


PR 2007/96 - Income tax: Rewards Group Berry Project 2008 - Early Growers

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Product Ruling

Income tax: Rewards Group Berry Project 2008 – Early Growers

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! This publication provides you with the following level of protection:

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

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

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

No guarantee of commercial success

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

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

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

Terms of use of this Product Ruling

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

What this Ruling is about

1. This Product Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified in the Ruling section (below) apply to the defined class of entities, who take part in the scheme to which this Ruling relates. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated. In this Product Ruling this scheme is referred to as the Rewards Group Berry Project 2008 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 Grower.

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 39 of this Ruling on or before 29 February 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 to participate in the Project prior to the date of this Ruling or after 29 February 2008;
- have their application conditionally accepted by Rewards Projects Limited subject to finance for the payment of the Initial Fee, where the finance has not been approved by the lender by 29 February 2008 or the finance has been approved and the funds have not been made available to Rewards Projects Limited by 15 March 2008; or
- enter into finance arrangements with Rewards Projects Limited, the Nominated Financier or entities associated with Rewards Projects Limited or the Nominated Financier other than the arrangements described at paragraphs 71 to 77 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 39 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

9. This Product Ruling applies prospectively from 5 December 2007, the date this Product Ruling is made. It therefore applies to the specified class of entities that enter into the scheme from 5 December 2007 until 29 February 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 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 may impact on this Product Ruling. Any such changes will take precedence over the application of this Product Ruling and, to the extent of those amendments this Product Ruling will be superseded.

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

Note to promoters and advisers

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

Goods and Services Tax

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

Ruling**Application of this Ruling**

18. This Ruling applies only to Growers who:
- are accepted to participate in the Project during the period from the date of this Ruling to 29 February 2008;
 - have executed a Sub-Lease and a Management Agreement on or before 29 February 2008; and
 - have paid the Initial Fee, have entered into a Terms Option or have had finance approved by 29 February 2008 and the funds are made available to the Responsible Entity by 15 March 2008.
19. The Grower's participation in the Project must constitute the carrying on of a business of primary production.

Minimum subscription

20. A Grower is not eligible to claim any tax deductions until the Grower's application to enter the Project is accepted and the Project has commenced. Under the terms of the Product Disclosure Statement, a Grower's application will not be accepted and the project will not proceed until the minimum subscription of 150 interests is achieved.

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 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 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.

24. The Grower recognises ordinary income from carrying on the business of cultivation of Strawberry and Blueberry Plants at the time that income is derived.

Treatment of trading stock

Section 328-285

25. A Grower who is a 'small business entity' may, in some years, hold Fruit that will constitute trading stock on hand. Where, for such a Grower, for an income year, the difference between the value of all their trading stock at the start and a reasonable estimate of it at the end, is less than \$5,000, they can choose not to account for that difference under the ordinary trading stock rules in Division 70 (subsection 328-285(1)).

26. Where the small business entity chooses to account for changes in the value of their trading stock for an income year, they will have to do a stocktake and account for the change in the value of all their trading stock (Subdivision 70-C).

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

Section 70-35

28. A Grower who is not a 'small business entity' may, in some years, hold Fruit that will constitute trading stock on hand. Where, in an income year, the value of trading stock on hand at the end of an income year exceeds the value of trading stock on hand at the start of an income year a Grower must include the amount of that excess in assessable income.

29. Alternatively, where the value of trading stock on hand at the start of an income year exceeds the value of trading stock on hand at the end of an income year, a Grower may claim the amount of that excess as an allowable deduction.

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

Deduction for the Management Services (Fixed Component) Fees, Rent, Harvest costs and cost of sales, Management Services (Harvest Component) Fees, Plant insurance costs, Credit Card Merchant Fee, Interest and borrowing expenses

Sections 8-1 and 25-25

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

Fee Type	ITAA 1997 Section	2007-08 Income Year	2008-09 Income Year	2009-10 Income Year
Management Services (Fixed Component) Fee - Initial Services	8-1	\$4,494.85 See Notes (i) and (ii)		
Management Services (Fixed Component) Fees – Ongoing Services	8-1		\$2,427.58 See Notes (i), (ii) and (v)	\$2,178.93 See Notes (i), (ii) and (v)
Harvest costs	8-1	Amount incurred See Notes (i), (ii) and (v)	Amount incurred See Notes (i), (ii) and (v)	Amount incurred See Notes (i), (ii) and (v)
Costs of sale	8-1	Amount incurred See Notes (i), (ii) and (v)	Amount incurred See Notes (i), (ii) and (v)	Amount incurred See Notes (i), (ii) and (v)
Management Services (Harvest Component) Fees	8-1	Amount incurred See Notes (i), (ii) and (v)	Amount incurred See Notes (i), (ii) and (v)	Amount incurred See Notes (i), (ii) and (v)
Rent	8-1	\$147.15 See Notes (i), (ii) and (v)	\$441.46 See Notes (i), (ii) and (v)	\$453.82 See Notes (i), (ii) and (v)
Plant insurance costs	8-1	Amount incurred See Notes (i), (ii) and (v)	Amount incurred See Notes (i), (ii) and (v)	Amount incurred See Notes (i), (ii) and (v)
Credit Card Merchant Fee	8-1	As incurred – See Notes (i) and (iii)	As incurred – See Notes (i) and (iii)	As incurred – See Notes (i) and (iii)
Interest	8-1	As incurred – See Notes (iv) and (v)	As incurred – See Notes (iv) and (v)	As incurred – See Notes (iv) and (v)
Borrowing expenses	25-25	Must be calculated See Note (vi)	Must be calculated See Note (vi)	Must be calculated See Note (vi)

Notes:

- (i) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (for example, input tax credits): Division 27.
- (ii) The Management Services (Fixed Component) Fees, Management Services (Harvest Component) Fees, Rent, Plant insurance costs, Harvest costs and costs of sale are deductible under section 8-1 in the income year that the relevant fee is incurred.
- (iii) Growers who use their credit card to pay the fees for this Project will incur a merchant fee for the use of their credit card. This fee will be deductible under section 8-1.
- (iv) Interest payable to Rewards Project Limited or the Nominated Financier under the finance arrangements described at paragraph 74 of this Ruling is deductible in the income year in which it is incurred. The deductibility of interest incurred under any other finance arrangements (including finance arrangements entered into with financiers other than Rewards Projects Limited or the Nominated Financier) is outside the scope of this Ruling.
- (v) This Ruling does not apply to Growers who choose to prepay fees or rent or who choose to, or are required to prepay interest under a finance arrangement. 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.
- (vi) The Application Fee of 1% of the Finance Application Amount subject to a minimum of \$100 and a maximum of \$500 and stamp duty and ASIC registration fees (if applicable) relating to the finance arrangements is a borrowing cost and is deductible under section 25-25. It is incurred for borrowing funds that are to be used during the income year solely for income producing purposes. Borrowing expenses of \$100 or less are deductible in the year in which they are incurred. If the borrowing expenses are greater than \$100, the deduction is spread over the period of the loan or 5 years, whichever is the shorter. The deductibility or otherwise of borrowing expenses arising from finance arrangements other than the finance arrangements described at paragraph 74 of this Ruling with Rewards Projects Limited or the Nominated Financier is outside the scope of this Ruling.

Joint Venture Growers

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

- the First Joint Venturer may claim the Management Services (Fixed Component) Fee for the Initial Period, the Rent for the 2007-08 income year, and if applicable the Credit Card Merchant Fee, Interest and borrowing expenses on an on going basis for the duration of the loan or 5 years in the case of borrowing expenses;
- the Second Joint Venturer may claim the Management Services (Fixed Component) Fee for Ongoing Services, Rent for the 2008-09 income year onwards, Plant insurance costs and if applicable the Credit Card Merchant Fee; and
- both Joint Venturers may claim a deduction for the Management Services (Harvest Component) Fees, Harvest costs and cost of sale. The First Joint Venturer may claim a deduction for 20% of these costs and the Second Joint Venturer may claim a deduction for 80% of these costs.

Interest

33. The deductibility or otherwise of interest incurred by Growers who finance their participation in the Project through a loan facility with an independent lender external to the Project is outside the scope of this Ruling. Such Growers may request a private ruling on the deductibility or otherwise of interest under finance arrangements not covered by this Product Ruling.

Deductions for capital expenditure***Subdivisions 40-F, 40-G and 40-I***

34. Growers will also be entitled to tax deductions for the Planting Services Fee, Landcare Services Fee and the Application Fee for the 12 Month Terms Option. The deductions are shown (on a per Grove basis) in the following Table and accompanying notes:

Fee type	ITAA 1997 Section	2007-08 Income Year	2008-09 Income Year	2009-10 Income Year
Planting Services Fees (Victorian Strawberry Plantation-New Block)	40-515	Nil	\$308 See Notes (i) and (vii)	\$316.62 See Notes (i) and (vii)
Landcare Services Fee	40-630	\$1,650 See Notes (i) & (viii)		
Application Fee (12 Month Terms Option)	40-880	Must be calculated See Note (ix)	Must be calculated See Note (ix)	Must be calculated See Note (ix)

Notes:

- (vii) Strawberry Plants established on the New Block of the Victorian Strawberry Plantation (New Block) are a 'horticultural plant' as defined in subsection 40-520(2). As Growers hold the Land under a Sub-Lease, 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 establishment of Strawberry Plants on the New Block is determined using the formula in section 40-545 and is based on the capital expenditure incurred that is attributable to their establishment, that is, the Planting Services Fee.

The Planting Services Fee incurred by the Grower for the period from acceptance of the Grower's Application to 30 June 2008 is an amount of \$308 per Grove. The Planting Services Fee of \$316.62 for Planting Services to be completed in the period 1 July 2008 to 30 June 2009 is payable in arrears on or before 1 October 2009. The Planting Services Fees are expenditure incurred for the establishment of the Strawberry Plants on the New Block of the Victorian Strawberry Plantation during the Victorian Planting Season.

The Strawberry Plants have an 'effective life' of less than 3 years for the purposes of section 40-545. This results in a write off of all of the capital expenditure attributable to the establishment of the Strawberry Plants on the New Block. The deduction is allowable when the Strawberry Plants, to be established on the New Block enter their first commercial season (section 40-530, item 2). The Responsible Entity will

inform Growers of when the Strawberry Plants enter their first commercial season and the amount that may be claimed.

- (viii) Any capital expenditure incurred for a 'landcare operation' (as defined in section 40-635) is fully deductible in the year in which it is incurred under Subdivision 40-G, section 40-630. Accordingly the expenditure incurred on drainage works and the installation of measures to prevent soil erosion is deductible in the 2007-08 income year.
- (ix) Growers who elect to pay their Grower's contribution under the 12 month Terms Option must pay an Application Fee of 1% of the 12 month Terms Option amount, subject to, a minimum Application Fee of \$100 and Maximum Application Fee of \$500. This expenditure does not constitute a borrowing expense and is therefore not deductible under section 25-25. As it is capital in nature it is also not deductible under section 8-1. However, section 40-880 will allow the Application Fee to be deducted on a straight line basis over five income years. Section 40-880 applies to capital expenditure that is incurred in relation to a business and which is not taken into account elsewhere or denied deductibility under another provision of income tax law.

Joint Venture Growers

- 35. The First Joint Venturer is entitled to claim the deduction for:
 - the capital expenditure for the establishment of horticultural plant (being the Planting Services Fees) for the Planting Services to be completed during the Initial Period, as listed in the Table above;
 - the Landcare Services Fee (included in the Management Services (Fixed Component) Fee) for the Initial Services; and
 - the Application Fee for the Terms Option (if applicable).
- 36. The Second Joint Venturer is entitled to claim the deduction for the capital expenditure for the establishment of horticultural plant (being the Planting Services Fees) for Planting Services to be completed for the period 1 July 2008 to 30 June 2009, as listed in the Table above.

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

Section 35-55 – exercise of Commissioner’s discretion

37. A Grower who is an individual accepted into the Project in the period from the date of this Ruling to on or before 29 February 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 these Growers for the income years ended **30 June 2008 to 30 June 2009**. This conditional exercise of the discretion will allow those losses to be offset against the Grower’s other assessable income in the income year in which the losses arise.

Prepayment provisions and anti-avoidance provisions

Sections 82KZME, 82KZMF and 82KL and Part IVA

38. For a Grower who participates in the Project and incurs expenditure as required by the Sub-Lease and the Management Agreement the following provisions of the ITAA 1936 have application as indicated:

- expenditure by a Grower does not fall within the scope of sections 82KZME and 82KZMF (but see paragraphs 88 to 92 of this Ruling);
- section 82KL does not apply to deny the deductions otherwise allowable; and
- the relevant provisions in Part IVA will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

Scheme

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

- Application for Product Ruling as constituted by documents received on 23 August 2007 and additional correspondence, including emails, received on 30 August 2007, 17-18, 25, 27 and 28 September 2007; 2-4, 11, 15-17, 19 and 25 October 2007, 13-16, 19-22, 26 and 27 November 2007;
- Draft Product Disclosure Statement for the Rewards Group Berry Project 2008, received 27 November 2007;
- Draft Constitution of the Rewards Group Berry Project 2008 between Rewards Projects Limited (Responsible Entity) and the Grower, received 26 November 2007;

- Draft **Management Agreement** for the Rewards Group Berry Project 2008 between the Responsible Entity and the Grower, received 26 November 2007;
- Draft Lease/Sub Lease for the Rewards Group Berry Project 2008 between the Lessor and the Responsible Entity, received on 23 August 2007;
- Draft **Sub-Lease** for the Rewards Group Berry Project 2008 between the Responsible Entity (as 'Sub-Lessor') and the Grower, received 11 October 2007;
- Draft Compliance Plan for the Rewards Group Berry Project 2008, received 23 August 2007;
- Draft Operations Agreement for the Rewards Group Berry Project 2008 between the Responsible Entity and Rewards Management Pty Limited (as 'Manager'), received 26 November 2007;
- Independent Experts Report dated 19 July 2007, received 11 October 2007;
- Draft Heads of Agreement Fruit Marketing Services (Early Groves), received 23 August 2007;
- Draft Heads of Agreement Fruit Packaging Services (Early Groves), received 23 August 2007;
- Draft Heads of Agreement Fruit Packaging Services (Early Groves), received 23 August 2007;
- Draft Berry Project 2008 Independent Market Report, dated 15 August 2007, received 23 August 2007;
- Draft Management Plan for the Yarra Valley, dated August 2007, received 23 August 2007;
- Draft Management Plan for the Caboolture, dated August 2007, received 23 August 2007;
- Draft Grower Licence Agreement between the Grower of the Driscoll Plants and the Responsible Entity, received 11 October 2007;
- Draft **Grower Sub-Licence Agreement** between the Responsible Entity and the Grower, received 13 November 2007; and
- Draft Finance Package including Finance Application Form, **Debit Service Agreement** and **Finance Agreement**, received 11 October 2007.

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

40. The documents highlighted (in bold) are those that the Growers may enter into. There are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower, or an associate of the Grower will be a party to that are part of the scheme to which this Ruling applies.

41. All Australian Securities and Investments Commission (ASIC) requirements are, or will be, complied with for the term of the agreements. The effect of the agreements may be summarised as follows.

Overview

42. This scheme is called the Rewards Group Berry Project 2008. The main features are as follows:

Location	Near Wamuran in the Shire of Caboolture, South East Queensland, 40 km north of Brisbane Near Woori Yallock in the Yarra Valley, Victoria, 40 km north east of Melbourne
Type of business each participant will be carrying on	Commercial growing and cultivation of Strawberry Plants and Blueberry Plants
Number of hectares offered for cultivation	148 hectares
Size of each Grove	0.05 hectares
Minimum allocation per Grower	1 Grove
Minimum subscription	150 Groves
The term of the Project	18 years
Initial minimum cost	\$6,600
Ongoing costs	<ul style="list-style-type: none"> • Management Services(Fixed Component) Fees • Planting Services Fees • Management Services(Harvest Component) Fees • Rent • Harvest costs • costs of sale • optional insurance

43. The Project is registered as a Managed Investment Scheme under the *Corporations Act 2001*, ARSN 128 368 141. Rewards Projects Limited has been issued with Financial Services Licence Number 224000 and will be the Responsible Entity for the Project.

44. The Project involves the cultivation of Strawberry and Blueberry Plants and the harvest and sale of the Fruit derived from the Strawberry and Blueberry Plants. The Strawberry Plants will include Driscoll varieties (which are obtained under licence from the Owner of the Plants) and public varieties.

45. The Project will be conducted on land located in Queensland and Victoria. The Queensland properties are located near Caboolture which is situated 40 kilometres north of Brisbane in the Caboolture Shire. The properties are comprised of two separate titles described as Lot 102 on Crown Plan C311307 and Lot 271 on Crown Plan CG932. Water for irrigation of the Strawberry Plants will be supplied from dams established on the properties. The Victorian properties are located near Woori Yallock which is situated 40 km north east of Melbourne. The properties are comprised of the titles described as CT Volume 9146 Folio 938, CT Volume 10203 Folio 154 and CT Volume 10203 Folio 155. Water for irrigation of the Strawberry Plants and Blueberry Plants will be supplied from dams and bores established on the properties.

46. A Grower who participates in the Project will do so by acquiring an interest in the Project which will consist of a minimum of one Grove of 0.05 hectares in size. The Groves will be planted at the rate of approximately 50,000 Strawberry Plants per hectare in the Caboolture Plantation and 45,000 Strawberry Plants and 2,000 Blueberry Plants per hectare in the Yarra Valley Plantation. Rewards Projects Limited reserves the right to accept oversubscriptions where sufficient land is able to be sourced. Each Grove will consist of:

- one Strawberry Plantation in Queensland;
- one Strawberry Plantation in Victoria, consisting of a New Block, an Established Block and a Fallow Block; and
- one Blueberry Plantation in Victoria.

47. An offer to participate in the Project will be made through a Product Disclosure Statement (PDS). The offer made under the PDS is for 148 hectares which corresponds to 2,960 Groves in the Project. The term of the Project is a minimum of 18 years. The Project will not commence if the minimum subscription of 150 Groves has not been reached by 29 February 2008.

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

49. For the purposes of this Ruling, Applicants who are accepted to participate in the Project and who execute a Sub-Lease and a Management Agreement on or before 29 February 2008 will become 'Early Growers'. **This Ruling only applies to 'Early Growers'**. Note that a separate Product Ruling may issue for Growers who are accepted into the Project during the period from 1 March 2008 to 31 May 2008 ('Late Growers').

Constitution

50. The Constitution for the Project sets out the terms and conditions under which the Responsible Entity agrees to act for the Growers in the Project. Growers are bound by the Constitution by virtue of their participation in the Project. The Responsible Entity will maintain a register of all Growers that are accepted to participate in the Project.

51. Under the terms of the Constitution, the Responsible Entity must deposit all application moneys received from Growers into a trust account established for this purpose. This account is referred to as a Subscription Fund. The application moneys will be released from this fund when the Responsible Entity is satisfied that certain specified criteria in the Constitution have been met (clauses 3.3 and 3.8 of the Constitution).

52. The proceeds from the sale of the Fruit will be paid into a Proceeds Fund established by the Responsible Entity. Following the end of each Harvest Period, the Responsible Entity will deduct the Grower's share of Harvest costs and costs of sale and any other outstanding Project Fees and amounts owing by the Grower before distributing the balance to the Grower (clause 11 of the Constitution).

53. In the event that a Grower's Grove(s) is destroyed or partially destroyed, the Grower's proceeds of the sale from the Fruit will be reduced in accordance with clause 18 of the Constitution.

54. The Responsible Entity will arrange insurance for the Grower's Plants on receiving notification each year from the Grower (clause 19).

55. Under clause 20, the Responsible Entity may accept applications from two Joint Venturers that wish to conduct an unincorporated joint venture to participate in the Project. Under the joint venture, the First Joint Venturer is entitled to a 20% share and the Second Joint Venturer is entitled to a 80% share of the proceeds of selling the Fruit.

Compliance Plan

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

Grower Licence Agreement and Grower Sub-Licence Agreement

57. Under the Grower Licence Agreement between the Owner of the Driscoll Plants and the Responsible Entity, the Owner grants the Responsible Entity the right to use the Driscoll Plants to produce and harvest Fruit. Title to the Fruit vests in the Responsible Entity at the time it is harvested from the Driscoll Plants.

58. Under the Grower Sub-Licence Agreement between the Responsible Entity and the Grower, the Responsible Entity sub-licences to the Grower the right to use the Driscoll Plants to produce and harvest Fruit. Title to the Fruit from the Driscoll Plants vests in the Grower at the time it is harvested from the Plants.

Lease and Sub-Lease

59. Under the Head Lease for the Land located in Queensland, the Responsible Entity will lease the Project Land from the owner of the land for a period of 18 years. The Land is located in Wamuran in the Shire of Caboolture in Queensland. The properties are comprised of two separate titles totalling 70.74 hectares. The Responsible Entity as Sub-Lessor, sub-leases the 0.01 hectare portions of this Land ('Strawberry Plantation') to the Growers by entering into Sub-Lease agreements.

60. Under the Head Lease for the Land located in Victoria, the Responsible Entity will lease the Project Land from the owner of the land for a period of 20 years. The Land is located near Woori Yarrock in Victoria. The properties are comprised of three separate titles totalling 137 hectares. The Responsible Entity as Sub-Lessor, sub-leases the 0.04 hectare portions of this Land (Strawberry and Blueberry 'Plantations') to the Growers by entering into Sub-Lease agreements.

61. Under the terms of the Sub-Lease, the Sub-Lessor will give the Grower quiet possession of the Groves and pay all rates, taxes and other charges in respect of the land. The Sub-Lessor will also install (or procure the owner or the Land to install) suitable irrigation systems on the Grove on or before 31 March 2008 (clause 5 of the Sub-Lease).

62. Growers are entitled to the Fruit derived from the Plants on their Groves (clause 2.2 of the Sub-Lease and clause 1.2 of the Grower Sub-Licence Agreement). However, the Grower is not entitled to the Strawberry Fruit derived from the Established Block located on the Victorian Strawberry Plantation from the Sub-Lease Commencement Date until the end of the 2008 Victorian Harvest Season. The Fruit on the Established Block, from the 2008 Victorian Harvest Season, will be harvested by the owner of the Land.

63. As consideration for granting of the Sub-Lease, the Grower shall pay Rent to the Sub-Lessor for the term of the Sub-Lease as set out in the Schedule to the Sub-Lease.

Management Agreement

64. Under the Management Agreement, the Grower engages the Responsible Entity as an independent contractor and farm manager to carry out or cause to be carried out, the Management Services in accordance with sound agricultural and environmental practices adopted within the agricultural industry and in accordance with the Management Plan. The Responsible Entity will enter into the Operations Agreement to appoint Rewards Management Pty Ltd (the 'Manager') to carry out its obligations to the Grower under the Management Agreement. The Management Services are comprised of the Initial Services (including Landcare Services) and the Ongoing Services.

65. The Initial Services will be undertaken and completed during the Initial Period which is the period from the date of the Management Agreement to 30 June 2008. These services are listed in Annexure A of the Management Agreement.

66. The Ongoing Services that will be provided from the end of the Initial Period and throughout the balance of the Term on an annual basis are listed in Annexure B of the Management Agreement.

Harvesting and sale

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

68. The Responsible Entity will appoint a Fruit Agent to negotiate the sale of the Fruit from each Harvest of the same Plantation. Public and Driscoll varieties will be pooled separately. A Grower's share of the proceeds from sale of the Fruit is based on the number of Groves held by the Grower, excluding any Groves held by the Grower that fail to produce Fruit.

Fees

69. The Initial Fee payable to the Responsible Entity on application is \$6,600 per Grove. This fee consists of:

- **Management Services (Fixed Component) Fee** of \$4,494.85 for Initial Services to be performed during the Initial Period (item 2 of the Schedule to the Management Agreement);
- **Landcare Services Fee** of \$1,650 for Landcare Services to be performed during the Initial Period (item 2 of the Schedule to the Management Agreement);
- **Planting Services Fee** of \$308 for the establishment of Strawberry Plants on the New Block of the Victorian Strawberry Plantation which is scheduled to be planted during the Initial Period (item 3 of the Schedule to the Management Agreement); and
- **Rent** of \$147.15 for the period from the Sub-Lease Commencement Date to 30 June 2007 (item 4 of the Schedule to the Sub-Lease).

70. The ongoing fees **per Grove** are:

Annual **Management Services (Fixed Component) Fees:**

- \$2,427.98 for Ongoing Services to be performed from 1 July 2008 to 30 June 2009, payable on or before 1 October 2008;
- \$2,178.93 for Ongoing Services to be performed from 1 July 2009 to 30 June 2010, payable on or before 1 October 2009; and
- an amount equal to the previous income year Management Services (Fixed Component) Fee indexed at 2.8% per annum, or by CPI for the prior financial year where CPI exceeds 3.5%, for each financial year commencing from 1 July 2010, payable on or before 1 October of the relevant year, until the end of the Project (item 2 of the Schedule to the Management Agreement).

Planting Services Fee for the preparation of land for planting, supply of suitable plants and planting of the plants during the relevant Victorian Planting Season, being the period from March to May:

- \$316.62 for the establishment of Strawberry Plants on the New Block of the Victorian Strawberry Plantation which is scheduled to be planted during the Planting Season following the Initial Period, payable in arrears on or before 1 October 2009 (item 3 of the Schedule to the Management Agreement); and

- an amount equal to the previous income year Planting Services Fee indexed at 2.8% per annum, or by CPI for the prior financial year where CPI exceeds 3.5%, for each financial year commencing from 1 July 2010. The Planting Services Fee is payable in arrears on or before 1 October of the relevant year, until the end of the Project (item 3 of the Schedule to the Management Agreement) for the establishment of Strawberry Plants on the New Block of the Victorian Strawberry Plantation which is scheduled to be planted during the relevant Planting Season.

Annual **Management Services (Harvest Component) Fees:**

- 11% of the Grower's share of the sale proceeds of each harvest after deducting the Harvest costs and the costs of sale payable annually within one month of the end of the Harvest Period (item 4 of the Schedule to Management Agreement).

Annual **Rent per Grove** of:

- \$441.46 for the period 1 July 2008 to 30 June 2009, payable on or before 1 October 2008; and
- an amount equal to the rent for the previous income year increased by 2.8% per annum, or by CPI for the prior financial year where CPI exceeds 3.5%, for each financial year commencing from 1 July 2009, payable on or before 1 October of the relevant year, until the end of the Project (item 4 of the Schedule to the Sub-Lease).

Other Fees per Grove:

- **Harvest costs**, being the Grower's share of all costs of and incidental to the Harvest, payable out of the Grower's Share of the proceeds of sale of the relevant Harvest (clause 6.2 of Management Agreement and clause 11.1 of the Constitution);
- **costs of sale**, being the Grower's Share of all costs of and incidental to the sale of the Fruit Harvested including any Royalties and Sale Commissions, payable out of the Grower's share of the proceeds of sale of the relevant harvest (clause 7.4 of Management Agreement and clause 11.1 of the Constitution); and
- **optional Plant insurance costs** for the period after 30 June 2008. Note: The Responsible Entity will be responsible for the cost of public risk insurance for the Term of the Project. The Responsible Entity will pay for Plant insurance from the date of the Management Agreement to 30 June 2008 after that date Plant insurance is at the request of the Grower and at the Growers own expense.

Joint venture:

- the First Joint Venturer will pay the fee for Initial Period of \$6,600 per Grove;
- the Second Joint Venturer will pay the Management Services (Fixed Component) Fees for Ongoing Services, annual Rent, Planting Services Fees, insurance costs if applicable; and
- both Joint Venturers will pay the Management Services (Harvest Component) Fees, Harvest costs, costs of sale, and any other amounts that are due to the Responsible Entity pursuant to the terms of the Constitution, Sub-Lease or Management Agreement. The First Joint Venturer will pay 20% and the Second Joint Venturer will pay 80% of these costs.

Finance

71. Growers can fund their investment in the Project in one of the following ways:

- from their own funds;
- 12 Month Terms Option with the Responsible Entity;
- a loan from the Responsible Entity or the Nominated Financier; or
- a loan from an independent lender.

Note: Loans from an independent lender are outside the scope of this Ruling.

72. A Grower choosing to pay the Initial Fee of \$6,600 per Grove by entering into a Terms Option or loan arrangement with the Responsible Entity or a loan arrangement with the Nominated Financier, must complete the Finance Application which includes a Direct Debit Service Agreement and a Finance Agreement. The Agreements will be executed by the Responsible Entity. All arrangements will be on a full recourse basis and recovery action will be taken in respect of any default.

73. An Application Fee of 1% of the Finance Application Amount, subject to a minimum of \$100 and a maximum of \$500 is payable to the Provider on the first drawdown date which is 31 March 2008. Except for the Terms Option, the Interest Rate is fixed at 10.95% per annum.

74. Finance Application Amount is repayable under the following payment options:

12 Month Terms Option:

- 12 monthly repayments of \$550.00.

Finance from Rewards Projects Limited:

- 5 years principal and interest – 60 monthly payments of \$143.34.

Finance from the Nominated Financier:

- 2 years principal and interest – 24 monthly payments of \$307.46;
- 5 years principal and interest – 60 monthly payments of \$143.34;
- 10 years principal and interest – 120 monthly payments of \$90.73; and
- 3 years interest only followed by 7 years principal and interest – 36 monthly payments of \$60.23 followed by 84 monthly payments of \$112.83.

75. The instalments are paid monthly in arrears commencing on the last business day of March following the acceptance of the Grower's application (31 March 2008).

76. The payment of the Instalment Amounts under the above arrangements are secured by a first ranking mortgage or charge over the Grower's right, title and interest in the Project.

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

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

- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- entities associated with the Project other than Rewards Projects Limited and the Nominated Financier are involved or become involved, in the provision of finance for the Project.

Commissioner of Taxation

5 December 2007

Appendix 1 – Explanation

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

Is the Grower carrying on a business?

78. For the amounts set out in paragraphs 31 and 34 of this Ruling to constitute allowable deductions the Grower's horticultural activities as a participant in the Rewards Group Berry Project 2008 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 of 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 Rewards Group Berry Project 2008. 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 Rewards Group Berry Project 2008 is accepted to be carrying on a business of growing and harvesting Strawberries and Blueberries for sale.

Deductibility of Management Services (Fixed Component) Fees, Rent, Harvest costs, cost of sale, Management Services (Harvest Component) Fees, optional Plant insurance costs and credit card merchant fees

Section 8-1

83. Consideration of whether the Management Services (Fixed Component) Fees, Rent and other costs are deductible under section 8-1 begins with the first limb of the section. This view proceeds on the following basis:

- the outgoing in question must have a sufficient connection with the operations or activities that directly gain or produce the taxpayer's assessable income;
- the outgoings are not deductible under the second limb if they are incurred when the business has not commenced; and

- where all that happens in a year of income is that a taxpayer is contractually committed to a venture that may not turn out to be a business, there can be doubt about whether the relevant business has commenced, and hence, whether the second limb applies. However, that does not preclude the application of the first limb in determining whether the outgoing in question has a sufficient connection with activities to produce assessable income.

84. The Management Services (Fixed Component) Fees, Rent, Harvest costs, cost of sale, Management Services (Harvest Component) Fees, optional Plant insurance costs and credit card merchant 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 Management Services (Fixed Component) Fees, Rent, Harvest costs, cost of sale, Management Services (Harvest Component) Fees, optional Plant insurance costs and credit card merchant fees (see paragraphs 49 to 51 of TR 2000/8).

85. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply. Provided that the prepayment provisions do not apply (see paragraphs 88 to 92 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).

86. Some Growers may finance their participation in the Project through a Finance Agreement with the Responsible Entity or the Nominated Financier. Applying the same principles as that used for the management fee and the Rent, interest incurred under such a loan has sufficient connection with the gaining of assessable income to be deductible under section 8-1.

87. Other than where the prepayment provisions apply (see paragraphs 88 to 92 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

88. 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.

89. 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

90. Under the scheme to which this Product Ruling applies Management Services (Fixed Component) Fees, Rent, Harvest costs, cost of sale, Management Services (Harvest Component) Fees, optional Plant insurance costs and credit card merchant fees are incurred annually and the interest payable to the Responsible Entity or the Nominated Financier is incurred monthly in arrears. Accordingly, the prepayment provisions in sections 82KZME and 82KZMF of the ITAA 1936 have no application to this scheme.

91. However, sections 82KZME and 82KZMF of the ITAA 1936 may have relevance if a Grower in this Project prepays all or some of the expenditure payable under the Management Agreement and/or the Sub-lease, or prepays interest under a loan agreement (including loan agreements with lenders other than the Responsible Entity or the Nominated Financier). Where such a prepayment is made these prepayment provisions will also apply to 'small business entities' because there is no specific exclusion contained in section 82KZME that excludes them from the operation of section 82KZMF.

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

Expenditure of a capital nature

Division 40 and Division 328

93. 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, the Landcare Services Fee, Planting Services Fees for the establishment of Strawberry Plants on the New Block of the Victorian Strawberry Plantation and the Application Fee for the Terms Option are of a capital nature. This expenditure falls for consideration under Division 40 or Division 328.

94. 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'.

95. The tax treatment of capital expenditure has been dealt with in a representative way in paragraph 34 of this Ruling, the Table and accompanying notes.

Division 35 – deferral of losses from non-commercial business activities***Section 35-55 – exercise of Commissioner's discretion***

96. 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 2009, the Commissioner has determined that for those income years:

- it is because of its nature the business activity of a Grower will not satisfy one of the four tests in Division 35; and
- there is an objective expectation that within a period that is commercially viable for the horticultural industry, a Grower's business activity will satisfy one of the four tests set out in Division 35 or produce a taxation profit.

97. 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.

98. 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

99. The operation of section 82KL of the ITAA 1936 depends, among other things, on the identification of a certain quantum of 'additional benefit(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

100. 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).

101. The Rewards Group Berry Project 2008 will be a scheme commencing with the issue of the Product Disclosure Statement. A Grower will obtain a tax benefit from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 31 to 36 of this Ruling that would not have been obtained but for the scheme. However, it is not possible to conclude that the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

102. 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 their Fruit. There are no facts that would suggest that Growers have the opportunity of obtaining a tax advantage other than the tax advantages identified in this Ruling. There are no non-recourse financing or round robin characteristics, and no indication that the parties are not dealing with each other at arm's length, or, if any parties are not at arm's length, that any adverse tax consequences result. Further, having regard to the factors to be considered under paragraph 177D(b) of the ITAA 1936 it cannot be concluded, on the information available, that participants will enter into the scheme for the dominant purpose of obtaining a tax benefit.

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 97/7; TR 97/11; TR 98/22;
TR 2000/8

Subject references:

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

Legislative references:

- ITAA 1936 82KL
- ITAA 1936 Pt III Div 3 Subdiv H
- ITAA 1936 82KZL
- ITAA 1936 82KZLA
- ITAA 1936 82KZM
- ITAA 1936 82KZMA
- ITAA 1936 82KZMB
- ITAA 1936 82KZMC
- ITAA 1936 82KZMD
- ITAA 1936 82KZME
- ITAA 1936 82KZMF
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1997 6-5

- ITAA 1997 8-1
- ITAA 1997 17-5
- ITAA 1997 25-25
- ITAA 1997 Div 27
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- ITAA 1997 35-55
- ITAA 1997 35-55(1)(b)
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- ITAA 1997 40-515
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- ITAA 1997 40-545
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- ITAA 1997 40-630
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- ITAA 1997 70-35
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- TAA 1953
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