


# ***CR 2016/64 - Goods and services tax: liquidation - Great Southern Plantation and Gunns Plantations Limited Woodlot Schemes***

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## Class Ruling

# Goods and services tax: liquidation – Great Southern Plantation and Gunns Plantations Limited Woodlot Schemes

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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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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.

## What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

### Relevant provisions

2. The relevant provisions dealt with in this Ruling are:
- section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)
  - section 9-10 of the GST Act, and
  - section 9-15 of the GST Act.

Unless otherwise stated, all legislative references are to the GST Act.

## Class of entities

3. The class of entities to which this Ruling applies is:

### Growers

Entities who:

- were accepted to participate in one of the following registered managed investment schemes (MISs):
  - (i) Great Southern Plantations (referred to as the 'GSP Schemes'):
    - Great Southern Plantations 1998
    - Great Southern Plantations 1999
    - Great Southern Plantations 2000
    - Great Southern Plantations 2001
    - Great Southern Plantations 2002
    - Great Southern Plantations 2003
    - Great Southern Plantations 2004
    - Great Southern Plantations 2005
    - Great Southern Plantations 2006
  - (ii) Gunns Plantations Woodlot Projects (referred to as the 'GPLW Projects'):
    - Gunns Plantations Woodlot Project 2002
    - Gunns Plantations Woodlot Project 2003
    - Gunns Plantations Woodlot Project 2004
    - Gunns Plantations Woodlot Project 2005
    - Gunns Plantations Woodlot Project 2006
    - Gunns Plantations Woodlot Project 2008
    - Gunns Plantations Woodlot Project 2009
- executed a 'Land and Management Agreement' / 'Management Agreement' with either Great Southern Managers Australia Limited or Gunns Plantation Limited, and
- are entitled to a distribution from the Court approved amount of the 'Sale Proceeds' allocated to their GSP Scheme or GPLW Project (less the payment of Project costs) (referred to as 'Net Liquidation Sale Proceeds') arising from one of the following Court approved 'Sale Agreement' transactions:
  - Asset Sale Agreement
  - Business Sale Agreement
  - GSP Third Party Landowner Agreements
  - Gunns Third Party Landowner Agreements.

**Qualifications**

4. The Commissioner makes this Ruling based on the precise schemes identified in this Ruling.
5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 9 to 33 of this Ruling.
6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:
  - this 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 Ruling may be withdrawn or modified.

**Date of effect**

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7. This Ruling applies from 1 July 2013. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

**Scheme**

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8. The following description of the scheme is based on information provided by the applicant.

**Description****Overview**

9. Gunns Plantation Limited (Receivers and Managers Appointed)(Liquidators Appointed) ('GPL (LA)') as the responsible entity ('RE') for the GSP Schemes and GPLW Projects (collectively referred to as 'Schemes') is in liquidation, and therefore the Schemes are unable to continue to be operated. In winding up the Schemes, the Liquidators of GPL (LA) have completed (or are in the process of negotiating) a number of 'Sale Agreements' to sell the relevant Scheme Assets (predominantly the right, title and interest in the standing 'timber' ('Trees')).

10. The 'Sale Agreements' and the allocation of the relevant Sale Proceeds to each Scheme have been approved by the Court. As Scheme Members, Growers will be entitled to a distribution from the pool of the Net Liquidation Sale Proceeds attributable to their Scheme.

## *GSP Schemes*

11. The GSP Schemes comprises nine registered MISs<sup>1</sup> initially established and operated by Great Southern Managers Australia Limited (GSMAL), as the appointed RE under the Constitution that governs each GSP Scheme. In 2009, Gunns Plantations Limited (GPL) replaced GSMAL as the appointed RE for each of the GSP Schemes.

12. The GSP Schemes provided Growers with the opportunity to invest in hardwood timber plantations primarily located in Western Australia, Victoria, South Australia and Queensland.

## *GPLW Projects*

13. The GPLW Projects comprises seven registered MISs established and operated by GPL, as the RE appointed under the Constitution that governs each GPLW Project. The GPLW Projects provided Growers the opportunity to invest in Eucalyptus or Radiata Pine wood on woodlots located in Tasmania and the Southern Highlands region of New South Wales.

## **Project Documents**

14. Relevantly, the documents for the Schemes ('Project Documents') include the:

- Scheme Constitution;
- Scheme Agreements:
  - Land and Management Agreement / Management Agreement
  - Land Interest (Sub-Lease/Grower Lease, Sub-Forestry Right/Grower Forestry Right).

15. As there is no relevant material difference between the GSP Schemes and GPLW Projects in terms of how they were established and operated, the Project Documents relating to the Great Southern Plantation 2005 Scheme ('GSP 2005 Scheme') are referred to for description purposes.

## ***GSP 2005 Scheme***

### *Constitution*

16. Relevantly, the terms of the GSP 2005 Scheme 'Constitution' provide for:

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<sup>1</sup> Being schemes that have the features of a 'managed investment scheme' as defined by section 9 of the *Corporations Act 2001* (Corporations Act).

- the creation of an 'Application Fund' and a 'Proceeds Fund' (clause 3.3)
- the rules for entering into an 'Agreement' (clause 4), being a 'Land and Management Agreement' (clause 6.2) and a 'Land Interest' (clauses 6.3 and 6.4), which are executed by the Applicants according to the power of attorney granted to GSMAL by the Applicant in the Application (clause 6.5)
- GSMAL to have all the powers of a natural person and all the powers that are reasonably necessary for it to carry out its functions and duties under the 'Constitution' (clause 13.2)
- the rules surrounding the distribution of 'Proceeds Funds' (clause 32), and
- the rules for the termination of the GSP Scheme and 'Agreements' (clauses 36 and 37).

#### *Land and Management Agreement<sup>2</sup>*

17. Upon sufficient subscriptions being reached, GSMAL used its power of attorney to execute the *Land and Management Agreement*. Under this agreement (entered into by GSMAL as the *Landholder*, GSMAL as RE, and the named Grower):

- GSMAL as RE is required to determine the Grower's actual *Woodlots* by determining the plantation upon which the *Woodlots* will be situated (clause 2.1)
- GSMAL as *Landholder* agrees to grant a lease of the determined *Woodlots* within 9 months of the commencement of the *Land and Management Agreement*, subject to the terms set out in the *Land Interest* (clause 2.2)
- A *Non-Electing Grower* appoints GSMAL as RE to perform:
  - the *Establishment Services and Services* (clause 5.1)
  - the *Harvesting of the Forest Produce* (clause 7)
  - the sale of *Forest Produce* as agent for which the payment of the *Gross Proceeds of Sale* into the *Proceeds Fund* will be taken to be in full satisfaction and discharge of the Grower's rights in relation to the *Forest Produce* (clause 10.1).

<sup>2</sup> All italicised Land and Management Agreement terms refer to terms defined to have meaning given by clause 1.1 of the Land and Management Agreement.

*Land Interest*<sup>3</sup>

18. As required by the terms of the *Land and Management Agreement*, and within 9 months of entering into that agreement, GSMAL as *Landholder* grants the Grower a *Lease* of, or a *Forestry Right* over, the determined *Woodlots* upon the terms and conditions set out in the *Land Interest* (clause 2.2).

19. Relevantly, under a *Land Interest* involving the *Lease* of determined *Woodlots* (also referred to as a Sub-Lease):

- a *Non-Electing Grower*:
  - is granted a lease of the *Woodlot* together with all improvements thereon and the *Fixtures* for the *Term* (clause 2.1)
  - is required to pay rent in an amount equal to 2.5% of the *Net Proceeds of Sale* (clause 3.1)
  - is required to perform or observe the listed covenants (clause 5), and
  - at all times has full right, title and interest in the *Forest Produce* (clause 11.3),
- GSMAL as the *Landholder*:
  - has reservation rights (clause 2.4)
  - is deemed to have acquired the Grower's interest in *Forest Produce* upon termination of the *Lease* for breach (clause 9.1(c)), and
  - is obliged to perform or observe the listed *Landholder* covenants (clause 10).

**Liquidation of the Schemes**

20. The Gunns Group of companies (including GPL) went into voluntary administration on 25 September 2012, and subsequently placed in liquidation on 5 March 2013. The resulting liquidation of GPL precipitated the winding up of the Schemes as the purpose of each Scheme could no longer be accomplished.

21. In realising the Scheme Assets, the Liquidators entered into negotiations with the owners of the 'Plantation Land' (being the land upon which GPL (LA) conducted the Schemes) for the sale of the right, title and interest in the 'Trees' situated on the 'Plantation Land'.

22. As the establishment and operation of each Scheme created rights in favour of both GPL (LA) and the Growers in relation to the 'Plantation Land', these rights had to be surrendered and

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<sup>3</sup> All italicised *Land Interest* terms refer to terms defined by clause 1.1(a) to have meaning given by clause 1.1 of the *Land and Management Agreement*.

extinguished in order for GPL (LA) to provide the respective 'Landowners' with clear title in the 'Trees'.

23. The Liquidators obtained Court approval on 31 May 2013 to procure GPL (LA) to amend the Schemes' Constitutions to provide it with the irrevocable power (as the agent, representative and attorney of the Grower) to unilaterally surrender and extinguish the Growers rights.

24. Through the unilateral exercise of this power, GPL (LA) entered into two major conditional 'Sale Agreements' with 'Landowners', namely:

- an Asset Sale Agreement (ASA) with a Buyer on 25 October 2013 for the sale of the right, title and interest in the Trees situated on this Buyer's Land (being the dominant part of the 'Plantation Land' upon which the GSP Schemes were conducted)
- an agreement with Gunns Limited in relation to the surrender of leases and grower rights which facilitated the Business Sale Agreement (BSA) on 24 April 2014 between Gunns Limited and other entities within the Gunns Group (collectively referred to as Gunns) and another Buyer, for the sale of the right, title and interest in the Trees situated on Gunns Land (being the dominant part of the 'Plantation Land' upon which the GPLW Projects were conducted).

25. In respect of the remaining part of the 'Plantation Land' used to conduct the Schemes, GPL (LA) has entered into / proposes to enter into a number of conditional 'Sale Agreements' with 'Third Party Landowners' (GSP / Gunns Third Party Landowner Agreements) for the sale of the right, title and interest in the 'Trees' situated on the Third Party Landowners' Land. The terms and conditions of these 'Sale Agreements' are essentially the same as those covered in the ASA.

26. While there are distinguishing features between the ASA and BSA<sup>4</sup>, these differences are not considered material. Consequently, for description purposes, the relevant ASA terms and conditions are referred to in this Ruling.

### **ASA Terms and Conditions<sup>5</sup>**

27. Relevantly, the terms and conditions of the ASA provide that:

- the parties to the agreement are:

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<sup>4</sup> Notably that the BSA involves a joint sale of GPLW Project Assets (Trees) together with Gunns Group's Forestry assets located in Tasmania. From the total sale proceeds of \$324.7 million, \$40,565,922 (exclusive of GST) was allocated to the sale of the Trees.

<sup>5</sup> All italicised ASA terms refer to terms defined to have meaning given in clause 1.1 of the ASA.



- GPL (LA) ('*Seller*'), and
- a named '*Buyer*'
- the contemplated sale and purchase (clause 3), consideration (clause 5) and *Completion* (clause 7) are not binding on the parties and *Completion* will not proceed unless, amongst the satisfaction of the other listed conditions precedent, the *Liquidators* obtain court orders that the *Liquidators* are justified in procuring the *Seller* to exercise its Constitutional powers to terminate, relinquish or surrender the *Project Documents* of the Schemes so as to allow *Completion* to occur (clause 2.1(b))
- amongst other requirements, the *Seller* agrees to sell and Buyer agrees to buy all of the *Seller's* and the *Growers'* rights, title and interest in the *Trees* free from all *Grower Rights* (clause 3.1(b)), with effect on and from *Completion* (clause 3.1(c)) and on the terms and conditions of the ASA (clause 3.1(d))
- at *Completion* the Buyer must pay the '*Purchase Price*' (\$38,500,000) to the *Seller* (clause 5.1)
- on or before *Completion*, amongst other things, the *Seller* must deliver to the Buyer, substantially in the form set-out in Part B to Annexure B of the ASA, a *Surrender and release of Grower Leases and Instruments* (for each GSP Scheme) duly executed by GPL (LA) in its RE capacity and as agent, representative and attorney for each *Grower* (clauses 7.2(b)) and 9)
- *Completion* is conditional upon the simultaneous settlement of the parties' obligations under clause 7 (clause 10.1)
- In respect of GST<sup>6</sup>:
  - except where express provision is made to the contrary, the *consideration* payable by a party for a taxable supply made by the other party pursuant to this agreement (other than under clause 16) represents the value of the taxable supply and is expressed exclusive of GST (clause 16.2)
  - notwithstanding any other ASA provision, if a party (the '*supplier*') makes a taxable supply in connection with the ASA, then the party liable to pay for the taxable supply (the '*recipient*') must also pay, at the same time and in the same manner as the GST exclusive consideration is otherwise payable, an additional amount equal

<sup>6</sup> Where, as per clause 16.1 of the ASA, the italicised terms have the same meaning given by section 195-1 of the GST Act.

to the amount of any GST payable in respect of the taxable supply (clause 16.3).

### **Surrender and Release Deed (Grower Lease and Instrument) (Deed)**<sup>7</sup>

28. Relevantly, the terms of the Deed for each Scheme provide that:

- the parties to the Deed are:
  - GPL (LA) as agent, representative and attorney of each Grower ('GPL'), and
  - GPL (LA) in its capacity as RE or manager of the Schemes ('RE')
- the RE, in the exercise of the power granted to the RE under the Constitutions, and in accordance with the *Directions*, surrenders and releases all of the *Growers'* right, title and interest in, arising under, or in connection with the *Grower Leases* in respect of the *Plantation Land* (clause 2.1)
- the RE acknowledges and agrees that, with effect on and from the surrender and release pursuant to clause 2.1, the *Grower Rights* of each *Grower* are and will be surrendered, relinquished and released (clause 2.2)
- with effect on and from the surrender pursuant to clause 2.1:
  - each of GPL and the RE accept the surrender and release of the *Grower Leases* (clause 2.3(a))
  - GPL irrevocably releases the RE and the *Growers* from all covenants, undertaking and other obligations under the *Grower Leases* (clause 2.3(b)), and
  - each of GPL and the RE acknowledges that all right, title and interest in the *Grower Rights* vests in GPL<sup>8</sup> (clause 2.3(c)).

### **Court approval of the Sale Agreements and Sale Proceeds Allocation methods**

29. In satisfaction of the condition precedent stipulated by clause 2.1(b) of the ASA, the Liquidators obtained Court approval for the ASA on 16 December 2013. Furthermore, on 5 June 2014 the

<sup>7</sup> All italicised Deed terms refer to terms defined to have meaning given in clause 1.1 of the Deed.

<sup>8</sup> The applicant advises that the clause 2.3(c) reference to 'GPL' in the Deed was a typographical error and should have referenced the 'RE'.

Court approved the method to allocate the net amount of the 'Sale Proceeds' to each GSP Scheme.

30. In respect of the other 'Sale Agreements':

- on 21 May 2014, the Court approved the GSP and Gunns Third Party Agreements together with the respective methods of allocating the net amount Sale Proceeds to the relevant Schemes
- on 11 August 2014, the Court approved the BSA, and on 18 August 2015, the court approved the method to allocate the net amount of sale proceeds to each GPLW Project.

31. In each case, the net amount of Sale Proceeds allocated to each Scheme is further reduced by the costs attributable to each Scheme to leave a 'Net Liquidation Sale Proceeds amount'.

32. Growers who are members of a Scheme have a right as against GPL (LA) to a distribution from the relevant Net Liquidation Sale Proceeds amount equal to their proportional interest in the Scheme.

## Ruling

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### Growers

33. Growers are not making supplies for consideration for the purposes of paragraph 9-5(a) when GPL (LA) in its RE capacity:

- disposes of 'Scheme Assets' (predominantly the right, title and interest in 'Trees' standing on leased 'Plantation Land') in accordance with the terms and conditions of a 'Sale Agreement', and
- makes distributions from the pool of 'Net Liquidation Sale Proceeds' (resulting from a 'Sale Agreement') to Growers in discharge of their payment entitlement arising from their membership / participation in a Scheme.

34. As a result, Growers are not making taxable supplies under section 9-5 and therefore have no liability to pay GST under section 9-40 in respect of these transactions.

## Appendix 1 – Explanation

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**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.*

35. Subsection 7-1(1) provides that GST is payable on taxable supplies. An entity makes a taxable supply where the requirements of section 9-5 are met.

36. An essential characteristic of a taxable supply is the test imposed by paragraph 9-5(a) which requires that a 'supply' be made for 'consideration'. Therefore, in satisfying this test, an entity needs to identify from a given transaction that:

- it is making a 'supply'
- there is 'consideration', and
- there is a 'sufficient nexus' between the 'supply' that it makes and the 'consideration'.

### Making a Supply

37. For GST purposes, a 'supply' is broadly defined in subsection 9-10(1) as 'any form of supply whatsoever'. In terms of defining what constitutes the 'making of a supply', the High Court observed in *Commissioner of Taxation v. MBI Properties Pty Ltd*<sup>9</sup> that:

34. The concept of supply employed in the GST Act is of wide import. Absent modification of the general operation of the GST Act through application of a special rule, there is a supply whenever one entity (the supplier) provides something of value to another entity (the recipient)...

### Consideration

38. Under subsection 9-15(1), 'consideration' includes any payment in connection with, in response to or for the inducement of a 'supply'.

### Sufficient Nexus

39. In determining whether there is a 'sufficient nexus' between a 'supply' and 'consideration', the Commissioner identified in Goods and Services Tax Ruling GSTR 2006/9<sup>10</sup> that:

- the test is an objective one

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<sup>9</sup> [2014] HCA 49 at 34 (MBI Properties).

<sup>10</sup> Goods and Services Tax Ruling GSTR 2006/9 *Goods and services tax: supplies*, at paragraph 180.

- regard needs to be had to the true character of the transaction, and
- an arrangement between parties will be characterised not merely by the description that the parties give to the arrangement, but by looking at all of the transactions entered into and the circumstances in which the transactions are made.

40. Further, in identifying the character of the connection required by paragraph 9-5(a), the Commissioner states at paragraph 180B of GSTR 2006/9 that:

..., the word 'for' ensures that not every connection between supply and consideration meets the requirements for a taxable supply. That is, merely having any form of connection of any character between a supply and payment of consideration is insufficient to constitute a taxable supply. (Footnote omitted)

### **'Forest Produce' sale transactions**

41. Scheme Assets predominantly consist of the 'Head-Leases' or 'Forestry Rights' over the 'Plantation Lands' (granted by the 'Landowners') and the 'Trees' grown on those Lands (which GPL (LA) as the RE of each Scheme holds on trust for the benefit of Scheme Members). Accordingly, the value of the 'Plantation Land' for the duration of the 'Planting Period' is naturally enhanced by the value of the standing 'Trees'.

42. However, the essence of each Scheme lies in the nature of the Agreements ('Land and Management Agreement' / 'Management Agreement' and 'Land Interest' documents) that the RE enters into with each Scheme Member (Grower).

43. Under these 'Agreements', entitlements are created in favour of the Grower in the form of:

- the right to the exclusive use of 'Woodlots' (via the grant of a Sub-Lease or Sub-Forestry Right of 'Plantation Land') to manage, cultivate and work the 'Woodlots' for the purposes of long term silviculture
- the full right, title and interest in the 'Trees' grown on the 'Woodlots'
- the right to the performance of services by the RE necessary for the Grower to fulfil their 'Woodlot' Sub-Lease or Sub-Forestry Right 'permitted use' covenants.

44. By means of acquiring these rights as a participant in a Scheme, it is generally accepted for GST purposes that a Grower will satisfy the registration requirements imposed by section 23-10 being an 'entity' (within the meaning of section 184) that is 'carrying on an enterprise (within the meaning of section 9-20).

45. In other words, through the acquisition of 'Woodlot' interests and the 'Services' performed by GPL (LA), each Grower is viewed as carrying on an enterprise of commercial silviculture activities. Furthermore, the carrying on of this Grower enterprise is separate from the enterprise that GPL (LA) carries on in relation to the operation of each Scheme.

46. On this basis, in the normal course of the operation of a Scheme, it follows that by exercising its rights in relation to the harvesting and sale of its 'Woodlot Trees' ('Forest Produce'), each Grower is providing something of value to a recipient in the form of 'Forest Produce' which constitutes the 'making of a supply'. Furthermore, the making of such a supply would have a 'sufficient nexus' with a payment ('consideration') being the Grower's share of the net amount of Sale Proceeds that is deposited into the Proceeds Fund.

47. Therefore, in relation to the 'Forest Produce' sale transactions contemplated by the terms and conditions of the 'Project Documents', each Grower would satisfy the requirements of paragraph 9-5(a). In turn, this would result in the Grower making a 'taxable supply' of the 'Forest Produce' grown on their Woodlots under section 9-5 (where the further requirements of section 9-5 are met) and being liable for the GST payable under section 9-40.

### **'Sale Agreement' Transactions**

48. By contrast, the circumstances surrounding the entry into the Sale Agreements (as evidenced by the Gunns Group going into liquidation and the various Court Orders) and the facts of the 'Sale Agreements' (as evidenced by the example of the ASA terms and conditions) demonstrate that the Growers are not 'making a supply' of their right, title and interest in the 'Trees' ('Forest Produce') to either the Buyer (in each case) or GPL (LA) in its RE capacity as part of these transactions.<sup>11</sup>

49. In particular, the circumstances surrounding the entry into the 'Sale Agreements' establish that:

- the liquidation of the Gunns Group (including GPL) necessitated the winding up of the Schemes and the requirement for the Liquidators to realise Scheme Assets
- the Liquidators determined that a sale of the Scheme Assets to the respective owners of the 'Plantation Land' (Landowners) was in the best interests of the Growers, and that the best sales outcome depended upon the Landowners obtaining clear title to the Scheme Assets on settlement

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<sup>11</sup> The 'Sale Agreement' transactions can be differentiated from the 'Forest Produce' sale transactions in paragraphs 42 to 48 of this Ruling.

- in view of the fact that the Growers acquired rights ('Grower Rights') over the Scheme Assets as part of the establishment and operation of each Scheme, the provision of clear title to the Scheme Assets required a solution that avoided the costly process of entering into negotiations with each Grower for the termination of their 'Grower Rights'
- the Liquidators solved this issue by obtaining Court approval that it was justified in procuring GPL (LA) in its RE capacity to amend the Scheme Constitutions to provide it with the unilateral power to terminate the 'Grower Rights'.

50. The exercise of these 'powers' found expression in the form of the terms and conditions of the 'Sale Agreements' entered into between GPL (LA) in its RE capacity and the respective 'Landowners'.

51. In particular, and with regard to the example of the ASA entered into between GPL (LA) in its capacity as RE of the GSP Schemes (Seller) and the Buyer (being the owner of the GSP 'Plantation Land'), the following facts are established:

- in selling all of the Seller's and the Growers' rights, title and interest in the 'Trees', the Seller is obliged (amongst other things) to do so free from all 'Grower Rights'<sup>12</sup> (clause 3.1(b)) and with effect on and from Completion (clause 3.1(c)).
- GPL (LA) achieved the surrender, release and relinquishment of the 'Grower Rights' by procuring and duly executing 'Surrender and release of Grower Leases and Instruments' (Deeds) in respect of each GSP Scheme (clause 9.1) and delivering the duly executed Deeds on or before Completion (clause 7.2).
- under these Deeds, and in accordance with the Constitutional powers vested in GPL (LA) in its RE capacity and as agent, representative and attorney of each Grower:
  - all of the Growers' right, title and interest in the Grower Leases in respect of the Plantation

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<sup>12</sup> Defined in clause 1.1 of the ASA to mean all of the right, title and interest of a Grower in, arising from or in connection with the Plantation Land (or any part thereof) including:

- (a) any rights they may have under the Grower Leases;
- (b) any fixtures and chattels on the Plantation Land;
- (c) the Trees and any other plantation crop derived from the Grower Leases or Plantation Land, including rights, benefits or credits derived from the Trees; and
- (d) any rights to remove, deal with or otherwise dispose of any of the rights, fixtures, chattels, Trees, benefits or credits referred to in paragraphs (a) to (c) inclusive.

- Land (Sub-Leases of Woodlots) were surrendered and released (clause 2.1)
- the 'Grower Rights' of each Grower were surrendered, relinquished and released (clause 2.2), and
- all right, title and interest in the Grower Rights vested in GPL (LA) in its RE capacity (clause 2.3(c)).

52. From these facts and circumstances it is firstly evident that the process to effect the surrender, release and relinquishment of a Grower's rights, title and interest in the 'Trees' (derived from the Grower's Sub-Lease of Woodlots) is manifestly different from the arrangements contemplated by the terms and conditions of the Project Documents to effect the sale of a Grower's 'Forest Produce'.

53. This difference is borne out by the fact that the 'Sale Agreement' process is entirely being driven by GPL (LA) acting in its RE capacity and in accordance with the irrevocable powers bestowed on it by virtue of the Constitutional amendments.

54. Consequently, it does not follow that a Grower should be viewed as 'making a supply' for the purposes of paragraph 9-5(a) under the terms and conditions of a 'Sale Agreement', because they would ordinarily be viewed as 'making a supply' under the terms and conditions of the 'Project Documents'.

55. It is further evident that the terms and conditions of the 'Sale Agreement' do not impose on Growers any particular obligations in terms of the disposal of their interests in the Trees. This is made clear by reference to the terms of the Deeds. Under these terms, GPL (LA), in accordance with its RE capacity powers, is unilaterally taking action to cede all of the 'Grower Rights' (in respect of a particular Scheme), which has the effect of vesting in it the Growers' rights, title and interest in the Trees.

56. This outcome is achieved under the terms of the Deeds without the Grower providing anything to GPL (LA) in its RE capacity, as the Grower takes no action to cause its legal interests to be transferred or surrendered. Furthermore, the terms of the Deeds do not place the Grower under any obligation to do anything, refrain from doing something or tolerate an act or situation.

57. It follows that the intended effect of these executed Deeds (delivered on Completion) is to momentarily ensure that GPL (LA's) rights, title and interest in the 'Trees' standing on the Buyer's 'Plantation Land' (Scheme Assets) is held free from the 'Growers' Rights', so that GPL (LA) in its RE capacity can discharge its obligations under clause 3 of the ASA. In doing so, subject to the surrender and release of its rights under the 'Head-Leases' / Forestry Right Deeds, it is GPL (LA) in its RE capacity, not each Grower, that is making a taxable supply of the rights, title and interest in the 'Trees' to each Buyer.



## ***GPL (LA) in its RE capacity – not acting as agent for the Growers***

58. For completeness, the Commissioner considers that GPL (LA) in its RE capacity is not acting as the agent of the Growers when it discharges its obligations as a party to a 'Sale Agreement' or as a party to the 'Deeds'. While the Constitution powers bestowed on GPL (LA) in its RE capacity are expressed in agency-like terms, the context of the 'Sale Agreement' transactions informs the view that the exercise of these powers were not intended to effect agency relationships in the ceding of 'Grower Rights'.

## ***Summary***

59. Growers are not making supplies for consideration for the purposes of paragraph 9-5(a) when GPL (LA) in its RE capacity disposes of 'Scheme Assets' to 'Buyers' in accordance with the terms and conditions of a 'Sale Agreement'.

60. As a result Growers are not making taxable supplies under section 9-5 and therefore have no liability to pay GST under section 9-40 in respect of a 'Sale Agreement' transaction.

## **Distribution of Net Liquidation Sale Proceeds to Growers**

61. By virtue of their interest in a particular Scheme, Growers will be entitled to a distribution from the pool of the 'Net Liquidation Sale Proceeds' arising from the completion of the related 'Sale Agreement'.

62. These distribution payments will be made by GPL (LA) to Growers as a consequence of their membership interests and without regard to any further act or entry into an obligation to do anything, refrain from doing something or tolerate an act or situation provided by the Growers.

63. Consequently, Growers will not be making supplies for consideration for the purposes of paragraph 9-5(a) when GPL (LA) in its RE capacity makes a payment to a Grower discharging their entitlement, to a distribution from the pool of the 'Net Liquidation Sale Proceeds'.

64. As a result Growers will not be making taxable supplies under section 9-5 and will therefore have no liability to pay GST under section 9-40 in respect of any such transactions.

## **Appendix 2 – Detailed contents list**

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

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10; GSTR 2006/9;  
CR 2016/19

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