PR 2002/22 - Income tax: Gunns Plantations Woodlot Project 2002

Product Ruling
Income tax: Gunns Plantations Woodlot Project 2002

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Preamble

*The number, subject heading, and the **What this Product Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. Product Ruling PR 1999/95 explains Product Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

No guarantee of commercial success

The Australian Taxation Office (ATO) **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. This will involve a consideration of important issues such as whether projected returns are realistic, the 'track record' of the management, the level of fees in comparison to similar products, how this product fits an existing portfolio, etc. 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 below in the **Ruling** part of this document are available **provided that** the arrangement is carried out in accordance with the information we have been given and have described below in the **Arrangement** part of this document.

If the arrangement is not carried out as described below, participants lose the protection of this Product Ruling. Potential participants may wish to seek assurances from the promoter that the arrangement will be carried out as described in this Product Ruling.

Potential participants should be aware that the ATO will be undertaking review activities to confirm the arrangement has been implemented as described below and to ensure that the participants in the arrangement include in their income tax returns income derived in those future years.

Terms of Use of this Product Ruling

This Product Ruling has been given on the basis that the person(s) who applied for the 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 Ruling.

What this Product Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' identified below apply to the defined class of persons who take part in the arrangement to which this Ruling refers. In this Ruling this arrangement is sometimes referred to as the Gunns Plantations Woodlot Project 2002, or simply as 'the Project'.

Tax laws

2. The tax laws dealt with in this Ruling are:

- Section 6-5 of the *Income Tax Assessment Act 1997* ('ITAA 1997');
- Section 8-1 (ITAA 1997);
- Section 17-5 (ITAA 1997);
- Division 27 (ITAA 1997);
- Division 35 (ITAA 1997);
- Division 328 (ITAA 1997);
- Section 82KL of the *Income Tax Assessment Act 1936* ('ITAA 1936');
- Section 82KZL (ITAA 1936);
- Section 82KZME (ITAA 1936);
- Section 82KZMF (ITAA 1936); and
- Part IVA (ITAA 1936).

Goods and Services Tax

3. In this Ruling all fees and expenditure referred to include 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.

Changes in the Law

4. The Government is currently evaluating further changes to the tax system in response to the Ralph *Review of Business Taxation* and continuing business tax reform is expected to be implemented over a number of years. Although this Ruling deals with the taxation

legislation enacted at the time it was issued, later amendments may impact on this Ruling. Any such changes will take precedence over the application of this Ruling and, to that extent, this Ruling will be superseded.

5. Taxpayers who are considering participating in the Project 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

6. Product Rulings were introduced for the purpose of providing certainty about tax consequences for participants in projects 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 Ruling is issued.

Class of persons

7. The class of persons to whom this Ruling applies is the persons who are more specifically identified in the Ruling part of this Product Ruling and who enter into the arrangement specified below on or after the date this Ruling is made. They will have a purpose of staying in the arrangement until it is completed (i.e., being a party to the relevant Agreements until their term expires) and deriving assessable income from this involvement. In this Ruling these persons are referred to as 'Growers'.

8. The class of persons to whom this Ruling applies does not include persons who intend to terminate their involvement in the arrangement prior to its completion or who otherwise do not intend to derive assessable income from it.

Qualifications

9. The Commissioner rules on the precise arrangement identified in the Ruling. If the arrangement described in the Ruling is materially different from the arrangement that is actually carried out, the Ruling has no binding effect on the Commissioner. The Ruling will be withdrawn or modified.

Date of effect

11. This Ruling applies prospectively from 27 February 2002, the date this Ruling is made. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

12. If a taxpayer has a more favourable private ruling (which is legally binding), the taxpayer can rely on that private ruling if the income year to which it relates has ended or has commenced but not yet ended. However if the arrangement covered by the private ruling has not commenced, and the income year to which it relates has not yet commenced, this Ruling applies to the taxpayer to the extent of the inconsistency only (see Taxation Determination TD 93/34).

Withdrawal

13. This Product Ruling is withdrawn and ceases to have effect after 30 June 2004. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons within the specified class who enter into the arrangement specified below. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the person's involvement in the arrangement.

Arrangement

14. The arrangement that is the subject of this Ruling is described below. This description incorporates the following documents:

- Application for Product Ruling dated 26 November 2001;
- Draft of the Gunns Plantations Woodlot Project 2002 Prospectus dated 26 November 2001;
- Draft **Management Agreement** between Gunns Plantations Limited ('Gunns Plantations' or 'the Responsible Entity') (as the Manager) and the Grower dated 8 February 2002;
- Draft Forestry Right Deed between a Landowner and Gunns Plantations dated 22 November 2001;

- Draft **Lease of Forestry Right** between Gunns Plantations (as the Landlord) and the Grower dated 22 November 2001
- Draft Gunns Plantations Woodlot Project 2002 Constitution;
- Draft **Finance Package** for the Gunns Plantations Woodlot Project 2002, undated, and such other finance arrangements as may be entered into between Gunns Plantations Finance Pty Ltd ('GFPL') and investors on ordinary, commercial and full recourse terms, but do not have any of the features set out in paragraph 33;
- Draft **Woodsale Agreement** between Gunns Plantations (as agent for each Grower) and Gunns Ltd 17 January 2002;
- Draft Custody Agreement between Gunns Limited (as Custodian) and Gunns Plantations; and
- Correspondence received from the Applicant and or the Applicant's representative on 29 January 2002, 4 February 2002, 6 February 2002, 8 February 2002, 11 February 2002 and 18 February 2002.

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

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

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

Overview

17. The arrangement is the Gunns Plantations Woodlot Project 2002.

Location	A number of specified parcels of land in Tasmania
Type of business each participant is carrying on	Commercial growing of *Eucalyptus globulus* (Tasmanian Blue-Gum) and *Eucalyptus nitens* (Shining Gum) trees under one of two options: **Option 1:** Eucalyptus for Pulpwood. **Option 2:** Eucalyptus for Veneer and Pulpwood.
Number of hectares under cultivation	There is a target of 6,000 hectares under the prospectus, however, oversubscriptions may be accepted.
Name used to describe the product	Gunns Plantations Woodlot Project 2002.
Size of the leased area	One hectare
Number of trees per hectare	Minimum average of 1,100
Term of the investment	Option 1: 13 years Option 2: 20 years
Initial cost per hectare	Application Fee of $4,345 (including GST).
Ongoing costs	There will be no fees for ongoing costs such as maintenance or lease rental. These costs will be covered by a percentage of sale proceeds from the thinning in year 9 and from the clear fell in year 13 or 20, depending on which option is chosen. A pruning fee will be payable for Option 2 in years 4 ($714), 6 ($765) and 7 ($816). A fee for sales commission, planting, rental and maintenance will be charged at year 9 (i.e., at the time of thinning) and at the end of the Project, ie at the end of year 13 or 20, depending on which option is chosen. The fee will equal 12% of the sale proceeds from the woodlot.

18. Growers participating in the Project acquire a lease of a Forestry Right by entering into a Lease Agreement with Gunns

Plantations as the Landlord. The Forestry Right will comprise contractual rights in relation to an identifiable area of land called a woodlot. Effectively, the Forestry Right will enable Growers to access the land to establish, maintain and ultimately harvest the woodlot. The Growers will also contract with Gunns Plantations as the Responsible Entity, under a Management Agreement, to have eucalyptus planted on the woodlot for the purpose of eventual felling and sale in approximately 13 or 20 years, depending on which option is chosen.

19. Under the Management Agreement, the Responsible Entity undertakes to ensure that all Establishment Services are provided in relation to each woodlot by 30 June 2002 (cl. 4.1(b)). From 1 June 2002, Gunns Plantations will defer applications for any woodlots where it is reasonably apparent that they will not be able to complete all of the Establishment Services in relation to those woodlots by 30 June 2002 (the "first determined date"). Gunns Plantations will be monitoring on a daily basis its ability to complete the Establishment Services by 30 June 2002. Approximately 1,100 trees per hectare for both options 1 and 2 will be planted in the Spring of 2002 and the Autumn of 2003 for applications accepted on or before 30 June 2002.

20. Applications received from 1 June 2002 which Gunns Plantations determines cannot meet the 30 June 2002 deadline will form part of the applications for the 30 June 2003 year of income. Gunns Plantations will also accept new applications from 1 July 2002 until expiry of the Prospectus (being 13 months after the Prospectus is lodged with ASIC). Under the Management Agreement, the Responsible Entity will undertake to ensure that all Establishment Services are provided in relation to each woodlot by 30 June 2003 (cl. 4.1(b)). Approximately 1,100 trees per hectare for both options 1 and 2 will be planted in the Autumn or Spring of 2003 for applications accepted on or after 1 July 2002.

21. Under the prospectus, Gunns Plantations will offer woodlots of one hectare for an initial cost of $4,345 (including GST). Gunns Plantations has the right to accept oversubscriptions. There is no minimum amount that must be raised under the Prospectus. The land for the Project has been leased by Gunns Plantations either from Gunns Limited or a third party land owner. Gunns Plantations is a wholly owned subsidiary of Gunns Limited.

Lease of Forestry Right and Management Agreement

22. Under the Lease of Forestry Right and Management Agreement, Growers enter into a 13 or 25 year lease for one or more Forestry Rights and contract with Gunns Plantations to establish and maintain the plantation until maturity. Clause 3 of the Lease of Forestry Right agreement grants a lease of a Forestry Right to the

Grower. Growers are not entitled to assign their rights under the Lease and Management Agreements, except in certain circumstances (cl 26.3 of the Management Agreement). Statements of interest are issued to Growers. Gunns Plantations keeps a register of Growers. Growers execute an Application and Power of Attorney Form enabling Gunns Plantations to act on their behalf as required.

23. Growers may elect to harvest their own timber produce (cl 19 of the Management Agreement), or have Gunns Plantations, acting as their agent, sell the timber produce on the Grower's behalf (cl 11.1 of the Management Agreement), for the prevailing market price to Gunns Limited (cl 5 of the Wood Sale Agreement). Gunns Limited will not be obliged to purchase the timber produce in the event of a material adverse change in Gunns Limited's level of committed sales. In the event of such material adverse change, Gunns plantations will be authorised to sell the timber produce to another party on similar terms (cl 10(b)). In accordance with the Management Agreement and the Constitution, each Non-Electing Grower is entitled to a distribution of that Grower's proportional interest in the Wood Sales Proceeds for the option(s) they have chosen less costs and any unpaid expenses applicable to that particular Grower.

Establishment and maintenance of the plantation

24. Gunns Plantations has the capacity and resources to carry out the establishment program prior to 30 June 2002 for applications received on or before the first determined date. During the period commencing 1 July 2002, Gunns Plantations will be responsible for planting eucalyptus on the woodlots, for applications accepted prior to, or following, the first determined date, as well as for applications received on or after 1 July 2002. From this period on, Gunns Plantations will maintain the trees in accordance with good silvicultural practice. The services to be provided by Gunns Plantations over the term of the Project are defined in clauses 4, 5 and 6 of the Management Agreement. Gunns Plantations will also be responsible for the maintenance of access roads and fire breaks, and is required to keep the Woodlots free from vermin.

25. Gunns Plantations will also be responsible for arranging the sale of the timber produce (clause 11.1 of the Management Agreement). The time for harvest will vary depending on the option selected and will be determined according to set criteria including growth rates, market demand, and volume of wood on the Woodlot (clauses 7 and 9 of the Management Agreement). Gunns Plantations will provide ongoing reports to the Growers on the progress of the plantation.

26. Gunns Plantations will ensure that the gross Wood Sale Proceeds of each option are paid into the relevant portion of the Fund.

The Non-Electing Growers' proportional shares of the costs of felling and costs of sale, will be paid to Gunns Plantations from the gross Wood Sale Proceeds. Gunns Plantations will receive from the Wood Proceeds Portion an amount equal to 12% of the gross Wood Sale Proceeds, as sales commission, planting, rental and maintenance. This percentage has been calculated to ensure that Gunns Plantations makes a profit in providing these services. The balance of the Wood Sale Proceeds for each option will be held in the Fund on trust for the Growers.

27. The independent forester considers that the Gunns Plantations Woodlot Project 2002 has the potential to meet its financial objectives if the intensive forestry regimes proposed for the two options are followed and appropriate marketing arrangements are put in place.

Fees

28. The Application Fee payable under the Management Agreement is $4,345 (including GST). There will be no ongoing fees for rent or maintenance charges. A single fee for sales commission, planting, lease and maintenance will be payable at year 9 (i.e., at the time of thinning) as well as at the end of the 13 or 20 year option period. The fee will equal 12% of the sale proceeds from the woodlot.

29. The Application Fee will be banked into the Applications Portion reflecting the planting options chosen. These monies will be released to Gunns Plantations when certain specified criteria have been met (cls 8 and 9 of the Constitution).

Finance

30. Growers can choose to fund their investment themselves, borrow from an unassociated lending body or borrow through a finance arrangement offered by Gunns Finance Pty Ltd ("GFPL") (a lender associated with the Responsible Entity).

31. The finance to be offered by GFPL will be on commercial terms. Interest will be calculated daily and payable monthly. Growers may borrow up to 80% of the Application Fee, that is $3476 per Woodlot, over a term of either 3, 4 or 5 years. Growers pay an establishment fee of $150 and will incur an interest rate of 10% per annum on the borrowed funds. The Growers will grant a legal mortgage over all their rights and interests under the Management Agreement and the Lease Agreement in favour of GFPL. Repayments will be made by direct debit and monthly in arrears. An additional 2% per annum will be charged daily on any amounts due and unpaid. Growers who borrow over a 5 year term may elect to borrow 90 % of the Application Fee and pay a further 20% "balloon payment" on or

before 30 September 2002. Interest at 10% per annum will accrue from 1 July 2002 until the "balloon payment" is made and will be added to the outstanding loan amount. Principal and interest repayments commence on the last day of October 2002.

32. Growers will also be entitled to elect under the Finance Package to enter into a non-interest bearing loan with GFPL. Growers who enter into this finance arrangement will be required to pay a 10% deposit and make 12 equal monthly instalments for the balance.

33. 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 or the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;
- the loan or rate of interest is non-arm's length;
- repayments of the principal and payments of interest are linked to the derivation of income from the Project;
- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender or any associate of the lender;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- entities associated with the Project other than Gunns Finance Pty Ltd are involved or become involved in the provision of finance to Growers for the Project.

Ruling

Application of this Ruling

34. This Ruling applies only to Growers who are accepted to participate in the Project on or before 31 March 2003 and who have executed a Management Agreement and a Lease Agreement on or before that date. The Grower's participation in the Project must constitute the carrying on of a business of primary production. 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. **Growers who elect to harvest their own timber produce will not be included in the class of persons to whom this Ruling applies.**

The Simplified Tax System ('STS')

Division 328

35. For a Grower participating in the Project, the recognition of income and the timing of tax deductions is different depending on whether the Grower is an 'STS taxpayer'. To be an 'STS taxpayer' a Grower:

- must be eligible to be an 'STS taxpayer'; and
- must have elected to be an 'STS taxpayer'.

Qualification

36. This Product Ruling assumes that a Grower who is an 'STS taxpayer' is so for the income year in which their participation in the Project commences. A Grower may become an 'STS taxpayer' at a later point in time. Also, a Grower who is an 'STS taxpayer' may choose to stop being an 'STS taxpayer', or may cease to be eligible to be an 'STS taxpayer', during the term of the Project. These are contingencies relating to the circumstances of individual Growers that cannot be accommodated in this Ruling. Such Growers can ask for a private ruling on how the taxation legislation applies to them.

Prepaid fees

37. Management fees and Lease fees incurred by Growers who are accepted into this Project on or after 1 June 2002 are subject to the prepayment rules in sections 82KZME and 82KZMF. In this context, a prepayment refers to advance expenditure incurred by a Grower in return for the doing of a thing that will not be wholly done in the year in which the expenditure is incurred. Where a Grower prepays expenditure that would otherwise be a general deduction under section 8-1 of the ITAA 1997 in the expenditure year, the Grower must apportion the prepayment over the period the prepayment covers unless it is 'excluded expenditure' (see Note (ii) below).

38. Subsection 82KZMF(1) provides the formula for determining how much of the prepaid expenditure a Grower can deduct for each income year. In that formula, which is shown below, the 'eligible service period' means the period during which the thing under the

agreement is to be done. The eligible service period begins on the day on which the thing under the agreement commences to be done or on the day on which the expenditure is incurred, whichever is the later, and ends on the last day on which the thing under the agreement ceases to be done, up to a maximum of 10 years.

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

39. In this Project, the tax deductions allowable for Management fees and Lease fees must be calculated by applying the above formula to the amount incurred each year by the Grower. The resulting tax deductions are reflected in the respective Tables of deductions shown below.

Tax outcomes for Growers who are not 'STS taxpayers'

Assessable Income

Section 6-5

40. That part of the gross sales proceeds from the Project attributable to the Grower's produce, less any GST payable on those proceeds (section 17-5), will be assessable income of the Grower under section 6-5.

41. The Grower recognises ordinary income from carrying on the business of afforestation at the time that income is derived.

Deductions for Management fees, Lease fees and Interest expenses for Growers accepted into the Project on or before 31 May 2002

Section 8-1

42. A Grower who is not an 'STS taxpayer' may claim tax deductions for the following revenue expenses:

Fee Type	**ITAA 1997 Section**	**Year ended 30 June 2002**	**Year ended 30 June 2003**	**Year ended 30 June 2004**
Management Fee	8-1	$4345 - See Notes (i) & (ii) (below)	Nil	Nil
Lease Fee (Rent)	8-1	Nil	Nil	Nil
Interest	8-1	As incurred See Note (iv) (below)	As incurred See Note (iv) (below)	As incurred See Note (iv) (below)

(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 (e.g., input tax credits): Division 27. See example 1 at paragraph 105;

(ii) The Management fees and the Lease fees shown in the Management Agreement and the Lease Agreement are deductible in full in the year that they are incurred. However, if a Grower **chooses** to prepay fees for the doing of a thing (e.g., the provision of management services or the leasing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA 1936 may apply to apportion those fees. In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 38 unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than $1,000.

Deductions for Management fees, Lease fees and Interest expenses for Growers accepted into the Project on or after 1 June 2002

Section 8-1

43. A Grower who is not an 'STS taxpayer' may claim tax deductions for the following revenue expenses:

Fee Type	ITAA 1997 Section	Year ended 30 June 2002	Year ended 30 June 2003	Year ended 30 June 2004
Management Fee	8-1	Amounts must be calculated – See Notes (i) (above) & (iii) (below)	Amounts must be calculated – See Notes (i) (above) & (iii) (below)	Nil
Lease Fee (Rent)	8-1	Nil	Nil	Nil
Interest	8-1	As incurred See Note (iv) (below)	As incurred See Note (iv) (below)	As incurred See Note (iv) (below)

Notes:

(iii) The Management fees shown in paragraphs 28 and 29 above are deductible in full in the year incurred provided the Manager completes the Establishment Services by 30 June in that income year. Where the Establishment Services are not completed by 30 June in the income year incurred, the deduction for each year's fees must be determined using the formula in subsection 82KZMF(1) (see paragraph 38). The Project Manager will inform Growers of the number of days in the 'eligible service period' in the first expenditure year. This figure is necessary to calculate the deduction allowable for the fees incurred (see Example 2 at paragraph 106);

(iv) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Gunns Finance Pty Ltd, the internal financier, is outside the scope of this Ruling. However all Growers, including those who finance their participation in the Project other than with Gunns Finance Pty Ltd, should read the discussion of the prepayment rules in paragraphs 72 to 81 (below) as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the prepayment is required under the relevant loan agreement or is at the Grower's choice.

Tax outcomes for Growers who are 'STS taxpayers'

Assessable Income

Section 6-5

44. That part of the gross sales proceeds from the Project attributable to the Grower's produce, less any GST payable on those proceeds (section 17-5), will be assessable income of the Grower under section 6-5.

45. The Grower recognises ordinary income from carrying on the business of afforestation at the time the income is received (paragraph 328-105(1)(a)).

Deductions for Management fees, Lease fees and Interest expenses for Growers who are accepted into the Project on or before 31 May 2002

Section 8-1 and section 328-105

46. A Grower who is an 'STS taxpayer' may claim tax deductions for the following revenue expenses:

Fee Type	ITAA 1997 Sections	Year ended 30 June 2002	Year ended 30 June 2003	Year ended 30 June 2004
Management Fee	8-1 & 328-105	$4345 – See Notes (v), (vi) & (vii) (below)	Nil	Nil
Lease Fee (Rent)	8-1 & 328-105	Nil	Nil	Nil
Interest	8-1 & 328-105	When paid - See Notes (v) & (ix) (below)	When paid - See Notes (v) & (ix) (below)	When paid - See Notes (v) & (ix) (below)

Notes:

(v) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g., input tax credits): Division 27. See example 1 at paragraph 105;

(vi) If, for any reason, an amount shown in the Table above is not fully paid in the year in which it is incurred by a Grower who is an 'STS taxpayer' then the amount is only deductible to the extent to which it has been paid, or has been paid for the Grower. Any amount or part of an amount shown in the Table above which is not paid in the year in which it is incurred will be deductible in the year in which it is actually paid;

(vii) Where a Grower who is an 'STS taxpayer', pays the Management fees and the Rent in the relevant income years shown in the Lease and Management Agreement, those fees are deductible in full in the year that they are paid. However, if a Grower chooses to prepay fees for the doing of a thing (e.g. the provision of management services or the leasing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA may apply to apportion those fees (see paragraphs 72 to 81). In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 38, unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules, and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than $1,000.

Deductions for Management fees, Lease fees and Interest expenses for Growers who are accepted into the Project on or after 1 June 2002

Section 8-1 and section 328-105

47. A Grower who is an 'STS taxpayer' may claim tax deductions for the following revenue expenses:

Fee Type	ITAA 1997 Sections	Year ended 30 June 2002	Year ended 30 June 2003	Year ended 30 June 2004
Management Fee	8-1	Amounts must be calculated – See Notes (v) (above) & (viii) (below)	Amounts must be calculated – See Notes (v) (above) & (viii) (below)	Nil
Lease Fee (Rent)	8-1	Nil	Nil	Nil
Interest	8-1 & 328-105	When paid- See Note (ix) (below)	When paid- See Note (ix) (below)	When paid- See Note (ix) (below)

Notes:

(viii) The Management fees shown in paragraphs 28 and 29 above are deductible in full in the year incurred provided the Manager completes the Establishment Services by 30 June in that income year. Where the Establishment Services are not completed by 30 June in the income year incurred, the deduction for each year's fees must be determined using the formula in subsection 82KZMF(1) (see paragraph 38). The Project Manager will inform Growers of the number of days in the 'eligible service period' in the first expenditure year. This figure is necessary to calculate the deduction allowable for the fees incurred. (See Example 2 at paragraph 106);

(ix) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Gunns Finance Pty Ltd, the internal financier, is outside the scope of this Ruling. However all Growers, including those who finance their participation in the Project other than with Gunns Finance Pty Ltd, should read the discussion of the prepayment rules in paragraphs 72 to 81 (below) as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the prepayment is required under the relevant loan agreement or is at the Grower's choice.

Tax outcomes that apply to all Non-Electing Growers

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

Section 35-55 – Commissioner's discretion

48. For a Grower who is an individual and who enters the Project during the year ended 30 June 2002 the rule in section 35-10 may apply to the business activity comprised by their involvement in this Project. Under paragraph 35-55(1)(b) the Commissioner will decide for the income years ending 30 June 2002 to 30 June 2014 (option 1) and for the years ended 30 June 2002 to 2010 (option 2) that the rule in section 35-10 does not apply to this activity provided that the Project is carried out in the manner described in this Ruling.

49. For a Grower who is an individual and who enters the Project during the year ended 30 June 2003 the rule in section 35-10 may apply to the business activity comprised by their involvement in this

Project. Under paragraph 35-55(1)(b) the Commissioner will decide for the income years ending 30 June 2002 to 30 June 2015 (option 1) and for the years ended 30 June 2002 to 2011 (option 2) that the rule in section 35-10 does not apply to this activity provided that the Project is carried out in the manner described in this Ruling.

50. This exercise of the discretion in subsection 35-55(1) will not be required where, for any year in question:

- the 'exception' in subsection 35-10(4) applies (see paragraph 92 in the Explanations part of this ruling, below);
- a Grower's business activity satisfies one of the tests in sections 35-30, 35-35, 35-40 or 35-45;
- the Grower's business activity produces assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsection 35-10(2)); or
- the Commissioner is precluded from exercising the discretion under paragraph 35-55(1)(b) because of subsection 35-55(2).

51. Where, the 'exception' in subsection 35-10(4) applies, the Grower's business activity satisfies one of the tests, or the discretion in subsection 35-55(1) is exercised, section 35-10 will not apply. This means that a Grower will not be required to defer any excess of deductions attributable to their business activity in excess of any assessable income from that activity, i.e., any 'loss' from that activity, to a later year. Instead, this 'loss' can be offset against other assessable income for the year in which it arises.

52. Growers are reminded of the important statement made on Page 1 of this Product Ruling. Therefore, Growers should not see the Commissioner's decision to exercise the discretion in paragraph 35-55(1)(b) as an indication that the Tax Office sanctions or guarantees the Project or the product to be commercially viable. An assessment of the Project or the product from this perspective has not been made.

Section 82KL and Part IVA

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

- section 82KL does not apply to deny the deductions otherwise allowable; and

- the relevant provisions in Part IVA will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

Explanations

Is the Grower carrying on a business?

54. For the amounts set out in the Tables above to constitute allowable deductions the Grower's afforestation activities as a participant in the Gunns Plantations Woodlot Project 2002 must amount to the carrying on of a business of primary production.

55. Where there is a business, or a future business, the gross proceeds from the sale of the timber produce will constitute gross assessable income in their own right. The generation of 'business income' from such a business, or future business, provides the backdrop against which to judge whether the outgoings in question have the requisite connection with the operations that more directly gain or produce this income.

56. For schemes such as that of the Gunns Plantations Woodlot Project 2002, Taxation Ruling TR 2000/8 sets out in paragraph 89 the circumstances in which the Grower's activities can constitute the carrying on of a business. As Taxation Ruling TR 2000/8 sets out, these circumstances have been established in court decisions such as *FCT v. Lau* 84 ATC 4929.

57. Generally, a Grower will be carrying on a business of afforestation, and hence primary production, if:

- the Grower has an identifiable interest (by lease) in the land on which the Grower's trees are established;
- the Grower has a right to harvest and sell the timber produce from those trees;
- the afforestation activities are carried out on the Grower's behalf;
- the afforestation activities of the Grower are typical of those associated with an afforestation business; and
- the weight and influence of general indicators point to the carrying on of a business.

58. In this Project, each Grower enters into a Management Agreement and a Lease Agreement.

59. Under the Lease Agreement each individual Grower will have rights over a specific and identifiable area of one hectares of land. The Lease Agreement provides the Grower with an ongoing interest in

the specific trees on the leased area for the term of the Project. Under the lease the Grower must use the land in question for the purpose of carrying out afforestation activities, and for no other purpose. The lease allows the Project Manager come onto to the land to carry out its obligations under the Management Agreement.

60. Under the Management Agreement the Project Manager is engaged by the Grower to establish and maintain a Woodlot on the Grower's identifiable area of land during the term of the Project. The Project Manager has provided evidence that it holds the appropriate professional skills and credentials to provide the management services to establish and maintain the Woodlot on the Grower's behalf.

61. The Project Manager is also engaged to harvest and sell, on the Grower's behalf, the timber produce grown on the Grower's Woodlot.

62. The general indicators of a business, as used by the Courts, are described in Taxation Ruling TR 97/11. Positive findings can be made from the Project's description for all the indicators.

63. The activities that will be regularly carried out during the term of the Project demonstrate a significant commercial purpose. Based on reasonable projections, a Grower in the Project will derive assessable income from the sale of the timber produce that will return a before-tax profit, i.e., a profit in cash terms that does not depend in its calculation on the fees in question being allowed as a deduction.

64. The pooling of timber produce from trees grown on the Grower's Woodlot with the timber produce of other Growers is consistent with general afforestation practices. Each Grower's proportionate share of the sale proceeds of the pooled timber produce will reflect the proportion of the trees contributed from their Woodlot.

65. The Project Manager's services are also consistent with general silvicultural practices. They are of the type ordinarily found in afforestation ventures that would commonly be said to be businesses. While the size of a Woodlot is relatively small, it is of a size and scale to allow it to be commercially viable (see Taxation Ruling IT 360).

66. The Grower's degree of control over the Project Manager as evidenced by the Management Agreement, and supplemented by the Corporations Act, is sufficient. During the term of the Project, the Manager will provide the Grower with regular progress reports on the Grower's Woodlot and the activities carried out on the Grower's behalf. Growers are able to terminate arrangements with the Project Manager in certain instances, such as cases of default or neglect.

67. The afforestation activities, and hence the fees associated with their procurement, are consistent with an intention to commence regular activities that have an 'air of permanence' about them. For the purposes of this Ruling, the Growers' afforestation activities in the

Gunns Plantations Woodlot Project 2002 will constitute the carrying on of a business.

The Simplified Tax System

Division 328

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

69. The question of whether a Grower is eligible to be an 'STS taxpayer' is outside the scope of this Product Ruling. Therefore, any Grower who relies on those parts of this Ruling that refer to the STS will be assumed to have correctly determined whether or not they are eligible to be an 'STS taxpayer'.

Deductibility of Management fees and Lease fees

Section 8-1

70. Consideration of whether the initial management fees and lease fees are deductible under section 8-1 begins with the first limb of the section. This view proceeds on the following basis:

- the outgoing in question must have a sufficient connection with the operations or activities that directly gain or produce the taxpayer's assessable income;
- the outgoings are not deductible under the second limb if they are incurred when the business has not commenced; and
- where all that happens in a year of income is that a taxpayer is contractually committed to a venture that may not turn out to be a business, there can be doubt about whether the relevant business has commenced, and hence, whether the second limb applies. However, that does not preclude the application of the first limb in determining whether the outgoing in question has a sufficient connection with activities to produce assessable income.

71. The management fees and lease fees associated with the afforestation activities will relate to the gaining of income from the Grower's business of afforestation (see above), and hence have a sufficient connection to the operations by which income (from the harvesting and sale of timber produce) is to be gained from this business. They will thus be deductible under the first limb of section 8-1. Further, no 'non-income producing' purpose in incurring the fee

is identifiable from the arrangement. The fee appears to be reasonable. There is no capital component of the management fee. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

Prepayment provisions

Sections 82KZL to 82KZMF

72. 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 (eg. the performance of management services or the leasing of land) that will not be wholly done within the same year of income as the year in which the expenditure is incurred. If expenditure is incurred to cover the provision of services to be provided within the same year, then it is not expenditure to which the prepayment rules apply.

73. For this Project, only section 82KZL (an interpretive provision) and sections 82KZME and 82KZMF are relevant. Where the requirements of sections 82KZME and 82KZMF are met, taxpayers determine deductions for prepaid expenditure under section 82KZMF using the formula in subsection 82KZMF(1). These provisions also apply to ‘STS taxpayers’ because there is no specific exclusion contained in section 82KZME that excludes them from the operation of section 82KZMF.

Sections 82KZME and 82KZMF

74. Where the requirements of subsections 82KZME(2) and (3) are met, the formula in subsection 82KZMF(1) (see below) will apply to apportion expenditure that is otherwise deductible under section 8-1 of the ITAA 1997. The requirements of subsection 82KZME(2) will be met if expenditure is incurred by a taxpayer in return for the doing of a thing that is not to be wholly done within the year the expenditure is made. The year in which such expenditure is incurred is called the ‘expenditure year’ (subsection 82KZME(1)).

75. The requirements of subsection 82KZME(3) will be met where the agreement (or arrangement) has the following characteristics:

- the taxpayer’s allowable deductions under the agreement for the ‘expenditure year’ exceed any assessable income attributable to the agreement for that year;

- the taxpayer does not have effective day to day control over the operation of the agreement. That is, the significant aspects of the arrangement are managed by someone other than the taxpayer; and
- either :
  a) there is more than one participant in the agreement in the same capacity as the taxpayer; or
  b) the person who promotes, arranges or manages the agreement (or an associate of that person) promotes similar agreements for other taxpayers.

76. For the purpose of these provisions, the agreement includes all activities that relate to the agreement (subsection 82KZME(4)). This has particular relevance for a Grower in this Project who, in order to participate in the Project may borrow funds from a financier other than Gunns Finance Pty Ltd. Although undertaken with an unrelated party, that financing would be an element of the arrangement. The funds borrowed and the interest deduction are directly related to the activities under the arrangement. If a Grower prepays interest under such financing arrangements, the deductions allowable will be subject to apportionment under section 82KZMF.

77. There are a number of exceptions to these rules, but for Growers participating in this Project, only the 'excluded expenditure' exception in subsection 82KZME(7) is relevant. 'Excluded expenditure' is defined in subsection 82KZL(1). However, for the purposes of Growers in this Project, 'excluded expenditure' is prepaid expenditure incurred under the arrangement that is less than $1,000. Such expenditure is immediately deductible.

78. Where the requirements of section 82KZME are met, section 82KZMF applies to apportion relevant prepaid expenditure. Section 82KZMF uses the formula below, to apportion prepaid expenditure and allow a deduction over the period that the benefits are provided.

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

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

Application of the prepayment provisions to this Project

80. The expenditure incurred by a Grower, accepted in the Project on or after 1 June 2002 and on or before 30 June 2002, for the management fees meets the requirements of subsections 82KZME(1) and (2) and is incurred under an 'agreement' as described in subsection 82KZME(3) where the Establishment Services are not completed by 30 June 2002. Therefore, unless one of the exceptions to section 82KZME applies, the amount and timing of tax deductions for those fees are determined under section 82KZMF.

81. The prepaid Management fees incurred by Growers do not fall within any of the 5 exceptions to section 82KZME. Therefore, the deduction for each year is determined using the formula in subsection 82KZMF(1). Section 82KZMF will apportion the deduction for prepaid Management fees over the period that the services for which the prepayment is made are provided.

Interest deductibility

Section 8-1

(i) Growers who use Gunns Finance Pty Ltd as the finance provider

82. Some Growers may finance their participation in the Project through a loan facility with Gunns Finance Pty Ltd. Whether the resulting interest costs are deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of lease and management fees.

83. The interest incurred for the year ended 30 June 2002 and in subsequent years of income will be in respect of a loan to finance the Grower's business operations - the cultivation and growing trees and the lease of the land on which the trees will have been planted - that will continue to be directly connected with the gaining of 'business income' from the Project. Such interest will, therefore, have a sufficient connection with the gaining of assessable income to be deductible under section 8-1.

84. As with the management fees and the lease fees, in the absence of any application of the prepayment provisions (see paragraphs 72 to 81), the timing of deductions for interest will again depend upon whether a Grower is an 'STS taxpayer' or is not an 'STS taxpayer'.

85. If the Grower is not an 'STS taxpayer', interest is deductible in the year in which it is incurred.

86. If the Grower is an 'STS taxpayer' interest is not deductible until it has been both incurred and paid, or is paid for the Grower. If interest that is properly incurred in an income year remains unpaid at

the end of that income year, the unpaid amount is deductible in the income year in which it is actually paid, or is paid for the Grower.

(ii) Grower who DO NOT use Gunns Finance Pty Ltd as the finance provider

87. The deductibility of interest incurred by Growers who finance their participation in the Project through a loan facility with a bank or financier other than Gunns Finance Pty Ltd is outside the scope of this Ruling. Product Rulings only deal with arrangements where all details and documentation have been provided to, and examined by the Tax Office.

88. While the terms of any finance agreement entered into between relevant Growers and such financiers are subject to commercial negotiation, those agreements <u>may</u> require interest to be prepaid. Alternatively, a Grower may <u>choose</u> to prepay such interest. Unless such prepaid interest is 'excluded expenditure' any tax deduction that is allowable will be subject to the prepayment provisions of the ITAA 1936 (see paragraphs 72 to 81).

Deferral of losses from non-commercial business activities

Division 35

89. Division 35 applies to losses from certain business activities for the income year ended 30 June 2001 and subsequent years. Under the rule in subsection 35-10(2) a deduction for a loss made by an individual (including an individual in a general law partnership) from certain business activities will not be taken into account in an income year unless:

- the exception in subsection 35-10(4) applies;
- one of four tests in sections 35-30, 35-35, 35-40 or 35-45 is met; or
- if one of the tests is not satisfied, the Commissioner exercises the discretion in section 35-55.

90. Generally, a loss in this context is, for the income year in question, the excess of an individual taxpayer's allowable deductions attributable to the business activity over that taxpayer's assessable income from the business activity.

91. Losses that cannot be taken into account in a particular year of income, because of subsection 35-10(2), can be applied to the extent of future profits from the business activity, or are deferred until one of the tests is passed, the discretion is exercised, or the exception applies.

92. For the purposes of applying Division 35, subsection 35-10(3) allows taxpayers to group business activities 'of a similar kind'. Under subsection 35-10(4), there is an 'exception' to the general rule in subsection 35-10(2) where the loss is from a primary production business activity and the individual taxpayer has other assessable income for the income year from sources not related to that activity, of less than $40,000 (excluding any net capital gain). As both subsections relate to the individual circumstances of Growers who participate in the Project they are beyond the scope of this Product Ruling and are not considered further.

93. In broad terms, the tests require:

(a) at least $20,000 of assessable income in that year from the business activity (section 35-30);

(b) the business activity results in a taxation profit in 3 of the past 5 income years (including the current year)(section 35-35);

(c) at least $500,000 of real property, or an interest in real property, (excluding any private dwelling) is used on a continuing basis in carrying on the business activity in that year (section 35-40); or

(d) at least $100,000 of certain other assets (excluding cars, motor cycles and similar vehicles) are used on a continuing basis in carrying on the business activity in that year (section 35-45).

94. A Grower who participates in the Project will be carrying on a business activity that is subject to these provisions. Information provided with the application for this Product Ruling indicates that a Grower who acquires the minimum allocation of one Woodlot in the Project on or before 31 May 2002 is unlikely to have their activity pass one of the tests until the income year ended 30 June 2015 (option 1) and 30 June 2022 (option 2). Information provided with the application for this Product Ruling indicates that a Grower who acquires the minimum allocation of one Woodlot in the Project on or after 1 June 2002 is unlikely to have their activity pass one of the tests until the income year ended 30 June 2016 (option 1) and 30 June 2023 (option 2). Growers who acquire more than one interest in the Project may however, find that their activity meets one of the tests in an earlier income year.

95. Therefore, prior to this time, unless the Commissioner exercises an arm of the discretion under paragraphs 35-55(1)(a) or (b), the rule in subsection 35-10(2) will apply to defer to a future income year any loss that arises from the Grower's participation in the Project.

96. The first arm of the discretion in paragraph 35-55(1)(a) relates to 'special circumstances' applicable to the business activity, and has

no relevance for the purposes of this Product Ruling. However, the second arm of the discretion in paragraph 35-55(1)(b) may be exercised by the Commissioner where:

(i) the business activity has started to be carried on;

(ii) because of its nature, it has not yet met one of the tests set out in Division 35; and

(iii) there is an expectation that the business activity of an individual taxpayer will either pass one of the tests or produce a taxation profit within a period that is commercially viable for the industry concerned.

97. Information provided with this Product Ruling indicates that a Grower who acquires the minimum investment of one Woodlot in the Project on or before 31 May 2002 is expected to be carrying on a business activity that will either pass one of the tests, or produce a taxation profit, for the year ended 30 June 2015 (option1) or 2011 (option 2). The Commissioner will decide for such a Grower that it would be reasonable to exercise the second arm of the discretion until the year ended 30 June 2014 (option 1) or 2010 (option2). Subsection 35-55(2) prevents the Commissioner exercising the discretion beyond this year.

98. Information provided with this Product Ruling indicates that a Grower who acquires the minimum investment of one Woodlot in the Project on or after 1 June 2002 is expected to be carrying on a business activity that will either pass one of the tests, or produce a taxation profit, for the year ended 30 June 2016 (option1) or 2012 (option 2). The Commissioner will decide for such a Grower that it would be reasonable to exercise the second arm of the discretion until the year ended 30 June 2015(option 1) or 2011 (option2). Subsection 35-55(2) prevents the Commissioner exercising the discretion beyond this year.

99. This Product Ruling is issued on a prospective basis (i.e., before an individual Grower's business activity starts to be carried on). The Project, however, may fail to be carried on during the income years specified above (see paragraphs 48 and 49), in the manner described in the Arrangement (see paragraphs 14 to 33). If so, this Ruling, and specifically the decision in relation to paragraph 35-55(1)(b), that it would be unreasonable that the loss deferral rule in subsection 35-10(2) not apply, may be affected, because the Ruling no longer applies (see paragraph 9). Growers may need to apply for private rulings on how paragraph 35-55(1)(b) will apply in such changed circumstances.

100. In deciding that the second arm of the discretion in paragraph 35-55(1)(b) will be exercised on this conditional basis, the Commissioner has relied upon:

- the report of the independent forester and additional expert or scientific evidence provided with the application by the Responsible Entity;
- the binding Woodsale contract with the Gunns Limited for the sale of the timber produce setting out prices that realistically reflect the existing market and/or the projected market in the geographical region where the timber produce is grown; and
- independent, objective, and generally available information relating to the afforestation industry which substantially supports cash flow projections and other claims, including prices and costs, in the Product Ruling application submitted by the Responsible Entity.

Section 82KL - recouped expenditure

101. The operation of section 82KL depends, among other things, on the identification of a certain quantum of 'additional benefits(s)'. Insufficient 'additional benefits' will be provided to trigger the application of section 82KL. It will not apply to deny the deduction otherwise allowable under section 8-1.

Part IVA - general tax avoidance provisions

102. For Part IVA to apply there must be a 'scheme' (section 177A), a 'tax benefit' (section 177C) and a dominant purpose of entering into the scheme to obtain a tax benefit (section 177D).

103. The Gunns Plantations Woodlot Project 2002 will be a 'scheme'. A Grower will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 42, 43, 46 and 47 that would not have been obtained but for the scheme. However, it is not possible to conclude the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

104. Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the harvesting and sale of the timber produce. 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) it cannot be concluded, on the

information available, that participants will enter into the scheme for the dominant purpose of obtaining a tax benefit.

Examples

Example 1 - Entitlement to GST input tax credits

105. Susan, who is a sole trader and registered for GST, contracts with a manager to manage her viticulture business. Her manager is registered for GST and charges her a management fee payable every six months in advance. On 1 December 2001 Susan receives a valid tax invoice from her manager requesting payment of a management fee in advance, and also requesting payment for an improvement in the connection of electricity for her vineyard that she contracted him to carry out. The tax invoice includes the following details:

Management fee for period 1/1/2002 to 30/6/2002	$4 400*
Carrying out of upgrade of power for your vineyard	
as quoted	$2 200*
Total due and payable by 1 January 2002 (includes GST of $600)	$6 600

*Taxable supply

Susan pays the invoice by the due date and calculates her input tax credit on the management fee (to be claimed through her Business Activity Statement) as:

1/11 x $4400 = $400.

Hence her outgoing for the management fee is effectively $4400 less $400, or $4000.

Similarly, Susan calculates her input tax credit on the connection of electricity as:

1/11 x $2200 = $200.

Hence her outgoing for the power upgrade is effectively $2200 less $200, or $2000.

In preparing her income tax return for the year ended 30 June 2002, Susan is aware that the management fee is deductible in the year incurred. She calculates her management fee deduction as $4000 (not $4400).

Susan is aware that the electricity upgrade is deductible 10% per year over a 10-year period. She calculates her deduction for the power upgrade as $200 (one tenth of $2000 only, not one tenth of $2200).

Example 2 – Apportionment of Fees

106. Murray decides to invest in the ABC Pineforest Prospectus which is offering 500 interests of 0.5ha in an afforestation project of 25 years. The management fees are $5,000 in the first year and $1,200 for years 2 and 3. From year 4 onwards the management fee will be the previous year's fee increased by the CPI. The first year's fees are payable on execution of the agreements for services to be provided in the following 12 months and thereafter, the fees are payable in advance each year on the anniversary of that date. The project is subject to a minimum subscription of 300 interests. Murray provides the Project Manager with a 'Power of Attorney' allowing the Manager to execute his Management Agreement and the other relevant agreements on his behalf. On 5 June 2002 the Project Manager informs Murray that the minimum subscription has been reached and the Project will go ahead. Murray's agreements are duly executed and management services start to be provided on that date.

Murray is an 'STS taxpayer' who is not registered, nor required to be registered for GST. He calculates his tax deduction for management fees for the **2002 income year** as follows:

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

$$\$5{,}000 \;\text{X}\; \frac{26}{365}$$

= **$356** (this is Murray's total tax deduction in 2002 for the Year 1 prepaid management fees of $5,000. It represents the 26 days for which management services were provided in the 2002 income year).

In the **2003 income year** Murray will be able to claim a tax deduction for management fees calculated as the sum of two separate amounts:

$$\$5{,}000 \;\text{X}\; \frac{339}{365}$$

= **$4,644** (this represents the balance of the Year 1 prepaid fees for services provided to Murray in the 2003 income year).

$$\$1{,}200 \;\text{X}\; \frac{26}{365}$$

= **$85** (this represents the portion of the Year 2 prepaid management fees for the 26 days during which services were provided to Murray in the 2003 income year).

$4,644 + $85 = $4,729 (The sum of these two amounts is Murray's total tax deduction for management fees in 2003).

Murray continues to calculate his tax deduction for prepaid management fees using this method for the term of the Project.

Detailed contents list

107. Below is a detailed contents list for this Product Ruling:

Commissioner of Taxation
27 February 2002

Previous draft:
Not previously issued in draft form

Related Rulings/Determinations:
TR 92/1; TR 92/20; TD 93/34; TR 97/11; TR 97/16; TR 98/22; TR 2000/8; PR 1999/95; IT 360

Subject references:
- carrying on a business
- commencement of business
- fee expenses
- interest expenses
- management fee expenses
- producing assessable income
- product rulings
- public rulings
- schemes and shams
- taxation administration
- tax avoidance

Legislative references:
- TAA 1953 Part IVAAA
- ITAA 1936 Div 3 of Part III
- ITAA 1936 82KL
- ITAA 1936 82KL(1)
- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZME
- ITAA 1936 82KZME(1)
- ITAA 1936 82KZME(2)
- ITAA 1936 82KZME(3)
- ITAA 1936 82KZME(4)
- ITAA 1936 82KZME(7)
- ITAA 1936 82KZMF
- ITAA 1936 82KZMF(1)
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 17-5
- ITAA 1997 Div 27
- ITAA 1997 Div 35
- ITAA 1997 35-10
- ITAA 1997 35-10(2)
- ITAA 1997 35-10(3)
- ITAA 1997 35-10(4)
- ITAA 1997 35-30
- ITAA 1997 35-35
- ITAA 1997 35-40
- ITAA 1997 35-45
- ITAA 1997 35-55
- ITAA 1997 35-55(1)
- ITAA 1997 35-55(1)(a)
- ITAA 1997 35-55(1)(b)
- ITAA 1997 35-55(2)
- ITAA 1997 Div 328
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- ITAA 1997 328-105
- ITAA 1997 328-105(1)(a)

Case references:
- FCT v. Lau 84 ATC 4929

ATO references:
NO: T2001/18389

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