

PR 2008/39 - Income tax: Great Southern 2008 Renewable Fibre Project



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Product Ruling

Income tax: Great Southern 2008 Renewable Fibre Project

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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 under-paid 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 or the entities that 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 provisions 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 scheme, the Great Southern 2008 Renewable Fibre Project, or simply as 'the Project'. The Project will be offered under a Product Disclosure Statement in relation to the Project and the Great Southern 2008 Forestry Land Trust. **This Product Ruling does not rule on the tax consequences of investing in the Great Southern 2008 Forestry Land Trust.**

Class of entities

2. This part of the Product Ruling specifies which entities:

- are subject to the taxation obligations; and
- can rely on the taxation benefits,

set out in the Ruling section of this Product Ruling.

3. The members of the class of entities who are subject to those taxation obligations and who can rely on those taxation benefits are referred to in this Product Ruling as Growers.

4. Growers will be those entities that are accepted to participate in the scheme specified below as initial participants¹ on or after 23 April 2008, the date this Product Ruling is made.

5. A Grower will have executed the relevant Project Agreements set out in paragraph 37 of this Ruling on or before 30 June 2008 and will hold a Woodlot in the Project.

6. The class of entities who can rely on this Product Ruling does **not** include entities who:

- participate in the scheme other than as initial participants;
- are accepted into this Project before the date of this Ruling or after 30 June 2008;
- participate in the scheme through offers made other than through the Product Disclosure Statement;

¹ For the purposes of this Product Ruling an 'initial participant' means a participant who has obtained their interest in the scheme from the Responsible Entity or the Manager of the scheme.

- do not take out insurance, or have insurance taken out on their behalf, against the loss or destruction of their Forest Produce from the time of planting until the end of the term of the Project (refer to paragraph 64 of this Ruling); or
- enter into finance arrangements with Great Southern Finance Pty Ltd, ABL Nominees Pty Ltd (the Preferred Financier) or entities associated with this Project other than those specified in paragraphs 89 to 93 of this Ruling (the word 'associate' has the same meaning given in section 318 of the *Income Tax Assessment Act 1936* (ITAA 1936)).

Qualifications

7. 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 37 to 94 of this Ruling.

8. 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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Superannuation Industry (Supervision) Act 1993

10. 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.

Date of effect

11. This Product Ruling applies prospectively from 23 April 2008, the date this Product Ruling is made. It therefore applies only to the specified class of entities that enter into the scheme from 23 April 2008 until 30 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 all income years up to the income year in which the scheme is terminated in accordance with the Land and Management Agreement.

12. 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.

13. 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)).

14. 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.

15. 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

16. 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.

17. 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

18. 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

19. 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

20. Two investments are available under the Product Disclosure Statement. These are the Great Southern 2008 Renewable Fibre Project and the Great Southern 2008 Forestry Land Trust (the Land Trust). This Product Ruling only applies to Growers in the Great Southern 2008 Renewable Fibre Project. **This Product Ruling does not rule on the tax consequences of investing in the Great Southern 2008 Forestry Land Trust.**

21. Subject to the stated qualifications, this part of the Product Ruling sets out in detail the taxation obligations and benefits for a Grower in the defined class of entities who enters into the Project described at paragraphs 37 to 94 of this Ruling.

22. 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 Land and Management Agreement (LMA).

23. 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.

Concessions for 'small business entities'²

24. 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').

25. 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. Because of these choices and the eligibility conditions the 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.

Deduction for Establishment Services fees***Division 27 of the ITAA 1997 and section 82KZMG of the ITAA 1936***

26. Other than where a 'CGT event'³ happens to their interest within 4 years of 30 June 2008 (see paragraph 27 of this Ruling), a Grower who is an initial participant in the scheme may claim tax deductions for the following amount on a per Woodlot basis.

Fee Type	Year ended 30 June 2008	Year ended 30 June 2009	Year ended 30 June 2010
Fee for Establishment Services or discounted fee for Establishment Services	\$3,135 or \$2,821.50 See Notes (i) & (ii)	Nil	Nil

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.

² The meaning of 'small business entity' is explained in section 328-110.

³ Defined in section 995-1.

- (ii) Under section 82KZMG of the ITAA 1936 the fee for Establishment Services is expenditure for 'seasonally dependent agronomic activities' (see paragraphs 109 to 114 of this Ruling) and is deductible in the income year in which it is incurred. Accordingly, an amount of \$3,135 is deductible in the year ended 30 June 2008 or, in the case of Growers who initially invested in any of the Great Southern Plantations 1997 and 1998 Projects, and who have retained their interests in one or more of those Projects, an amount of \$2,821.50 is deductible in the year ended 30 June 2008.

'CGT event' within 4 years for Growers who are 'initial participants'

Section 82KZMGA

27. A deduction for the Establishment Services fee is not allowable where a 'CGT event' happens in relation to a Grower's interest before 1 July 2012 (subsection 82KZMGA(1) of the ITAA 1936).

28. Where deductions for these amounts have already been claimed by a Grower the Commissioner may amend their assessment at any time within two years after the end of the income year in which the 'CGT event' happens. The Commissioner's power to amend in these circumstances applies despite section 170 of the ITAA 1936 (subsection 82KZMGA(2) of the ITAA 1936).

29. Growers whose deductions are disallowed are still required to include in their assessable income the market value of the interest at the time of the 'CGT event' or the decrease in the market value of the interest as a result of the 'CGT event' (see paragraphs 115 to 117 of this Ruling).

Deductions for insurance premiums, interest and borrowing expenses

Sections 8-1 and 25-25 and Division 27 of the ITAA 1997

30. A Grower who is an initial participant in the Project may also claim tax deductions for the following fees and expenses on a per Woodlot basis, as set out in the Table below.

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Fee Type	ITAA 1997 section	Year ending 30 June 2008	Year ending 30 June 2009	Year ending 30 June 2010
Insurance premiums	8-1	Nil	As incurred See Notes (i) & (iii)	As incurred See Notes (i) & (iii)
Interest	8-1	As incurred See Note (iv)	As incurred See Note (iv)	As incurred See Note (iv)
Loan administration fees and Loan Establishment fees	25-25	Must be calculated – See Note (v)	Must be calculated – See Note (v)	Must be calculated – See Note (v)

Notes:

- (iii) Insurance premiums are deductible under section 8-1 in the income year in which they are incurred.
- (iv) The deductibility or otherwise of interest arising from agreements entered into with financiers other than the Great Southern Finance Pty Ltd or the Preferred Financier is outside the scope of this Ruling. Prepayments of interest to any lender, including Great Southern Finance Pty Ltd or the Preferred Financier, are also not covered by this Product Ruling. Growers who enter into agreements with other financiers and/or prepay interest may request a private ruling on the deductibility of the interest incurred.
- (v) The Loan Establishment and Loan administration fees payable to either Great Southern Finance Pty Ltd or to the Preferred Financier are borrowing expenses and are deductible under section 25-25. They are incurred for borrowing money that is used or is to be used during that income year solely for income producing purposes. The deduction is spread over the period of the loan or 5 years, whichever is the shorter. The deductibility or otherwise of borrowing costs arising from loan agreements entered into with financiers other than Great Southern Finance Pty Ltd or the Preferred Financier is outside the scope of this Ruling.

Assessable income from 'CGT events' for Growers who are initial participants***Sections 6-10, 17-5 and 118-20 of the ITAA 1997 and section 82KZMGB of the ITAA 1936***

31. Where a 'CGT event' happens to the interest held by a Grower who is an initial participant in this Project, the market value of the interest, or the decrease in the market value of the interest, is included in the Grower's assessable income (section 6-10 of the ITAA 1997 and section 82KZMGB of the ITAA 1936), less any GST payable on those proceeds (section 17-5 of the ITAA 1997).

32. The amount is included in the Grower's assessable income in the income year in which the 'CGT event' happens (subsection 82KZMGB(2) of the ITAA 1936).

33. 'CGT events' for these purposes include those relating to:

- a **clear-fell harvest of all or part of the trees** grown on the Grower's Woodlot;
- the **sale, or any other disposal** of all or part of the 'interest' in the Project held by the Grower; or
- any other 'CGT event' that results in a reduction of the market value of the 'interest' in the Project held by the Grower.

34. Where an amount arising from a 'CGT event' is included in the assessable income of a Grower by section 82KZMGB of the ITAA 1936 the anti-overlap provisions in section 118-20 of the ITAA 1997 will operate to exclude that amount from the capital gains provisions in Part 3-1 of the ITAA 1997.

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

35. A Grower, who is an individual and is accepted into the Project in the year ended 30 June 2008, may have losses arising from their participation in the Project that would be deferred to a later income year under section 35-10. Subject to the Project being carried out in the manner described below (see paragraphs 37 to 94 of this Ruling), 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 2021. 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

36. For a Grower who commences participation in the Project and incurs expenditure as required by the LMA, the following provisions of the ITAA 1936 have application as indicated:

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

Scheme

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

- Application for a Product Ruling as constituted by documents provided on 18 December 2007 and additional correspondence including emails received on 22 January 2008, 30 January 2008, 4 February 2008, 12 February 2008, 4 March 2008, 5 March 2008, 27 March 2008, 14 April 2008 and 16 April 2008;
- **Product Disclosure Statement** for the Great Southern 2008 Future Forestry Investment dated 13 December 2007;
- Draft **Updated Information for Product Disclosure Statement** for the Great Southern 2008 Future Forestry Investment, received on 14 April 2008;
- Draft **Constitution** of the Great Southern 2008 Renewable Fibre Project received on 14 April 2008;
- Draft **Land and Management Agreement** between Great Southern Managers Australia Limited (GSMAL) (as both Landholder and Responsible Entity) and each Grower received on 18 December 2007;
- Draft **Standard Terms for Land and Management Agreement** between GSMAL (as both the Landholder and Responsible Entity) and each Grower, received on 14 April 2008;
- Draft **Lease** between GSMAL (as both the Landholder and Responsible Entity) and each Grower, received on 18 December 2007;

- Draft **Standard Terms for Lease** between GSMAL (as both the Landholder and Responsible Entity) and each Grower, received on 18 December 2007;
- Draft **Forest Right Agreement** between GSMAL (as both the Landholder and Responsible Entity) and each Grower, received on 18 December 2007;
- Draft **Standard Terms for Forest Right Agreement** between GSMAL (as both the Landholder and Responsible Entity) and each Grower, received on 18 December 2007;
- Draft **Forest Right Lease Agreement** between GSMAL (as both the Landholder and Responsible Entity) and each Grower, received on 18 December 2007;
- Draft **Standard Terms for Forest Right Lease Agreement** between GSMAL (as both the Landholder and Responsible Entity) and each Grower, received on 18 December 2007;
- Draft Lease between GSMAL (as the Lessee) and the Owner, received 18 December 2007;
- Draft Compliance Plan for the Great Southern 2008 Renewable Fibre Project received on 14 April 2008;
- Draft Plantation Management Agreement between GSMAL and Great Southern Limited (GSL), received on 18 December 2007;
- Draft Management Services Agreement between GSMAL and GSL, received on 18 December 2007;
- Draft Marketing Services Agreement between GSMAL and Great Southern Securities Pty Limited, received on 18 December 2007;
- Draft Harvesting, Marketing and Sales Agreement between GSMAL and Great Southern Export Company Pty Limited, received on 18 January 2007;
- Draft Constitution of the Great Southern 2008 Forestry Land Trust, received on 18 December 2007;
- Draft Compliance Plan for the Great Southern 2008 Forestry Land Trust, received on 18 December 2007; and
- Draft Application for Term Finance, which includes the **Loan Deed** between the Financier or the Preferred Financier (as the Borrower), received 4 March 2008.

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

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

39. 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.

Overview

40. The main features of the Great Southern 2008 Renewable Fibre Project are as follows:

Location	Any area of Australia deemed suitable for the commercial growing of Hardwoods
Species of trees to be planted under the scheme	Hardwood species including <i>Eucalyptus Globulus</i> , <i>Eucalyptus nitens</i> , and <i>Acacia mangium</i> .
Term of the Project	Approximately 13 years
Number of trees per hectare	A minimum of 800 trees/ha and a maximum of 1,250 trees/ha depending on the location and rainfall
Number of hectares offered for cultivation	25,000 hectares Oversubscriptions may be accepted
Size of each Woodlot	0.33 hectares on the Tiwi Islands in the Northern Territory and 0.25 hectares in all other areas
Minimum allocation of 'Woodlots' per Grower	1 Woodlot
Minimum subscription	None
Initial cost	\$3,135 or \$2,821.50
Other costs	<ul style="list-style-type: none"> • ongoing management fee of 2.75% of Net Proceeds of Sale; • rent/land fee of 8.25% of Net Proceeds of Sale; • Costs of Chipping; • Costs of Felling; • Costs of Sale; • Performance Fee; and • insurance premiums.

41. The Project will be a registered managed investment scheme under the *Corporations Act 2001*. Great Southern Managers Australia Limited has been issued with an Australian Financial Service Licence, No. 240787, and will be the Responsible Entity for the Project.

42. The Project will involve establishing, tending, felling and harvesting Hardwood species for the production of short fibre hardwood woodchips for use in the paper industry.

43. An offer to participate in the Project will be made through a Product Disclosure Statement (PDS). The offer under the PDS is for 25,000 hectares, which corresponds to approximately 100,000 Woodlots in the Project. The PDS for the Project also contains an offer to invest in Units in the Great Southern 2008 Forestry Land Trust. **This Product Ruling DOES NOT address the tax consequences of investing in the Great Southern 2008 Forestry Land Trust.**

44. An entity that participates in the Project as a Grower will do so by acquiring a Woodlot in the Project on or before 30 June 2008, which will consist of a minimum of 1 Woodlot, each of 0.33 hectares in size on the Tiwi Islands and 0.25 hectares in size in all other areas. There is no minimum amount that must be raised under the PDS.

45. Applicants execute a Power of Attorney contained in the PDS. The Power of Attorney irrevocably appoints Great Southern Managers Australia Limited to enter into, on behalf of the Grower, a Land and Management Agreement, and a Lease, Forest Right Agreement or Forest Right Lease Agreement (a Lease Interest) and any other documents required to hold an interest in the Project.

46. For the purposes of this Ruling, Applicants who are accepted to participate in the Project and who execute the Land and Management Agreement on or before 30 June 2008 will become Growers in the 2008 Project.

47. The majority of land for the Project will be purchased by Great Southern Property Holdings Limited (GSPH) as trustee for the Great Southern Property Trust, or another entity in the Great Southern consolidated group (the Landowner). GSPH may lease, or may be granted other similar interests in land under relevant State or Territory laws, from third parties, which are sufficient for the purpose of carrying on the Project.

48. Once it has acquired the land GSPH will enter into a head lease or similar Land Interest under relevant State or Territory laws with GSMAL for the Term of the Project. Under the relevant Land Interest, GSMAL will then grant each Grower a 'sub-lease' under similar terms and conditions as the head lease. All land selected for the Project must have been assessed as suitable by a Professional Forester.

Constitution

49. The Constitution establishes the Project and operates as a deed binding on all Growers and Great Southern Managers Australia Limited. The Constitution sets out the terms and conditions under which Great Southern Managers Limited agrees to act as Responsible Entity and thereby manage the Project. Upon acceptance into the Project, Growers are bound by the Constitution by virtue of their participation in the Project.

50. In order to acquire an interest in the Project, an entity must make an application for 'Woodlots' in accordance with clause 4.2. Among other things, the application is to be completed in a form approved by the Responsible Entity, signed by or on behalf of the Applicant, lodged at the registered office of the Responsible Entity and accompanied by payment of the Application Money in a form acceptable to the Responsible Entity.

51. Under clause 5.1 of the Constitution, GSMAL holds the Application Money on bare trust. GSMAL will deposit all Application Moneys received from applicants in an Application Fund (clause 5.1).

52. Once GSMAL has accepted the application and all of the Project Documents have been executed and remain in force (clause 6) the Application Money may be transferred and applied against the fees due to GSMAL (clauses 6.9 and 8).

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

- the functions, powers and duties of the Responsible Entity (clause 13);
- the complaints procedure (clause 14);
- the compliance plan (clause 15);
- the provision of a Foresters Report to Growers (clause 19);
- transfer and transmission of Grower's interest (clauses 21 and 23);
- retirement or removal of Responsible Entity (clause 26);
- the right of the Responsible Entity to be paid fees (clause 27);
- the issue of certificates and register of Growers (clauses 28 and 29);
- procedures relating to the collection of proceeds of sale, the Responsible Entity's entitlement to reimbursement of particular costs and expenses out of the Proceeds Fund, and the payment of Project expenses by the Responsible Entity (clause 31);
- distributions from the Proceeds Fund (clause 32); and
- termination of the Project (clause 36 and 37).

Compliance Plan

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

Lease

55. GSMAL will lease the Leased Land under a 'Lease', or be granted other similar interests in the Leased Land under relevant State or Territory laws which are sufficient for the purposes of carrying on the Project.

56. GSMAL must use the Land only for the purpose of planting, tending and harvesting a plantation of Hardwoods for commercial wood production.

57. The Responsible Entity may also sub-lease or grant a similar interest in the Leased Land or any part of the Leased Land to Growers in the Great Southern 2008 Renewable Fibre Project for a term equivalent to the Term of the Lease (clause 16.4).

58. The Plantation Crop and Wood are and will remain the property of GSMAL, or any third parties to whom a 'sub-lease' or similar interest in the Leased Land has been granted by GSMAL, and may be sold or otherwise dealt with by GSMAL or those third parties (clauses 9.7 and 15.3).

Land Interest

59. Within the period of 9 months commencing on and including the Commencement Date of the LMA, Growers will, pursuant to the terms of the LMA, be granted an interest in a Woodlot or Woodlots by GSMAL (as the Landholder) in the form of a Land Interest, being a Lease, Forest Right or Forest Right Lease, to use their Woodlot(s) for the purpose of conducting their long term commercial afforestation business (clause 2 of the LMA).

60. Growers with Woodlots situated in Western Australia, Victoria, South Australia or New South Wales will be granted a lease in the form of the Lease. Growers with Woodlots situated in Queensland will be granted a Forest Right in the form of the Forest Right Agreement, and Growers who are allotted Woodlots situated in Tasmania will be granted a Forest Right Lease in the form of the Forest Right Lease Agreement. Growers with Woodlots situated in any other State or Territory will be granted a similar interest in land in accordance with the relevant State/Territory laws. Where this Ruling uses the terms 'Lease' and 'Lessor' it is intended to also include the respective terms 'Forest Right' and 'Grantor' or similar terms used in a document granting any similar interest in land.

61. The Land Interest will have a Term commencing on its Commencement Date and ending on the date on which harvesting and removal of the Forest Produce from the Woodlot(s) is completed or the date on which the Project is terminated pursuant to the provisions of the Constitution, whichever is the earlier.

62. The Grower's obligations are set out in detail in clause 5 of the Land Interest under which the Grower agrees to manage, cultivate and work the Woodlot(s) so as to maintain and develop the Woodlot(s) for the purpose of long term commercial silviculture in a proper and skilful manner and according to approved methods at all times during the Term. Pursuant to the LMA, the Responsible Entity agrees to observe and perform all of the obligations to be observed and performed by the Grower under the Land Interest, except for the payment of rent (clause 18.1 of the LMA).

63. The Grower will at all times have full right, title and interest in the Forest Produce and the right to have the Forest Produce sold for the benefit of the Grower (clause 11.3).

64. The Responsible Entity will use its reasonable endeavours to arrange insurance on behalf of the Growers annually so as to provide cover in respect of the interest and obligations of the Growers with one or more reputable insurers against destruction or damage to the Forest Produce on the Woodlot by fire and/or other usual risks (clause 12). This Ruling only applies to participants in the Project who, from the time of planting until the end of the term of the Project, take out insurance in respect of the trees against damage or destruction in terms of clause 12 of the Land Interest.

65. Among other things, the Land Interest also sets out details of the following:

- the rent payable by a Grower (clause 3);
- the events which may trigger default and early termination of the Lease Interest by the Grower (clause 9);
- the covenants of the Landholder (clause 10); and
- the appointment of the Responsible Entity as the Grower's attorney (clause 13).

Land and Management Agreement

66. Under the Land and Management Agreement each Grower appoints GSMAL for the Term of the Project to manage the Grower's business of the commercial growing of Hardwood species by performing the Establishment Services and the Services in relation to the Woodlot.

67. GSMAL will carry out the Establishment Services during the Establishment Period, being the period within 12 months from the Commencement Date (clauses 3.1 and 5.2). The Establishment Services are all commercial silvicultural activities to be carried out on the Woodlot to establish a Hardwood plantation according to good silvicultural and forestry practices.

68. The Establishment Services are specified in clause 1.1 and include, amongst other things:

- ripping and mounding the Woodlot as necessary from the Commencement Date;
- otherwise preparing the Woodlot for planting as necessary from the Commencement Date;
- procurement of sufficient Hardwood seedlings or trees of appropriate size as is reasonably required to complete the Planting Services;
- fertilising and spraying the Woodlot as necessary from the Commencement Date;
- maintaining the Woodlot according to good silvicultural and forestry practices; and
- the Planting Services.

69. The Responsible Entity will commence the provision of the Services from the expiry of the Establishment Period and shall continue to provide the Services until the Termination Date (clause 3.2).

70. The Services are specified in clause 1.1 and include, amongst other things:

- cultivating, tending, culling, fertilising, replanting, spraying and otherwise caring for the trees;
- keeping in good repair and condition any access road or roads within the Plantation;
- undertaking pest control measures as required to control rabbits and other vermin by fumigating and poisoning; keeping in good repair and condition adequate fire-breaks;
- obtaining a Report as soon as practicable after the trees have been established for 12 months and then by 31 July in each year thereafter for at least one third of the plantation, on a three year rolling period, to be made available to Growers; and
- organising and arranging for the trees to be clearfelled when they have reached maturity or have otherwise become marketable.

71. Among other things, the LMA also sets out details of the following:

- the duration of the Responsible Entity's term of appointment and the events which may trigger an early termination of the LMA (clauses 4 and 22);
- the rights of a Grower to the Forest Produce (clause 10);
- the remuneration payable to the Responsible Entity for the provision of Establishment Services and Services (clauses 12 and 13);
- the performance by the Responsible Entity of the Grower's covenants under the Land Interest (clause 18); and
- the appointment of the Responsible Entity as the Grower's attorney (clause 19).

72. The Responsible Entity will also arrange for the harvesting of the wood on the Woodlot and must arrange for the processing and sale of either all forest produce or woodchips.

Plantation Management Agreement

73. GSMAL will engage GSL as a contractor for the Term of the Project to perform the Establishment Services and Services on the Project land as specified in the Management Plan, in a proper and efficient manner and in accordance with good silvicultural and environmental practices adopted within the forestry industry.

Harvesting and sale

74. GSMAL must arrange for the harvesting of the forest produce. Harvesting is to take place within 8 to 12 years from establishment (as reasonably determined by GSMAL and, in any event, not later than 13.5 years from the Commencement Date) unless GSMAL reasonably believes that it would be in the best interest of the Growers for harvesting to be deferred and the Growers resolve to do so by ordinary resolution (clause 7 of the LMA).

75. GSMAL must also use its best endeavours to arrange for the processing and sale of either all bole wood or woodchips. The Grower will be deemed to have appointed GSMAL as the Grower's agent for the purpose of negotiating and making at the maximum practicable price available sales of its Forest Produce or Woodchips including entering into a sale agreement with a purchaser on such terms and conditions as GSMAL considers appropriate (clause 9.1 of the LMA).

76. GSMAL will ensure that the Gross Proceeds of Sale are paid into the Proceeds Fund. The Grower's Proportional Share of the Costs of Felling, the Costs of Sale and, if applicable, the Costs of Chipping will be paid out of the Proceeds Fund to the Responsible Entity by way of reimbursement, or directly to the relevant contractor (clause 11.1 of the LMA).

77. Following the payment of particular fees from the Net Proceeds of Sale by Growers to GSMAL under the LMA and the Land Interest (see paragraphs 81 to 85 of this Ruling), the balance of the Net Proceeds of Sale in the Proceeds Fund will be held on trust for the Growers in accordance with the provisions of the Constitution (clause 11.3 of the LMA). The Responsible Entity will then distribute out of the Proceeds Fund each Grower's Proportional Interest of the Proceeds Fund relating to the last Accounting Period (clause 32 of the Constitution).

Pooling of Timber and Entitlement to Net Proceeds

78. The Constitution sets out provisions relating to the pooling of proceeds from the sale of timber on behalf of all Growers and the distribution of the proceeds from that sale or from insurance proceeds (clauses 31.1 and 32). This Product Ruling only applies where the following principles apply to those pooling and distribution arrangements:

- only Growers who have contributed Forest Produce or insurance proceeds to the pool making up the proceeds are entitled to benefit from distributions of those proceeds from the pool; and
- any pool of Forest Produce or other proceeds must consist only of Forest Produce or other proceeds contributed by Growers in the Project.

Fees

79. Under the terms of the Land and Management Agreement and the Land Interest, a Grower will make payments as described below on a per Woodlot basis.

Fees payable under the Land and Management Agreement

80. The Application Price is to be paid by each Grower on application for the provision of the Establishment Services in the Establishment Period. The Application Price is \$3,135. However, Growers in this Project who initially invested in any of the Great Southern Plantations 1997 and 1998 Projects, and who have retained their interests in any one of those Projects, are entitled to a discount of 10% of the fee payable on application.

81. Each Grower must pay a fee of 2.75% of the Net Proceeds of Sale for the Services to be provided from the expiry of the Establishment Period to the Termination Date.

82. Each Grower must pay a Performance Fee of 22% of the amount of the Net Proceeds of Sale that exceed \$5,000 per Woodlot.

Fees payable under the Land Interest

83. Rent of 8.25% of the Net Proceeds of Sale is payable per Woodlot.

84. Fees/Rent calculated as a percentage of the Net Proceeds of Sale will be paid out of the Net Proceeds of Sale at the time the Net Proceeds of Sale are payable by the Responsible Entity to the Grower.

85. Annual insurance premiums against destruction or damage to the Forest Produce on the Woodlot by fire and/or other usual risks will also be payable by the Grower.

Finance

86. To finance all or part of the cost of their Woodlot a Grower can enter into a finance arrangement with Great Southern Finance Pty Ltd, borrow from the Preferred Financier or, alternatively, borrow from an independent lender external to the Project.

87. 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 Great Southern Finance Pty Ltd or with the Preferred Financier that materially differs from that set out in the documentation provided with the application for this Product Ruling. A Grower who enters into a finance arrangement with an independent lender external to the Project other than the Preferred Financier may request a private ruling on the deductibility or otherwise of interest incurred under finance arrangements not covered by this Product Ruling.

88. A Grower cannot rely on any part of this Ruling if the Application Moneys are not paid in full on or before 30 June 2008 by the Grower or, on the Grower's behalf, by a lending institution.

Finance offered by Great Southern Finance Pty Ltd or the Preferred Financier

89. A Grower can finance the cost of their Application Price by borrowing the amount from Great Southern Finance Pty Ltd or the Preferred Financier.

90. Subject to Great Southern Finance Pty Ltd or the Preferred Financier accepting the Grower's Application, the Grower will be bound by the terms and conditions of the Loan Deed and the PDS.

Option A – 12 Month Interest Free Loan offered by Great Southern Finance Pty Ltd

91. This loan option has the following features:

- repayment of principal in 12 equal monthly instalments;
- instalments paid by direct debit commencing in July 2008;
- the GST component of the fee for Establishment Services is not part of the finance arrangement and is invoiced on execution of the LMA;
- no interest is payable;
- a loan application fee of up to 3.0% of the amount borrowed may be charged and added to the principal of the loan and repaid in the same equal monthly instalments.

Option B – Principal and Interest loans

92. The principal and interest loans offered by Great Southern Finance Pty Ltd and the Preferred Financier include the following features:

- principal and interest loans with terms of 2, 5, 7 or 10 years;
- the borrowing includes the GST component of the fee for Establishment Services;
- equal monthly principal and interest repayments over the term of the loan, commencing on, or about, 31 July 2008;
- interest rates will be fixed for the term of the loan;
- a Loan Establishment Fee of 0.5% of the amount borrowed may be charged; and
- the security for the loan is taken over the Grower's interest under the LMA.

Option C – Principal and Interest Finance offered by the Preferred Financier

93. The preferred Financier may also offer Loans which include the following features:

- an interest only period of up to 3 years for a term of 7 or 10 years;
- the borrowing includes the GST component of the fee for Establishment Services;

- equal monthly instalments of interest commencing on, or about, 31 July 2008 during the interest only period, followed by equal monthly principal and interest repayments for the remainder of the term of the loan;
- interest will be fixed for the period of the loan;
- a Loan Establishment Fee of 0.5% of the amount borrowed may be charged; and
- the security for the loan is taken over the Grower's interest under the LMA.

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

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' are or will be granted to the borrowers for the purpose of section 82KL of the ITAA 1936 or the funding arrangements transform the Project into a 'scheme' to which Part IVA of the ITAA 1936 may apply;
- the loan or rate of interest is non-arm's length;
- repayments of the principal and payments of interest are linked to the derivation of income from the Project;
- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender or any associate of the lender;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- entities associated with the Project, other than Great Southern Finance Pty Ltd, are involved or become involved in the provision of finance to Growers for the Project.

Appendix 1 – Explanation

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

Is the Grower carrying on a business?

95. For the amounts set out in paragraphs 26 and 30 of this Ruling to constitute allowable deductions the Grower's forestry activities as a participant in the Great Southern 2008 Renewable Fibre Project must amount to the carrying on of a business of primary production.

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

97. 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?

98. Taxation Ruling TR 2000/8 Income tax: investment schemes, particularly paragraph 89, is more specific to arrangements such as the Great Southern 2008 Renewable Fibre Project. As Taxation Ruling TR 2000/8 sets out, the relevant principles have been established in court decisions such as *Commissioner of Taxation v. Lau* (1984) 6 FCR 202; 84 ATC 4929; (1984) 16 ATR 55.

99. Having applied these principles to the arrangement set out above, a Grower in the Great Southern 2008 Renewable Fibre Project is accepted to be carrying on a business of forestry.

Deductibility of the Establishment Services fee, insurance premiums and interest on loans with GSFL and the Preferred Financier

100. The Establishment Services fees and insurance premiums 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 Establishment Services fees or insurance premiums (see paragraphs 49 to 51 of TR 2000/8).

101. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply. Subject to the prepayment provisions (see paragraphs 104 to 114 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.)

102. Some Growers may finance their participation in the Project through a Loan Deed with Great Southern Finance Pty Ltd or with the Preferred Financier. Applying the same principles as that used for the Establishment Services fees and insurance premiums, interest incurred under such a loan has sufficient connection with the gaining of assessable income to be deductible under section 8-1.

103. Other than where the prepayment provisions apply (see paragraphs 104 to 114 of this Ruling), a Grower can claim a deduction for such interest in the year in which it is incurred.

Prepayment provisions

Sections 82KZL to 82KZMG

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

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

Application of the prepayment provisions to the Project

Sections 82KZME and 82KZMF

106. Other than the Establishment Services fee (see below), the fees payable under the scheme to which this Product Ruling applies are payable only out of proceeds of sale and the interest payable to Great Southern Finance Pty Ltd or to the Preferred Financier is incurred monthly in arrears. Accordingly, the prepayment provisions in sections 82KZME and 82KZMF of the ITAA 1936 have no application.

107. However, sections 82KZME and 82KZMF of the ITAA 1936 may have relevance if a Grower in this Project chooses or is required to prepay interest under a loan agreement (including loan agreements with lenders other than Great Southern Finance Pty Ltd or the Preferred Financier).

108. As stated in Note (iv) of paragraph 30 of this Ruling, prepayments of interest are not covered by this Product Ruling and Growers who make such prepayments may instead request a private ruling on the tax consequences of the prepaid interest.

Section 82KZMG

109. Expenditure that meets the requirements of section 82KZMG of the ITAA 1936 is excluded from the application of the prepayment rules in sections 82KZME and 82KZMF of the ITAA 1936 that would otherwise apply.

110. Section 82KZMG of the ITAA 1936 provides a '12 month rule' that, in effect, facilitates an immediate deduction for certain prepaid expenditure⁴ incurred under an 'agreement for planting and tending trees for felling' (subsection 82KZMG(3) of the ITAA 1936).

111. The 12 month rule applies to expenditure for 'seasonally dependent agronomic activities' that will be carried out during the establishment period of a particular planting of trees (subsection 82KZMG(4) of the ITAA 1936). Seasonally dependent agronomic activities are explained in Taxation Determination TD 2003/12.

112. Whilst the establishment period itself may exceed 12 months, each seasonally dependent agronomic activity must be completed within 12 months of commencement of its eligible service period (as defined in subsection 82KZL(1) of the ITAA 1936), and by the end of the income year following the 'expenditure year' (see subsections 82KZMG(1) and (2) of the ITAA 1936).

113. Under the LMA each Grower incurs an Establishment Services fee of \$3,135 per Woodlot, or \$2,821.50 for Growers in this Project who initially invested in any of the Great Southern Plantations 1997 and 1998 Projects, for 'seasonally dependent agronomic activities' that will be carried out during the 'establishment period' of the Trees.

114. The expenditure for 'seasonally dependent agronomic activities' meets all other requirements of section 82KZMG of the ITAA 1936 and, therefore, other than where section 82KZMGA of the ITAA 1936 applies (see paragraphs 115 to 117 of this Ruling), a deduction is allowable in the income year ended 30 June 2008 for the full amount of expenditure incurred by the Grower for the Establishment Services fee.

⁴ The expenditure must be incurred on or before 30 June 2008 (subsection 82KZMG(2) of the ITAA 1936).

‘CGT event’ within 4 years for Growers who are initial participants***Section 82KZMGA***

115. A Grower who is an initial participant in the Project cannot deduct an amount that meets the requirements of section 82KZMG of the ITAA 1936 if a ‘CGT event’ happens in relation to the Grower’s interest within 4 years of 30 June 2008 (subsection 82KZMGA(1) of the ITAA 1936). In the Project, only the Application Price payable in respect to the provision of Establishment Services meets the requirements of section 82KZMG of the ITAA 1936. Accordingly, the deduction of \$3,135 per ‘interest’ for the Establishment Services fee, or \$2,821.50 for Growers in this Project who initially invested in any of the Great Southern Plantations 1997 and 1998 Projects, will not be allowable if a ‘CGT event’ happens to the Grower’s interest within the 4 year period.

116. Where subsection 82KZMGA(1) of the ITAA 1936 applies, the Commissioner may amend any affected Grower’s assessment within 2 years after the end of the income year in which the ‘CGT event’ happens. The Commissioner’s power to amend in these circumstances applies despite section 170 of the ITAA 1936 (subsection 82KZMGA(2) of the ITAA 1936).

117. A Grower whose deduction for the Establishment Services fee is disallowed because of section 82KZMGA of the ITAA 1936 is still required to include in their assessable income either the market value of the interest at the time of the ‘CGT event’, or the decrease in the market value of the interest as a result of the ‘CGT event’ (section 82KZMGB of the ITAA 1936).

Assessable income from ‘CGT events’ for Growers who are initial participants***Sections 6-10, 10-5 and 118-20 of the ITAA 1997 and section 82KZMGB of the ITAA 1936***

118. Section 6-10 of the ITAA 1997 includes in assessable income amounts that do not constitute ordinary income. These amounts, called statutory income, are listed in the table in section 10-5 of the ITAA 1997 and include amounts that are included in the assessable income of a Grower by section 82KZMGB of the ITAA 1936.

Section 82KZMGB

119. Where a ‘CGT event’ (other than for a ‘CGT event’ in respect of a thinning)⁵ happens to an interest held by a Grower who is an initial participant in the Project, section 82KZMGB of the ITAA 1936 includes an amount in the assessable income of the Grower if:

- the Grower can deduct or has deducted the Establishment Services fee; and

⁵ A thinning of the trees includes a selective harvest of immature trees to facilitate better outcomes at harvest. A thinning differs from a clear fell of a percentage of mature trees which may occur over two or more income years.

- subsection 82KZMG(1) of the ITAA 1936 applies to the timing of the deduction of the Establishment Services fee (or would apply if section 82KZMGA of the ITAA 1936 were disregarded – see above).

Market value rule applies to ‘CGT events’

120. If, as a result of the ‘CGT event’ the Grower either:

- no longer holds the interest; or
- otherwise – where the Grower continues to hold the ‘forestry interest’ but there is a decrease in the market value of the interest,

then the market value of the interest at the time of the event, or the decrease in market value of the interest as a result of the event, is included in the assessable income of the Grower (subsection 82KZMGB(2) of the ITAA 1936). A market value rule applies rather than the amount of money actually received from the CGT event (subsection 82KZMGB(3) of the ITAA 1936). However, the market value and the actual amount of money received may be the same.

121. The market value amount included in the assessable income of a Grower is the value of the interest just before the ‘CGT event’, or where the Grower continues to hold their interest after the ‘CGT event’, the amount by which the market value of the interest is reduced by the ‘CGT event’ (subsection 82KZMGB(2) of the ITAA 1936).

122. This provision will apply where the interest is sold, is extinguished, or ceases, and will include ‘CGT events’ such as a full or partial sale of the interest or from a full or partial clear-fell harvest of the trees grown under the Project.

Anti-overlap provisions

Section 118-20

123. Generally, where as a result of a ‘CGT event’ a capital gain would otherwise be included in a taxpayer’s assessable income, section 118-20 will apply to reduce the capital gain if, because of the event, a provision of the income tax law other than the CGT provisions includes an amount in the taxpayer’s assessable income.

124. In the case of interests held by Growers who are initial participants in the Project the market value, or the reduction in the market value of the interest from a CGT event is included in assessable income by section 6-10 of the ITAA 1997 and section 82KZMGB of the ITAA 1936. Therefore, section 118-20 of the ITAA 1997 will operate to reduce to nil any capital gain that would otherwise be assessable under the CGT provisions in Part 3-1 of the ITAA 1997.

Borrowing cost

Section 25-25

125. A deduction is allowable for expenditure incurred by a Grower in borrowing money to the extent that the borrowed money is used for the purpose of producing assessable income (subsection 25-25(1)).

126. In the Project the Loan Establishment and Loan administration fees payable to GSMAL or the Preferred Financier are incurred to borrow money that is used or is to be used solely for income producing purposes during each income year over the term of the loan.

127. Borrowing expenses of \$100 or less are deductible in the year in which they are incurred (subsection 25-25(6)). Where the amount exceeds \$100, the deduction for the borrowing expense is spread over the period of the loan or 5 years, whichever is the shorter (subsection 25-25(4)).

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

128. 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 2021, the Commissioner has applied the principles set out in Taxation Ruling TR 2007/6 Income tax: non-commercial business losses: Commissioner's discretion. Based on the evidence supplied, the Commissioner has determined that for those income years:

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

129. 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.

130. 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

131. 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

132. 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).

133. The Great Southern 2008 Renewable Fibre Project will be a 'scheme' and a Grower will obtain a 'tax benefit' from entering into the 'scheme', in the form of tax deductions for the amounts detailed at paragraphs 26 and 30 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.

134. Growers to whom this Ruling applies will derive assessable income from holding or disposing of their Woodlot in the Project. 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 Growers will enter into the scheme for the dominant purpose of obtaining a tax benefit.

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations

TR 97/7; TR 97/11; TR 98/22;
TR 2000/8; TR 2007/6; TD 2003/12

Subject references:

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

Legislative references:

- ITAA 1936 82KL
- ITAA 1936 Pt III Div 3 Subdiv H
- ITAA 1936 82KZL
- ITAA 1936 82KZLA
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZM
- ITAA 1936 82KZMA
- ITAA 1936 82KZMB
- ITAA 1936 82KZMC
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- ITAA 1936 Pt III Div 6
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- ITAA 1936 170
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1936 318
- ITAA 1997 6-10
- ITAA 1997 8-1
- ITAA 1997 10-5
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- ITAA 1997 35-55
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- ITAA 1997 Pt 3-1
- ITAA 1997 118-20
- ITAA 1997 328-110
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- Commissioner of Taxation v. Lau (1984) 6 FCR 202; 84 ATC 4929; (1984) 16 ATR 55

ATO references

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