proceeds'.</li> </ul>

35. The Project is registered as a managed investment scheme under the *Corporations Act 2001*. GPL has been issued with an Australian Financial Service Licence, Number 238701, and will be the Responsible Entity for the Project. There is no minimum amount that must be raised under the PDS.

36. The offer to which this Product Ruling applies is for participation in a Project consisting of no more than 600 'Vinelots' situated on approximately 120 hectares of a property called 'Coombend' in Eastern Tasmania. Each 'Vinelot' will contain approximately 485 grape vines.

37. To participate in the Project applicants must complete the Application and Power of Attorney Form in the Product Disclosure Statement (PDS) on or before 15 June 2008 and pay the 'Application Fee' to the Custodian. The 'Application Fee' will be banked into the relevant 'Applications Portion'. These monies will be released to GPL when certain specified criteria have been met in accordance with clauses 7 and 8 of the Constitution.

38. Each Grower will enter into a 'Vine Right Agreement' with GPL. The 'Vine Right Agreement' will comprise contractual rights in relation to a parcel of land of 0.20 hectares called a 'Vinelot', 0.14 of which will be situated within the 'New Vineyard', on which the 'Vines' will be planted before 31 December 2008, and 0.06 hectares of fully established vines situated within the 'Existing Vineyard', which will be completed prior to January 2008.

39. Each Grower will enter into a 'Management Agreement' to contract with GPL as the 'Manager', to undertake the 'Initial Services' and the 'Additional Services'. GPL will also provide 'Maintenance and Harvest Services', and arrange to market and sell the Grower's 'Grapes'.

40. GPL will appoint Gunns Limited as subcontractor to perform the 'Initial Services' and 'Additional Services' and the 'Maintenance and Harvest Services' under the terms of the 'Initial and Additional Services Sub-contracting Agreement', and the 'Maintenance and Harvest Sub-contracting Agreement'.

41. For the purposes of this Ruling, Applicants who are accepted to participate in the Project and who execute the 'Vine Right Agreement' and 'Management Agreement' on or before 15 June 2008 will become 'Late Growers'.

42. **Note that a separate Product Ruling PR 2006/164 has issued for 'Early Growers' who are accepted into the Project on or before 15 June 2007.**

### **Constitution**

43. The Constitution for the Project sets out the general functions, powers and duties under which GPL agrees to act for the Growers and to manage the Project. The 'Vine Right Agreement' and the 'Management Agreement' are Schedules to the Constitution. These Agreements will be executed by GPL on behalf of each Grower who has signed the 'Application and Power of Attorney Form' attached to the PDS and who is accepted into the Project on or before 15 June 2008.

44. After acceptance and execution of the Agreements, Growers are bound by the Constitution by virtue of their participation in the Project.

45. Upon acceptance of an application, GPL will allocate the 'Vinelot'(s) to the Grower and prepare the 'Vine Right Agreement' and 'Management Agreement' in accordance with clause 6.

46. Before authorising or instructing the Custodian to release the 'Application Money', GPL must be satisfied among other things that:

- the 'Vine Right Agreement'(s) have all been duly completed and executed;
- it has the capacity to grant the rights referred to in the 'Vine Right Agreement';
- all necessary consents have been obtained;
- the property that is the subject of the rights referred to in the 'Vine Right Agreement' is not subject to any encumbrance or restrictions which detrimentally affects the interests of Growers;
- the Leases are registered prior to, or immediately after the acceptance of an application in respect of the 'Vine Right Agreement'; and
- the Leases are not deregistered while it is subject to any 'Vine Right Agreement' and 'Management Agreement' entered into under the Constitution, clause 7.

47. GPL is entitled to receive fees according to clause 11 and may instruct the Custodian to invest all or part of the 'Proceeds Portion' and 'Application Portion' according to clause 12.

48. Among other things the Constitution sets out in detail the following:

- general functions, powers and duties, clause 13;
- complaints, clause 14;
- compliance committee requirement under the Corporations Act, clause 15;
- the requirement for GPL to procure a written report from the Independent Viticulturist and for Growers to receive copies of the Viticulturist's Report, clause 16;
- the transfer and transmission of a Growers' interest, clauses 18 and 19;
- the retirement or removal of GPL according to the Corporations Act, clause 22;
- the issue of a 'Vinelot' Statement and a 'Register of Members' of the Project, clauses 23 and 24; and
- the 'Collections and payments' of all 'Grape Sale Proceeds', the distribution from the 'Proceeds Portion of the Fund' and 'Deductions from Income or Profit', clauses 26, 27 and 28.

**Compliance Plan**

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

**Lease Agreements**

50. Gunns Limited (the 'Landowner'), is the registered proprietor of the 'Land' on which both the 'Existing Vineyard' is established and the 'New Vineyard' will be established. The Landowner has agreed to grant to GPL a 'Lease' of the 'Land', together with all the rights described in clauses 3.2 and 4, for the 'Term' of the Project.

51. A lease has already been registered over some of the Land and a variation will be prepared extending the term of the lease for the length of the Project. A new lease over the remaining Land will also be registered against the relevant titles.

**'Vine Right Agreement'**

52. Growers participating in the Project will enter into a 'Vine Right Agreement' with GPL for the 'Term' of the Project. The grant of the 'Vine Right' and the rights and obligations of the Grower and of GPL are set out in Clauses 4 and 5. These include:

- access to the 'Vinelot' and the 'Common Areas';
- access to and use of the 'Vineyard Infrastructure';
- an exclusive right to access, use and enjoy the benefit of the 'Vines';
- an exclusive right to 'Harvest' the 'Grapes'; and
- an exclusive right to take all right, title and interest in the 'Harvested Grapes'.

53. The Landowner will, in the event of destruction or serious fault, replace all 'Vineyard Infrastructure' necessary for carrying out the Project, clause 5.1(b)(1).

54. In the event of destruction or death of the 'Vines', the Landowner will replant for the 'Term' (as close as is practically possible to 100% of the average initial planting density of the 'Developed Area') all 'Vines' necessary for carrying out the Project (clause 5.1(b)(3)) but subject to the condition at clause 8 (see paragraph 55 of this Ruling).

55. At any time after the second anniversary of the 'Date of Commencement', if 95% of the 'Vines' are destroyed or materially damaged by fire or any other cause, then GPL may terminate this agreement by notice in writing to each Grower, clause 8.

## **'Management Agreement'**

56. Under the 'Management Agreement' entered into between GPL, as 'Manager' and each Grower, GPL is appointed to perform the 'Services' in respect of each Grower's 'Vinelot' and to act as sole agent to market, enter into negotiations and sell the Harvested Grapes on the Grower's behalf.

57. In consideration for the 'Initial Services Fee' GPL must use its best endeavours to complete all of the 'Initial Services' in relation to each Grower's 'Vinelot' before 30 June 2008, clause 4 and clause 9.1. The 'Initial Services' described in clause 4 consist of some capital works on the 'New Vineyard', maintenance and recurrent services on both the 'New Vineyard' and the 'Existing Vineyard', and certain administrative services.

58. GPL must also complete all of the following 'Additional Services' in relation to each Grower's 'Vinelot', clause 5A:

- procuring and attaching dripper lines in respect of the 'New Vineyard', on or before 30 June 2008;
- planting 'Vines' in the 'New Vineyard', during the months from October to December 2008; and
- placing vineguards used in the vine establishment process of the 'New Vineyard' on or before 30 June 2009.

59. Payment of the 'Application Fee' constitutes full payment of the fees relating to the 'Initial Services' and the 'Additional Services'.

60. In consideration for an annual 'Maintenance and Harvest Fee' GPL will carry out the ongoing 'Maintenance and Harvest Services' during the Term of the Project, clause 5.2 and clause 9.3. The Manager warrants to the Grower that it has access to such staff, personnel, consultants and other specialists' services as necessary to perform the 'Maintenance and Harvest Services', clause 5.1.

61. Each Grower appoints GPL as their sole agent to market, enter into negotiations and sell the 'Grapes' at a fair and reasonable price taking into account certain factors listed at clause 11(b).

62. GPL will be responsible for insuring the 'Vineyard' against public risk. If requested in writing by the Grower, GPL will endeavour to procure for the Grower insurance cover against destruction or damage of the Grower's 'Grapes'. If GPL is able to effect insurance as requested, GPL will invoice the Grower for the relevant premium together with an administration charge of 10% of the amount of the premium in each 'Year' of the 'Term'. For each Grower that does obtain such insurance, and subsequently makes a successful claim in relation to the policy, 35% of the insurance proceeds must be paid to GPL in satisfaction of the 'Ongoing Fees' for that 'Vinelot', clause 13.

63. Any Grower who suffers financial hardship at any time after the fourth anniversary of the 'Date of Commencement' may apply to GPL to pay on the Grower's behalf all 'Ongoing Fees' payable by the Grower under the 'Management Agreement', clause 16.

### **Pooling of 'Grapes' and distribution of proceeds**

64. The Constitution and the 'Management Agreement' set out provisions relating to the pooling of the Growers 'Grapes', the determination of the 'Gross Proceeds Entitlement' and the distribution of proceeds from the 'Fund'. This Product Ruling only applies where the following principles apply to those pooling and distribution arrangements:

- only Growers who have contributed 'Grapes' from a 'Harvest' to the pool which constitutes the 'Late Growers Proceeds Portion' of the 'Fund' are entitled to benefit from distributions from the 'Fund'; and
- 'Grapes' can only be pooled with the 'Grapes' of Growers accepted to participate in the Project as Late Growers.

### **Project Fees**

#### ***Fees payable under the 'Management Agreement'***

65. For the year ended 30 June 2008 part of the 'Application Fee' of \$17,325 per 'Vinelot' payable on Application will be applied as follows:

- \$10,585 for the 'Initial Services' to be provided from the 'Date of Commencement' to 30 June 2008 (Year 0). This includes an amount of \$316 for landcare operations, clause 9.1;
- \$4,070 for 'Maintenance and Harvest Fees' as a prepayment for the period from 1 July 2008 to 30 June 2009 (Year 1) and 1 July 2009 to 30 June 2010 (Year 2), clause 9.3;
- \$534 for irrigation related services, clause 9.6(a);
- \$392 for vineguards, clause 9.6(b); and
- \$598 for planting 'Vines' in the 'New Vineyard', clause 9.6(c).

66. In the event of a 'Harvest' in the year ended 30 June 2009, the Grower will incur a 'Year 1 Harvest Fee' equal to the cost of performing the Harvest, plus a 21% mark-up, clause 9.2.

67. Each Grower will also make the following additional 'Maintenance and Harvest Fee' payments per 'Vinelot':

***For the year ending 30 June 2010 (Year 2)***

- any 'Gross Proceeds Entitlement' derived by a Grower will be retained by the Custodian, on behalf of GPL, and paid to GPL to offset the costs of the 'Maintenance and Harvest Services', clause 9.3(d)(1); and
- Growers will be invoiced an additional amount equal to 10% of any 'Gross Proceeds Entitlement', being for the GST on that component of the 'Maintenance and Harvest Fee', clause 9.3(d)(2).

***For the year ending 30 June 2011 (Year 3)***

- any 'Gross Proceeds Entitlement' derived by a Grower will be retained by the Custodian, on behalf of GPL, and paid to GPL to offset the costs of the 'Maintenance and Harvest Services', clause 9.3(e)(1); and
- Growers will be invoiced an amount equal to 10% of any 'Gross Proceeds Entitlement', being for GST on that component of the 'Maintenance and Harvest Fee', clause 9.3(e)(2).

***For the years ending 30 June 2012 to 30 June 2028 (Year 20)***

- the 'Maintenance and Harvest Fee' for each year will be equal to the cost of performing the 'Maintenance and Harvest Services' in that year plus a 21% mark-up. The maximum fee will not exceed \$3,300 per 'Vinelot' annually (indexed annually for movements in CPI on the 1st May each year from the 1st May 2008), clause 9.3(g), and Item 5 of Schedule 1;
- GPL will be entitled to a 'Sales Commission' of 2.2% of the 'Grape Sale Proceeds' in each year, clause 9.4; and
- the 'Maintenance and Harvest Fee', and 'Sales Commission' will be deducted by the Custodian on behalf of GPL from the 'Gross Proceeds Entitlement' and paid to GPL in accordance with the Constitution, clause 9.4. Where a Grower's obligation to pay the 'Maintenance and Harvest Fee' exceeds their 'Gross Proceeds Entitlement' the Grower will be invoiced annually for the shortfall, clause 9.7.

***Fees payable under the 'Vine Right Agreement'***

68. Under clause 6 of the 'Vine Right Agreement' each Grower will make the following 'Vine Right Fee' payment per 'Vinelot':

- from the 'Date of Commencement' to the year ending 30 June 2010 (Year 0 to Year 2) a 'Vine Right Fee' of \$1,146 is included as part of the 'Application Fee', clause 6(b) and Item 2 of Schedule 1;
- for each subsequent year after 30 June 2010, a 'Vine Right Fee' of \$550 per year (indexed annually for movements in CPI on the 1st May each year from the 1st May 2008), Item 2 of Schedule 1;
- for the year ending 30 June 2011 (Year 3) the 'Vine Right Fee' forms part of the 'Maintenance and Harvest Fee' for that year and is not charged separately. GPL will retain the Grower's 'Gross Proceeds Entitlement' in lieu of the 'Maintenance and Harvest Fee', including the 'Vine Right Fee', for that year, clause 6(c); and
- For the year ending 30 June 2012 (Year 4) to the year ending 30 June 2028 (Year 20), the 'Vine Right Fee' will be deducted from the Grower's 'Gross Proceeds Entitlement' by the Custodian on behalf of GPL and paid to GPL in accordance with the Constitution, clause 6(d). Where a Grower's obligation to pay the 'Vine Right Fee', exceeds their 'Gross Proceeds Entitlement', the Grower will be invoiced for the shortfall.

**Finance**

69. A Grower who does not pay the 'Application Fee' in full upon application can fund their involvement in the Project as follows:

- from their own financial resources;
- with an interest free Terms Arrangement with GPL;
- by borrowing from Gunns Finance, a lender associated with GPL;
- by borrowing from Allco, (a preferred financier of the Project); or
- by borrowing from an independent lender external to the Project.



70. Other than where payment is made under a Terms Arrangement with GPL, Growers cannot rely on any part of this Ruling if the 'Application Fee' is not paid in full on or before 15 June 2008 by the Grower or, on the Grower's behalf by a lending institution. Where an application is accepted subject to finance approval by any lending institution other than Gunns Finance, Growers cannot rely on this Ruling if written evidence of that approval has not been given to the Responsible Entity by the lending institution on or before 15 June 2008.

71. 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 Gunns Finance or with Allco that materially differs from those set out in the documentation provided to the Tax Office with the application for this Product Ruling and summarised below. 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 that are not covered by this Product Ruling.

72. This Ruling only applies to loans for the 'Application Fee'. It does not apply to any additional loans, or 'Further Loan Amounts' made to Borrowers by Gunns Finance or by Allco.

## ***Terms Arrangement***

73. If GPL accepts payment of the 'Application Fee' under a Terms Arrangement the Grower must complete a terms application and a Direct Debit Authority. The Grower will be required to pay their 'Application Fee', as follows:

- 10% of the fee on application;
- the balance (plus stamp duty) by 11 equal consecutive monthly instalments as set out in Schedule 4, with the first instalment to be made on the last business day of the month following the month in which the Grower's application is accepted and thereafter on the last business day of each successive month until fully paid;
- GPL will take security over the Grower's 'Vinelot'; and
- there will be no interest payable by the Grower, unless instalments are not paid on time, then interest at a rate of 6% above the 5 year swap reference rate of the ANZ Bank (or Gunns Limited's banker at the time) will be levied.

***Loans from Gunns Finance***

74. The loans offered by Gunns Finance are Principal and Interest loans with a term of 3, 5, 10 or 15 years. Features of the finance packages are:

- the Borrower's application to participate in the Project must have been accepted by GPL;
- the Borrower will pay a loan 'Establishment Fee' of \$150, which is to be paid at the time that the loan is established;
- Gunns Finance will take security over the Borrower's 'Vinelot';
- a deposit of 20% of the 'Application Fee' is required, but this may be varied at the absolute discretion of Gunns Finance;
- Interest is charged at 10.5% per annum for the first 5 years of the loan. The interest rate will be reviewed at the end of each 5 year period and fixed for each following 5 year period at a rate 4% above the 5 year swap reference rate of the ANZ Bank (or Gunns Limited's banker at the time);
- subject to interest rate reviews every 5 years, the Loan will be repaid with equal monthly instalments over its Term as detailed in the Loan Schedule; and
- an additional 2% interest per annum applies to payments in arrears.

***Loans from Allco***

75. Allco offers 3 different loans:

- a 'Loan' with a term of 3, 5, 10 or 15 years repayable by equal monthly principal and interest repayments;
- a 'Loan' with a term of 5 or 7 years with a two year interest only period followed by equal monthly principal and interest repayments over the balance of the term of the loan; and
- a 'Loan' with a term of 6, 10 or 15 years with a three year interest only period followed by equal monthly principal and interest repayments over the balance of the term of the loan.

76. Common features contained in each of these loans are that:

- the Borrower's application to participate in the Project has been accepted by GPL subject to the finance approval;
- the Borrower pays a loan 'Establishment Fee' of \$250 plus 0.5% of the amount financed;
- Allco will take security over the Borrower's 'Vinelot' for the term of the loan;
- for loans where the loan term is less than 15 years an initial deposit of at least 10% of the 'Application Fee' is required, but this may be varied at the absolute discretion of Allco;
- for loans where the loan term is 15 years an initial deposit of at least 20% of the 'Application Fee' is required, but this may be varied at the absolute discretion of Allco;
- interest rates between 10% and 11% are indicative only. The Initial Interest Rate applicable to the Loan will be confirmed at the time the Loan Agreement is completed under Power of Attorney, and will then be fixed for the term of the loan;
- an additional 3% interest per annum applies to overdue amounts due and payable;
- Borrowers who enter into these finance arrangements will be required to make equal monthly repayments of the outstanding balance, commencing at the end of the relevant interest only period, if any; and
- Borrowers who break the term of the loan will be liable for break costs.

### ***General qualifications to finance arrangements***

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

- split loan features of a type referred to in Taxation Ruling TR 98/22;
- 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 Gunns Finance or Allco, are involved or become involved in the provision of finance to any Grower in the Project.

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**Commissioner of Taxation**22 August 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?**

78. For the amounts set out in paragraph 24 of this Ruling to constitute allowable deductions the Grower's viticulture activities as a participant in the Gunns Plantations Ltd Winegrape Project 2007 must amount to the carrying on of a business of primary production.

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

80. 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?

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

82. Having applied these principles to the arrangement set out above, a Grower in the Gunns Plantations Ltd Winegrape Project 2007 is accepted to be carrying on a business of growing and harvesting wine grapes for sale.

### **Expenditure of a capital nature**

#### ***Divisions 40 and 328***

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

84. The application and extent to which a Grower claims deductions under Division 40 and Division 328 depends on whether or not the Grower is a 'small business entity'.

85. The tax treatment of capital expenditure has been dealt with in a representative way in paragraphs 25 and 28 of this Ruling in the Table(s) and accompanying notes.

**Deductibility of the 'Initial Services Fee', the 'Maintenance and Harvest Fee', the 'Vine Right Fee', and interest on loans with Gunns Finance or Allco****Section 8-1**

86. That part of the 'Initial Services Fee' identified in the Table at paragraph 24 of this Ruling, the whole of the 'Maintenance and Harvest Fee', and the whole of the 'Vine Right Fee' 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, apart from the landcare component of the 'Initial Services Fee', there is no other capital component evident in these fees (see paragraphs 49 to 51 of TR 2000/8).

87. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply. Subject to the application of the prepayment provisions (see paragraphs 90 to 97 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.)

88. Some Growers may finance their participation in the Project through a Loan Agreement with either Gunns Finance or Allco. Applying the same principles as that used for the 'Initial Services Fee', the 'Maintenance and Harvest Fee', and the 'Vine Right Fee', interest incurred under such a loan has sufficient connection with the gaining of assessable income to be deductible under section 8-1.

89. Other than where the prepayment provisions apply (see paragraphs 90 to 96 of this Ruling), a Grower can claim a deduction for such interest in the year in which it is incurred.

**Prepayment provisions****Sections 82KZL to 82KZMF**

90. The prepayment provisions contained in Subdivision H of Division 3 of Part III of the ITAA 1936 affect the timing of deductions for certain prepaid expenditure. These provisions apply to certain expenditure incurred under an agreement in return for the doing of a thing under the agreement (for example, the performance of management services or the leasing of land) that will not be wholly done within the same year of income as the year in which the expenditure is incurred. If expenditure is incurred to cover the provision of services to be provided within the same year, then it is not expenditure to which the prepayment rules apply.

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

***Application of the prepayment provisions to this Project***

92. Under the scheme to which this Product Ruling applies the part of the 'Initial Services Fee' identified in the Table at paragraph 24 of this Ruling is incurred on or before 15 June 2008 for services to be wholly done by 30 June 2008, and the interest payable to Gunns Finance or Allco under the loans summarised at paragraphs 74 to 76 of this Ruling is incurred monthly in arrears. Accordingly, the prepayment provisions in sections 82KZME and 82KZMF of the ITAA 1936 have no application to this expenditure.

93. However, that part of the 'Application Fee' representing the 'Maintenance and Harvest Fee', and that part representing the 'Vine Right Fee' is expenditure for things that will not be wholly done within the same year of income as the year in which the expenditure is incurred.

94. For this expenditure the requirements of section 82KZME of the ITAA 1936 are met, and, therefore, unless one of the exceptions to section 82KZME applies, the amount and timing of tax deductions for those fees are determined under section 82KZMF of the ITAA 1936. Section 82KZMF uses the formula below, to apportion prepaid expenditure and allow a deduction over the period that the benefits are provided.

$$\text{Expenditure} \times \frac{\text{Number of days of eligible service period in the year of income}}{\text{Total number of days of eligible service period}}$$

95. In the formula, 'eligible service period' (defined in subsection 82KZL(1) of the ITAA 1936) means the period during which the thing under the agreement is to be done. The eligible service period begins on the day on which the thing under the agreement commences to be done or on the day on which the expenditure is incurred, whichever is the later, and ends on the last day on which the thing under the agreement ceases to be done, up to a maximum of 10 years.

96. The prepaid 'Maintenance and Harvest Fee' and 'Vine Right Fee' incurred by each Grower do not fall within any of the five exceptions to section 82KZME of the ITAA 1936. Therefore, the deduction for each year is determined using the formula in subsection 82KZMF(1) of the ITAA 1936. Section 82KZMF apportions the deduction for prepaid 'Maintenance and Harvest Fee' and 'Vine Right Fee' over the period that the services for which the prepayment is made are provided.

97. As noted in the Ruling section above, Growers who prepay other fees or 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.

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

98. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for the years ending **30 June 2008 to 30 June 2011**, the Commissioner has applied the principles set out in Taxation Ruling TR 2007/6 Income tax: non-commercial business losses: Commissioner’s discretion. Accordingly, 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 viticulture industry, a Grower’s business activity will satisfy one of the four tests set out in Division 35 or produce a taxation profit.

99. 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.

100. 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**

101. 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**

102. 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).



103. The Gunns Plantations Ltd Winegrape Project 2007 – Late Growers will be a ‘scheme’. A Grower will obtain a ‘tax benefit’ from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 24 to 27 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.

104. 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 wine grapes. 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**

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

	<b>Paragraph</b>
<b>What this Ruling is about</b>	<b>1</b>
Class of entities	2
Superannuation Industry (Supervision) Act 1993	5
Qualifications	6
<b>Date of effect</b>	<b>9</b>
Changes in the law	14
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- carrying on a business
- commencement of business
- non-commercial losses
- primary production
- primary production expenses
- management fee expenses
- producing assessable income
- product rulings
- public rulings
- schemes and shams
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters
- taxation administration

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