



PR 2002/65 - Income tax: Treviso Table Grape Project

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 This document has changed over time. This is a consolidated version of the ruling which was published on *15 May 2002*



Product Ruling

Income tax: Treviso Table Grape Project

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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.

Potential participants may wish to refer to the ATO's Internet site at <http://www.ato.gov.au> or contact the ATO directly to confirm the currency of this Product Ruling or any other Product Ruling that the ATO has issued.

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 Treviso Table Grape Project, or simply as 'the Project'.

Tax law(s)

2. The tax law(s) 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 40 (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.

10. A Product Ruling may only be reproduced in its entirety. Extracts may not be reproduced. As each Product Ruling is copyright, apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning

reproduction and rights should be addressed to the Manager,
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Date of effect

11. This Ruling applies prospectively from 15 May 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 or parts of documents lodged with the Tax Office:

- Application for Product Ruling dated 4 February 2002;
- Draft Product Disclosure Statement for the Treviso Table Grape Project and Treviso Vineyard Property Trust dated 7 March 2002;
- **Draft Constitution of the Treviso Table Grape Project that was provided on 24 April 2002;**

- **Draft Constitution of the Treviso Vineyard Property Trust dated 4 April 2002;**
- **Draft Allotment Agreement between Guardian Trust Australia Ltd ('the Land Owner') and each Grower that was provided on 24 April 2002;**
- **Draft Management Agreement between Blaxland Rural Investments Limited ('BRIL') and each Grower that was provided on 7 May 2002;**
- Draft No. 2 of the Agency Agreement - Custodian of the Treviso Table Grape Project between BRIL and Guardian Trust Australia Limited ('GTAL') dated 30 January 2002;
- Draft Agency Agreement – Custodian of the Treviso Vineyard Property Trust between BRIL and GTAL that was provided on 26 March 2002;
- Draft Compliance Plan of the Treviso Table Grape Project dated 31 January 2002;
- Draft Compliance Plan of Treviso Vineyard Property Trust that was provided on 26 March 2002;
- Draft Contract for the Establishment and Maintenance of a Vineyard ('Operations Agreement') between BRIL and Treviso Estates Pty Ltd ('TEPL') and Nangiloc Colignan Farms Pty Ltd ('NCF');
- Draft Grape Marketing Agreement between BRIL and NCF dated 21 February 2002;
- The Treviso Estates Water Supply Agreement and Management Agreement and Declaration of Trust; and
- Correspondence including e-mails dated 26 March 2002, 11 April 2002, 23 April 2002, 24 April 2002, 30 April 2002 and 7 May 2002.

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

15. The documents highlighted are those Growers enter into or become a party to. For the purposes of describing the arrangement to which this Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, to which the Grower, or an associate of the Grower, will be a party. The effect of these agreements may be summarised as follows.

Overview

16. The arrangement is called the Treviso Table Grape Project and is summarised as follows.

Location	Sunraysia Region of Victoria near Mildura
Type of business each participant is carrying on	A long term commercial viticulture business
Name used to describe the Project	Treviso Table Grape Project
Nature of Growers' participation in the Project	Stapled interest – interest as a Grower plus a unit in a Property Trust that owns the Project Land and water rights
Number of hectares under cultivation	98
Size of an Allotment	0.3 hectares
Minimum subscription	50 Allotments
Vines per Allotment	370
Vines per hectare	1,233
Project Term	15 years
Initial cost per Allotment	\$7,615 (see paragraph 49 for details)
Initial cost per hectare	\$25,383

17. An offer to participate in the Project will be made through a Product Disclosure Statement ('PDS'). The offer is in respect of the managed investment schemes called Treviso Table Grape Project and the associated Treviso Vineyard Property Trust ('the Trust'), which will own the land. The issuer of Interests in the Project and units in the Trust is Blaxland Rural Investments Limited, the Responsible Entity of the Project and the Trust.

18. The maximum offer under the PDS is for 328 Grower's Interests for the Project and 328 parcels of units in the Trust. The minimum subscription is 50 Grower's Interests and 50 parcels of units.

19. To participate in the offer, an investor must subscribe for at least one Grower Interest and one parcel of units which is equivalent to a 0.3 hectare Allotment. The parcels of units in the Trust can be acquired by an associate of the Grower.

The Project Land

20. The land on which the Project will be conducted is described in the PDS. It is located on the Treviso Estates irrigation development which is approximately 25 kilometres southeast of Mildura, in Northern Victoria. The property is located six kilometres from the Murray River. The real property descriptions are as follows:

- part of Lot 4 being part of Certificate of Title Vol 10526, Folio 862;
- Lot 5 being the land described in Certificate of Title Volume 10526, Folio 863; and
- Lot 6 being the land described in Certificate of Title Volume 10526, Folio 864.

21. BRIL will enter into a Contract of Sale of Real Estate and two separate option agreements to secure the land upon which the Project will be established. The contract and the options will be entered into on an “or nominee” basis which will enable BRIL to nominate the Trust as purchaser under the contracts.

22. BRIL in its capacity as a Responsible Entity of the Trust will enter into an Agency Agreement – Custodian appointing GTAL to hold the Trust Property as agent for BRIL. Once GTAL has entered into an unconditional contract to purchase the Land so that it will become capable of being registered as owner of the Land, GTAL will enter into Lease and Sublease.

Allotment Agreement

23. The Land Owner grants a licence to each Grower, by way of an Allotment Agreement, to conduct viticultural activities on the Allotment.

24. Pursuant to clause 2.1 of the Allotment Agreement, the Land Owner grants each Grower a licence:

- to use and occupy the Grower’s Allotment for the purpose only of developing, planting growing, maintaining and harvesting the Vines;
- to use the trellising to be installed on the Grower’s Allotment;

- to draw water supplied by the Land Owner for the purpose of irrigating the Allotment and the Vines; and
- to use in common with all other Growers the viticultural infrastructure on the Land required for the Project.

25. The Allotment Agreement will commence on the date BRIL accepts the Grower's application under the PDS for the Project and will continue until the termination of the Project at 30 June 2017 (cl. 5.1).

26. Under this Agreement, the Grower is responsible for maintenance of the trellises at its cost and at the end of the Agreement, all right, title and interest in the trellising licensed to the Grower will vest in the Land Owner (cl. 2.3).

27. The Agreement provides that the Land Owner acknowledges and agrees that pursuant to the Grower's Management Agreement, the Grower purchases the Vines to be planted on the Grower's Allotment, vine covers and the Internal Irrigation Equipment and all title and interest in the Vines, vine covers and Internal Irrigation Equipment belongs to the Grower. However, at the end of the term of this Agreement, the Grower agrees that the Vines, vine covers and Internal Irrigation Equipment will vest in and become the absolute property of the Land Owner. The Land Owner agrees to pay the Grower \$100 compensation for that vesting (cl. 3).

28. The Agreement also provides that the Land Owner must establish or cause to be established a pump and mains water pipeline to the Allotment for the purpose of enabling and facilitating the delivery of irrigation water to the Allotment. The Land Owner must maintain that pipeline, if necessary, for the term of this Agreement at its cost. The Grower acknowledges and agrees that it does not and will not have any proprietary interest in the pipeline (cl. 4) The Land Owner must establish the water pump and the pipeline under this Agreement during the first year of this Agreement (cl. 5.3).

29. The Grower's rights and obligations are set out in clause 7. Under this agreement, the Grower may, for the better performance of its obligations under this Agreement, employ any person as an agent (cl. 7.2).

30. The Land Owner's obligations are set out in clause 8. Clause 9 stipulates the licence fees payable by a Grower. The table in paragraph 49 shows the fees for the first three years as contemplated by the Allotment Agreement.

Management Agreement

31. The Management Agreement sets out the terms and conditions of BRIL's appointment by the Grower as an independent contractor to manage the Allotment (cl. 2). The Management Agreement will commence on the date BRIL accepts the Grower's application under the PDS for the Project and will continue until the termination of the Project at 30 June 2017 (cl. 3). This Agreement provides other grounds for termination by either BRIL or the Grower and the procedures to be followed following the termination. These grounds include default by one party in the performance of its duties (cl. 11)

32. Clause 4.1 stipulates the primary services that will be carried out by BRIL. Among other things, these primary services are as follows:

- obtaining all relevant Government approvals for the establishment of a table grape vineyard on the Allotment;
- developing an integrated irrigation and drainage plan for the Allotment;
- supplying and installing a drainage system on the Allotment in accordance with the drainage plan;
- installing the Internal Irrigation Equipment in accordance with the irrigation plan to ensure there is adequate irrigation water supplied to the Grower's Allotment;
- developing a soil plan and preparing contour maps;
- finalising and marking out vineyard layout;
- removing internal fencing and remnant vegetation;
- eradicating weeds, pests and vermin from the Allotment;
- preparing the Allotment land;
- supervise the growing of the rootlings set aside for the Grower in various nurseries and then supply the rootlings to Growers as Vines;
- implement a development and management plan for the Allotment including details of proposed plantings, a planting schedule and cost budgets;
- arrange or cause to be arranged all usual insurance for a table grape vineyard, shed, tool, plant, equipment and other infrastructure rental or hire required for the Allotment (alone or in conjunction with other

Allotments), and maintenance of vineyard and administration records in respect of the Allotment;

- commencing establishment of a trellis system on the Allotment; and
- all administration and compliance duties.

33. The Management Agreement provides that the primary services must be performed by BRIL as follows (cl. 4.2(a)):

- for Growers who are accepted into the Project on or before 20 June 2002 will have their primary services carried out by 30 June 2002;
- for Growers who are accepted into the Project after 20 June 2002 and on or before 31 October 2002 will have their primary services carried out by 31 December 2002. The PDS provides that applications received after 20 June 2002 and before 1 July 2002 will not be accepted until after 1 July 2002; and
- for Growers who are accepted after 31 October 2002 and on or before 20 June 2003 will have their primary services carried out by 30 June 2003.

34. BRIL must manage and maintain the Grower's Allotment following the establishment of the Allotment. BRIL's duties as stipulated in clause 4.3 must be carried out according to sound viticultural and environmental practices as well as in accordance with industry practices for similar table grape vineyards. These duties include as follows:

- planting the rootlings on the Grower's Allotment;
- harvesting the grapes from the Vines; and
- market and sell or cause to be marketed and sold the Produce Attributable to the Grower's Allotment using all reasonable endeavours to obtain the maximum price available and account to the Grower for the net sale proceeds.

35. BRIL may, for the better performance of its obligations under this Agreement, employ agents, contractors professional advisers and other consultants. BRIL's ability to delegate any of its duties and functions does not release it from the liability under this Agreement (cl. 9).

36. Clause 5 of the Management Agreement provides the manner in which the Grower can make an election to carry out its own weeding of the Grower's Allotment and to take the Produce Attributable to the Grower's Allotment. **This Ruling does not apply**

to Growers who make an election as provided under clause 5 of the Management Agreement.

37. In consideration of BRIL carrying out its duties under the Management Agreement, the Grower must pay BRIL in accordance with this Agreement. The table in paragraph 49 shows the fees for the first three years as contemplated by the Management Agreement.

Planting and Harvesting

38. Information provided in the PDS indicates that for Growers whose participation in the Project will commence on or before 31 October 2002, vine rootlings will be planted between August and December 2002. Growers who commence participation after 31 October 2002 will have a similar planting schedule but one year later.

39. While final decision on grape varieties will still have to be made, it is expected that the overall mix of varieties on the Project will be Thompson Seedless (30%), Red Globe (30%), Crimson Seedless (30%) and other varieties (10%).

40. The Responsible Entity will pool for sale all produce of each Grower's business with that of each other Grower and will market and sell all such produce. The proceeds of the pooled sales will be paid to GTAL for crediting to the account of each Grower on a proportional basis. Where the produce from a Grower's Allotment is of sufficient reduced quality or quantity, that Grower's share of the pooled sale proceeds may be reduced.

41. Income of the Project is to be held on behalf of the Growers by GTAL and to be applied in payment of the Growers' obligation under the Management Agreement. Any net income remaining after the payment of these fees is to be distributed to Growers after the final payment is received for each sale of produce.

42. A Grape Marketing Agreement will be executed whereby BRIL engages NCF as its agent to market all the Grapes which are harvested from the Vines.

Operations Agreement

43. Pursuant to its right to delegate any functions required of it, BRIL will contract with NCF to undertake BRIL's obligations under the Management Agreement to establish the Vineyard and undertake all necessary viticultural work in future years. This Agreement details those services to be undertaken by NCF in each year. NCF is specifically required to acquire rootlings for the Growers in the Project and install the irrigation system.

44. NCF is required to undertake all preplanting activities, plant vines, arrange the irrigation and ongoing maintenance of the Vineyard and other necessary operations over the life of the Project. NCF is required to harvest the Grapes on behalf of the Growers.

The Project Constitution

45. The Project Constitution is the primary document governing the relationship between the Growers in the Project and BRIL as the Responsible Entity. It contains extensive provisions about the legal obligations of the parties and the rights and powers of each.

46. The Project Constitution provides the manner in which a Grower can apply for an Interest in the Project, sets out the application price and the conditions that must be complied with before an Application is accepted by BRIL. Under clause 6.8, BRIL must not issue an Interest to an applicant unless that person, or the person's legally related associate, holds the required number of shares in the Land Owner. The number of units will be set out in the PDS. Each Interest must be stapled to the units in the Land Owner so that an Interest can not be dealt with without the relevant and equivalent dealing of units in the Land Owner.

47. The Allotment Agreement and Management Agreement will be executed on behalf of a Grower following the signing of the Application and a Power of Attorney Form attached to the PDS. Growers are bound by the Project Constitution, the Allotment Agreement and Management Agreement by virtue of their participation in the Project. If there is any inconsistency between the Allotment Agreement or the Management Agreement and the Project Constitution, then the Project Constitution prevails.

Project Agency Agreement – Custodian

48. Under this Agreement, BRIL appoints GTAL as agent for BRIL to hold the Project Property which includes application money, grapes pending sale and grape sale proceeds. GTAL is not a trustee appointed to represent the interests of Growers.

Project Fees

49. The table below shows the fees per Grower's Allotment.

	Year 1	Year 2	Year 3
	30 June 2002	30 June 2003	30 June 2004
Allotment Agreement fees -			
Land use fee	\$440	\$664	\$1,508
Water supply fee	\$330	\$260	\$265
Management Agreement fees -			
Other Primary Services	\$3,641		
Management and other duties		\$5,281	\$5,725
Landcare	\$979		
Irrigation	\$825	\$825	\$825
Planting duties		\$950	
Vines			\$100
Vine covers			\$1,223
Total Project Fees	\$6,215	\$7,980	\$9,646
Add: Units in Trust	\$1,400	\$1,450	\$1,850
Total Fees	\$7,615	\$9,430	\$11,496

Growers who are accepted on or before 20 June 2002

50. These Growers will pay on application, Year 1 fees for land use (\$440), water supply (\$330) and subscription for units in the Trust (\$1,400) as well as \$1,430 of other Year 1 Project Fees and the balance of other Project Fees (\$4,015) is payable by 30 June 2002. Project Fees for Year 2 are payable by 31 August 2002 and for Year 3, by 31 August 2003.

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51. A Grower has the option to pay Years 2 & 3 Management Agreement fees by instalment. Instalment service fee of \$320 and \$154 for Years 1 and 2, respectively, will be payable.

52. Where a Grower chooses to pay by instalment, Years 2 & 3 Allotment Agreement fees are payable when the first instalment is due and payable in each respective Year. The schedule of instalment is shown in the table below.

	First instalment	Second instalment	Third instalment	Fourth instalment	Total (includes service fee)
Year 2					
Amount	\$3,500	\$2,000	\$1,400	\$1,080	\$8,300
Due date	31/07/02	31/10/02	31/01/03	30/04/03	
Year 3					
Amount	\$3,500	\$2,500	\$2,500	\$1,146	\$9,800
Due date	31/07/03	31/10/03	31/01/04	30/04/04	

Growers who are accepted between 1 July 2002 and 31 October 2002

53. These Growers will pay on application, Year 1 Total Fees and Year 2 Total Project Fees. Project Fees for Year 3 are payable by 31 August 2003.

54. If a Grower chooses to pay Years 2 and 3 Management Agreement fees by instalment, then the amount payable on application is the sum of the Year 1 Project Fees (\$6,215), first instalment of Management Agreement fees for Year 2 (\$2,576) and the Year 2 Allotment Agreement fees (\$924). The Year 3 Allotment Agreement fees are payable when the first instalment is due and payable in that Year. The schedule of instalment is shown in the table below.

	First instalment	Second instalment	Third instalment	Fourth instalment	Total (includes service fee)
Year 2					
Amount	Paid on application	\$2,000	\$1,400	\$1,080	\$4,800
Due date	31/07/02	31/10/02	31/01/03	30/04/03	
Year 3					
Amount	\$3,500	\$2,500	\$2,500	\$1,146	\$9,800
Due date	31/07/03	31/10/03	31/01/04	30/04/04	

Growers who are accepted after 31 October 2002 but on or before 20 June 2003

55. These Growers will pay on application, Year 1 Total Fees. Project Fees for Year 2 are payable by 31 August 2003 and for Year 3, by 31 August 2004.

56. A Grower has the option to pay Years 2 & 3 Management Agreement fees by instalment. Instalment service fee of \$320 and \$54 for Years 1 and 2, respectively, will be payable.

57. Where a Grower chooses to pay by instalment, Years 2 & 3 Allotment Agreement fees are payable when the first instalment is due and payable in each respective Year. The schedule of instalment is shown in the table below.

	First instalment	Second instalment	Third instalment	Fourth instalment	Total (includes service fee)
Year 2					
Amount	\$3,500	\$2,000	\$1,400	\$1,080	\$8,300
Due date	31/07/03	31/10/03	31/01/04	30/04/04	
Year 3					
Amount	\$3,500	\$2,500	\$2,500	\$1,146	\$9,800
Due date	31/07/04	31/10/04	31/01/05	30/04/05	

Project Fees from Year 4 onwards

58. Allotment Agreement fees in each subsequent year will be the greater of the fee for the previous year increased by 2% or by CPI and the reasonable anticipated costs incurred by the Land Owner.

59. Fees under the Management Agreement from Year 4 onwards are as follows:

- \$1,716 for Vines in Year 4;
- \$773 for Vine covers in Year 4;
- for administration and compliance duties, \$217 in Year 4 and then for each subsequent year, the previous Year's fee increased by 2%; and
- for management, maintenance, harvesting and marketing duties in each year, plus crop insurance for Years 4 and 5 only:
 - (i) the reasonable budgeted costs, plus
 - (ii) 14.5% of the Net Income from the sale of the Produce.

60. Project Fees payable for Year 4 and subsequent Years will be paid from the gross income attributable to the Grower's Allotment and if the gross income attributable to the Grower's Allotment is insufficient to pay the fees for that Year, then the fees owing may be carried forward until there is sufficient income. However, fees for any Year are a debt due and owing by the Growers to the Land Owner and BRIL.

61. Under the Management Agreement, BRIL will also be entitled to an incentive fee determined according to clause 6.6 and if

applicable, to a deferred management fee equal to 20% of the gross income earned from the sale of the Produce Attributable to the Grower's Allotment in the Year immediately following the removal of BRIL as Responsible Entity of the Project.

Subscription for Units in the Trust

62. Growers who subscribe for Units in the Trust agree to make two further payments for \$1.00 Units on demand by BRIL and the corresponding number of Units must be issued by BRIL, as follows:

- 1,450 Units by 30 June 2003; and
- 1,850 Units by 30 June 2004.

63. The Units are payable in the income year these Units are issued. The PDS will specify the respective dates when these Units will be payable.

Finance

64. Growers can fund their investment in the Project themselves or borrow from an independent lender.

65. 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 are involved or become involved in the provision of finance to Growers for the Project.

Ruling

Application of this Ruling

66. This Ruling applies only to Growers who do not make an election under clause 5 of the Management Agreement and are accepted to participate in the Project as follows:

- for the income year ended 30 June 2002, on or before 20 June 2002 and have executed a Management Agreement and an Allotment Agreement on or before that date; and/or
- for the income year ended 30 June 2003, on or before 20 June 2003 and have executed a Management Agreement and an Allotment Agreement on or before that date.

67. The Grower's participation in the Project must constitute the carrying on of a business of primary production.

Minimum subscription

68. A Grower is not eligible to claim any tax deductions until the Grower's application to enter the Project is accepted and the Project has commenced. Under the terms of the PDS that will be issued for this Project, a Grower's application will not be accepted and the Project will not proceed until the minimum subscription of 50 Grower's Interest and 50 parcels of units in the Trust is achieved.

The Simplified Tax System ('STS')

Division 328

69. For a Grower participating in the Project, the recognition of income and the timing of tax deductions, including those related to capital allowances, 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

70. 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.

Tax outcomes for Growers who are not 'STS taxpayers'**Assessable Income*****Section 6-5***

71. 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.

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

Section 8-1

Deductions for a Grower who is accepted into the Project on or before 20 June 2002

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

Fee Type	ITAA 1997 Section	30 June 2002	30 June 2003	30 June 2004
Land use fee	8-1	\$440 – See Notes (i), (ii) & (iii) (below)	\$664 – See Notes (i), (ii) & (iii) (below)	\$1,508 – See Notes (i), (ii) & (iii) (below)
Water supply fee	8-1	\$330 – See Notes (i), (ii) & (iii) (below)	\$260 – See Notes (i), (ii) & (iii) (below)	\$265 – See Notes (i), (ii) & (iii) (below)

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Other Primary Services	8-1	\$3,641 – See Notes (i), (ii) & (iii) (below)	nil	nil
Management and other duties	8-1	nil	\$5,281 – See Notes (i), (ii) & (iii) (below)	\$5,725 – See Notes (i), (ii) & (iii) (below)

Notes:

- (i) If a Grower is accepted into the Project after 31 October 2002 but on or before 20 June 2003, the years ended 30 June 2003, 2004 and 2005 must be substituted for the income years shown in the above table;
- (ii) 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 144;
- (iii) The Project Fees as shown in the table above and as stipulated in the Management Agreement and Allotment 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 116 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 a Grower who is accepted into the Project between 1 July 2002 and 31 October 2002

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

Fee Type	ITAA 1997 Section	30 June 2002	30 June 2003	30 June 2004
Land use fee	8-1	nil	\$1,104 – See Notes (iv) & (v) (below)	\$1,508 – See Notes (iv) & (v) (below)
Water supply fee	8-1	nil	\$590 – See Notes (iv) & (v) (below)	\$265 – See Notes (iv) & (v) (below)
Other Primary Services	8-1	nil	\$3,641 – See Notes (iv) & (v) (below)	nil
Management and other duties	8-1	nil	\$5,281 – See Notes (iv) & (v) (below)	\$5,725 – See Notes (iv) & (v) (below)

Notes:

- (iv) 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 144;
- (v) The Project Fees as shown in the table above and as stipulated in the Management Agreement and Allotment 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 116 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 capital expenditure

Division 40

75. A Grower who is not an 'STS taxpayer' will also be entitled to tax deductions relating to vine covers, water facilities (e.g., irrigation) establishment of horticultural plant and a 'landcare operation'. All deductions shown in the following table are determined under Division 40.

Fee type	ITAA 1997 section	Year ended 30 June 2002	Year ended 30 June 2003	Year ended 30 June 2004
Vine covers	40-25	Must be calculated - See Notes (vi), (vii) & (viii) (below)	Must be calculated - See Notes (vi), (vii) & (viii) (below)	Must be calculated - See Notes (vi), (vii) & (viii) (below)
Water facility (e.g., irrigation, dam, bore, etc)	40-515	\$825 - See Notes (vi), (vii) & (ix) (below)	\$825 - See Notes (vi), (vii) & (ix) (below)	\$825 - See Notes (vi), (vii) & (ix) (below)
Establishment of horticultural plant	40-515	Nil - See Notes (vi), (vii) & (x) (below)	Nil - See Notes (vi), (vii) & (x) (below)	See Notes (vi), (vii) & (x) (below)
Landcare operations	40-630	\$979 - See Notes (vi), (vii) & (xi) (below)		

Notes:

- (vi) If a Grower is accepted into the Project between 1 July 2002 and 20 June 2003, the years ended 30 June 2003, 2004 and 2005 must be substituted for the income years shown in the above table;
- (vii) If the Grower is registered or required to be registered for GST, amounts of capital expenditure would need to be adjusted as relevant for GST (e.g., input tax credits): Division 27. See Example 1 at paragraph 144;
- (viii) A vine cover is a 'depreciating asset'. Each Grower holds an interest in each vine cover which is a 'low-cost asset' and can be allocated to a 'low-value pool'. Once any 'low-cost asset' of a Grower is allocated to a 'low-value pool', all other 'low-cost assets' the Grower starts to 'hold' in that year or a later year must be allocated to that pool. If the Grower has already allocated an asset to a 'low-value pool', the vine cover assets would also have to be allocated to that pool. Otherwise, the Grower must decide whether to create a 'low-value pool'. If the assets are allocated to a 'low-value pool', the capital expenditure on the vine covers will be deducted under the diminishing value methodology of the pool based on a rate of 18.75% in the year the vine covers are first used and a rate of 37.5% in subsequent years (section 40-440). If the assets are not allocated to a 'low-value pool', they can be written off based on the 'effective life' of the vine covers. As there has been no determination of the 'effective life' of a vine covers by the Commissioner, Growers must self-assess an 'effective life'. Vine covers are not installed until after the grapevines are planted and no deduction for the decline in value is available until this installation occurs. The Project Manager will advise Growers of that date to enable them to calculate the deduction;
- (ix) Any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. A deduction is available under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one third of the capital expenditure incurred by each Grower on the installation of the 'water facility' in the year in which it is incurred and one third in each of the next 2 years of income (section 40-540);

- (x) As grapevines are affixed to land which the Grower does not own, they are not owned by the Grower, the conditions in subsection 40-525(3) cannot be met, and the grapevines are not eligible for the 4 year write-off under section 40-550. However, grapevines are a 'horticultural plant' as defined in subsection 40-525(2). As Growers hold the land under a licence, one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. The deduction for the grapevines is determined using the formula in section 40-545 and is based on the capital expenditure incurred by the Grower that is attributable to their establishment. If the grapevines have an 'effective life' of greater than 13 but fewer than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 13%. The deduction is allowable when the grapevines enter their first commercial season (section 40-530, item 2). The Project Manager will inform Growers of when the grapevines enter their first commercial season;
- (xi) Any capital expenditure incurred for a 'landcare operation' (as defined in section 40-635) is fully deductible in the year it is incurred under Subdivision 40-G, section 40-630.

Tax outcomes for Growers who are 'STS taxpayers'

Assessable Income

Section 6-5

76. 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.

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

Section 8-1 and section 328-105

Deductions for a Grower who is accepted into the Project on or before 20 June 2002

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

Fee Type	ITAA 1997 Section	30 June 2002	30 June 2003	30 June 2004
Land use fee	8-1	\$440 – See Notes (xii), (xiii), (xiv) & (xv) (below)	\$664 – See Notes (xii), (xiii), (xiv) & (xv) (below)	\$1,508 – See Notes (xii), (xiii), (xiv) & (xv) (below)
Water supply fee	8-1	\$330 – See Notes (xii), (xiii), (xiv) & (xv) (below)	\$260 – See Notes (xii), (xiii), (xiv) & (xv) (below)	\$265 – See Notes (xii), (xiii), (xiv) & (xv) (below)
Other Primary Services	8-1	\$3,641 – See Notes (xii), (xiii), (xiv) & (xv) (below)	nil	nil
Management and other duties	8-1	nil	\$5,281 – See Notes (xii), (xiii), (xiv) & (xv) (below)	\$5,725 – See Notes (xii), (xiii), (xiv) & (xv) (below)

Notes:

- (xii) If a Grower is accepted into the Project after 31 October 2002 but on or before 20 June 2003, the years ended 30 June 2003, 2004 and 2005 must be substituted for the income years shown in the above table;
- (xiii) 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 144;

- (xiv) 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;
- (xv) Where a Grower who is an 'STS taxpayer' pays the Project Fees as shown in the table above and as stipulated in the Management Agreement and Allotment 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 110 to 124). In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 116, 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 a Grower who is accepted into the Project between 1 July 2002 and 31 October 2002

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

Fee Type	ITAA 1997 Section	30 June 2002	30 June 2003	30 June 2004
Land use fee	8-1	nil	\$1,104 – See Notes (xvi), (xvii) & (xviii) (below)	\$1,508 – See Notes (xvi), (xvii) & (xviii) (below)
Water supply fee	8-1	nil	\$590 – See Notes (xvi), (xvii) & (xviii) (below)	\$265 – See Notes (xvi), (xvii) & (xviii) (below)
Other Primary Services	8-1	nil	\$3,641 – See Notes (xvi), (xvii) & (xviii) (below)	nil
Management and other duties	8-1	nil	\$5,281 – See Notes (xvi), (xvii) & (xviii) (below)	\$5,725 – See Notes (xvi), (xvii) & (xviii) (below)

Notes:

- (xvi) 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 144;
- (xvii) 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;

- (xviii) Where a Grower who is an 'STS taxpayer' pays the Project Fees as shown in the table above and as stipulated in the Management Agreement and Allotment 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 110 to 124). In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 116, 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 capital expenditure

Subdivision 328-D and Subdivisions 40-F and 40-G

80. A Grower who is an 'STS taxpayer' will also be entitled to tax deductions relating to vine covers, water facilities (e.g., irrigation), establishment of horticultural plant and a 'landcare' operation'. Deductions relating to the 'cost' of vine covers must be determined under Division 328. An 'STS taxpayer' may claim deductions in relation to water facilities under Subdivision 40-F and in relation to a 'landcare operation' under Subdivision 40-G. If the 'water facility' or 'landcare operation' expenditure is on a 'depreciating asset' used to carry on the business, they may choose to claim deductions under Division 328. Deductions for the grapevines must be determined under Subdivision 40-F.

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

82. Under Division 328, if the 'cost' of a 'depreciating asset' at the end of the income year is less than \$1000 (a 'low-cost asset'), it can be claimed as an immediate deduction when first used or 'installed ready for use'. This is so provided the Grower is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and the income

year in which it first uses the asset or has it 'installed ready for use' to produce assessable income.

Fee type	ITAA 1997 section	Year ended 30 June 2002	Year ended 30 June 2003	Year ended 30 June 2004
Vine covers	328-180	Nil - See Notes (xix), (xx) & (xxi) (below)	Nil - See Notes (xix), (xx) & (xxi) (below)	\$1,223 - See Notes (xix), (xx) & (xxi) (below)
Water facility (e.g., irrigation, dam, bore, etc)	40-515	\$825 - See Notes (xix), (xx) & (xxii) (below)	\$825 - See Notes (xix), (xx) & (xxii) (below)	\$825 - See Notes (xix), (xx) & (xxii) (below)
Establishment of horticultural plant	40-515	Nil - See Notes (xix), (xx) & (xxiii) (below)	Nil - See Notes (xix), (xx) & (xxiii) (below)	See Notes (xix), (xx) & (xxiii) (below)
Landcare operations	40-630	\$979 - See Notes (xix), (xx) & (xxiv) (below)		

Notes:

- (xix) If a Grower is accepted into the Project between 1 July 2002 and 20 June 2003, the years ended 30 June 2003, 2004 and 2005 must be substituted for the income years shown in the above table;
- (xx) If the Grower is registered or required to be registered for GST, amounts of capital expenditure would need to be adjusted as relevant for GST (e.g., input tax credits): Division 27. See Example 1 at paragraph 144;
- (xxi) A vine cover is a 'depreciating asset'. Each Grower holds an interest in each vine cover which is a 'low-cost asset' as defined in subsection 40-425(2). It cannot be allocated to the 'general STS pool' (section 328-180). A deduction equal to the amount of the Grower's

expenditure for the vine cover is available in the income year in which they are used or 'installed ready for use'. This is so provided the Grower is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income. Vine covers are not installed until after the grapevines are planted. The Project Manager will advise when that has occurred;

- (xxii) Any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. If the expenditure is on a 'depreciating asset' (the underlying asset), the Grower may choose to claim a deduction under either Division 328 or Subdivision 40-F. For the purposes of Division 328, each Grower's interest in the underlying asset is itself deemed to be a 'depreciating asset'. If the 'cost' apportionable to that deemed 'depreciating asset' is less than \$1000, the deemed asset is treated as a 'low-cost asset' and that amount is deductible in full when the underlying asset is first used or 'held' ready for use. This is so provided the Grower is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income. If the deemed asset is not treated as a 'low-cost asset', the tax deduction allowable in the year ended 30 June 2002 is determined by multiplying its 'cost' by half the relevant STS pool rate. At the end of the year, it is allocated to the relevant STS pool and in subsequent years the full pool rate will apply. If the expenditure is not on a 'depreciating asset', or if they choose to use Subdivision 40-F, Growers must claim deductions under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one third of the capital expenditure incurred by each Grower on the installation of the 'water facility' in the year in which it is incurred and one third in each of the next 2 years of income (section 40-540);
- (xxiii) As grapevines are affixed to land which the Grower does not own, they are not owned by the Grower, the conditions in subsection 40-525(3) cannot be met, and the grapevines are not eligible for the 4 year write-off under section 40-550. However, grapevines are a

'horticultural plant' as defined in subsection 40-525(2). As Growers hold the land under a licence, one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. The deduction for the grapevines is determined using the formula in section 40-545 and is based on the capital expenditure incurred by the Grower that is attributable to their establishment. If the grapevines have an 'effective life' of greater than 13 but fewer than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 13%. The deduction is allowable when the grapevines enter their first commercial season (section 40-530, item 2). The Project Manager will inform Growers of when the grapevines enter their first commercial season;

- (xxiv) Any capital expenditure incurred for a 'landcare operation' (as defined in section 40-635) is fully deductible in the year it is incurred under Subdivision 40-G, section 40-630. If the expenditure is on a 'depreciating asset' (the underlying asset), the Grower may choose to claim a deduction under either Division 328 or Subdivision 40-G (although expenditure on some items of plant can only be deducted under Division 328). For the purposes of Division 328, each Grower's interest in the underlying asset is itself deemed to be a 'depreciating asset'. If the 'cost' apportionable to that deemed 'depreciating asset' is less than \$1000, the deemed asset is treated as a 'low-cost asset' and that amount is deductible in full when the underlying asset is first used or 'held' ready for use. This is so provided the Grower is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income. If the deemed asset is not treated as a 'low-cost asset', the tax deduction allowable is determined by multiplying its 'cost' by half the relevant STS pool rate. At the end of the year, it is allocated to the relevant STS pool and in subsequent years, the full pool rate will apply. If the expenditure is not on a 'depreciating asset', the expenditure is fully deductible under Subdivision 40-G.

Tax outcomes for all Growers

Interest on loans

83. The deductibility or otherwise of interest arising from any loan agreements entered into by a Grower is outside the scope of this Ruling. However, Growers should read the discussion of the prepayment rules in paragraphs 110 to 117 (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.

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

Section 35-55 – Commissioner's discretion

84. For a Grower who is an individual and who enters the Project during the years ended 30 June 2002 and/or 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 has decided that the rule in section 35-10 does not apply to this business activity for the income years specified below:

- 30 June 2002 to 30 June 2004 for a Grower who is accepted into the Project on or before 20 June 2002;
- 30 June 2003 to 30 June 2004 for a Grower who is accepted into the Project between 1 July 2002 and 31 October 2002; and
- 30 June 2003 to 30 June 2005 for a Grower who is accepted into the Project after 31 October 2002 but on or before 20 June 2003,

provided that the Project is carried out in the manner described in this Ruling.

85. 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 131 in the Explanations part of this ruling, below); or
- a Grower's business activity satisfies one of the tests in sections 35-30, 35-35, 35-40 or 35-45; or
- a 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)).

86. 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.

87. 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.

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

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

- expenditure by a Grower does not fall within the scope of sections 82KZME-82KZMF (but see paragraphs 110 to 117);
- 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?

89. For the amounts set out in the tables above to constitute allowable deductions the Grower’s viticulture activities as a participant in the Treviso Table Grape Project must amount to the carrying on of a business of primary production. These viticulture activities will fall within the definitions of ‘horticulture’ and ‘commercial horticulture’ in section 40-535 of the ITAA 1997.

90. For schemes such as that of Treviso Table Grape Project, 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.

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

- the Grower has an identifiable interest in the land on which the Grower's grapevines are established;
- the Grower has a right to harvest and sell the grapes each year from those grapevines;
- the viticulture activities are carried out on the Grower's behalf;
- the viticulture activities of the Grower are typical of those associated with a viticulture business; and
- the weight and influence of general indicators point to the carrying on of a business.

92. Under this Project, each Grower enters into a Management Agreement and an Allotment Agreement.

93. Under the Allotment Agreement each individual Grower will have rights over a specific and identifiable area of land. The Allotment Agreement provides the Grower with an ongoing interest in the specific grapevines on the licenced area for the term of the Project. Under the licence the Grower must use the land in question for the purpose of carrying out viticultural activities and for no other purpose. The licence allows BRIL as the Project Manager to come onto the land to carry out its obligations under the Management Agreement.

94. Under the Management Agreement the Project Manager is engaged by the Grower to establish and maintain a Grower's Allotment 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 Grower's Allotment on the Grower's behalf. In establishing the Grower's Allotment, the Grower engages the Project Manager to install water facilities (e.g., irrigation) and to acquire and plant vine seedlings/rootlings on the Grower's Allotment. During the term of the Project, these assets will be used wholly to carry out the Grower's viticulture activities. The Project Manager is also engaged to harvest and sell, on the Grower's behalf, the grapes grown on the Grower's Allotment. 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.

95. 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 its grapes 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. The pooling of grapes grown on the Grower's Allotment with the grapes of other Growers is consistent with general viticulture practices. Each Grower's proportionate share of the sale proceeds of the pooled grapes will reflect the proportion of the grapes contributed from their land.

96. The services of the Project Manager and the installation of assets on the Grower's behalf are also consistent with general viticulture practices. The assets are of the type ordinarily used in carrying on a business of viticulture. While the size of a Grower's Allotment is relatively small, it is of a size and scale to allow it to be commercially viable (see Taxation Ruling IT 360).

97. 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 Project Manager will provide the Grower with regular progress reports on the Grower's Allotment 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.

98. The viticulture 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' viticulture activities in the Treviso Table Grape Project will constitute the carrying on of a business.

The Simplified Tax System

Division 328

99. 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.

100. 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 the fees for land use, water supply, other primary services, management and other duties***Section 8-1***

101. Consideration of whether the fees for land use, water supply, other primary services, management and other duties 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.

102. The fees for land use, water supply, other primary services, management and other duties associated with the viticulture activities will relate to the gaining of income from the Grower's business of viticulture (see above), and hence have a sufficient connection to the operations by which income (from the regular sale of grapes) 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 these fees is identifiable from the arrangement. These fees appear to be reasonable. There is no capital component of the management fees. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

Possible application of prepayment provisions

103. Under the Management Agreement and the Allotment Agreement the fees for land use, water supply, other primary services, management and other duties are not for things to be done beyond 30 June in the year in which the relevant amounts are incurred. In these circumstances, the prepayment provisions in sections 82KZME and 82KZMF have no application to these fees.

104. However, where a Grower chooses to prepay these fees for a period beyond the income year in which the expenditure is incurred,

the prepayment provisions (see paragraphs 110 to 117) will apply to determine the amount and timing of the deductions regardless of whether the Grower is an 'STS taxpayer' or not. These provisions apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes 'STS taxpayers' from the operation of section 82KZMF. This is subject to the 'excluded expenditure' exception. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000.

Timing of deductions

105. In the absence of any application of the prepayment provisions, the timing of deductions for the fees for land use, water supply, other primary services, management and other duties will depend upon whether a Grower is an 'STS taxpayer' or is not an 'STS taxpayer'.

106. If the Grower is not an 'STS taxpayer', these fees are deductible in the year in which they are incurred.

107. If the Grower is an 'STS taxpayer' these fees are deductible in the income year in which they are paid, or are paid for the Grower (paragraph 328-105(1)(b)). If any amount 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.

Interest deductibility

Section 8-1

108. The deductibility of interest incurred by Growers who finance their participation in the Project through a loan facility with a bank or other financiers are 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.

109. While the terms of any finance agreement entered into between relevant Growers and such financiers are subject to commercial negotiation, those agreements may require interest to be prepaid. Alternatively, a Grower may choose 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 110 to 117).

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

110. 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 (e.g., 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.

111. For this Project only section 82KZL (an interpretative 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 'STS taxpayers' from the operation of section 82KZMF.

Sections 82KZME and 82KZMF

112. 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)).

113. 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; and
- 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.

114. 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. 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.

115. 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.

116. 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.

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

117. 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

118. In this Project, initial fees for land use, water supply, other primary services, management and other duties of per allotment will be incurred on execution of the Management Agreement and the

Allotment Agreement. These fees are charged for providing management services or licencing land to a Grower by 30 June of the year of execution of the Agreements. Under the Agreements, further annual expenditure is required each year during the term of the Project for the provision of management services and land until 30 June in those years.

119. In particular, fees for other primary services, management and other duties are expressly stated to be for a number of specified services. No explicit conclusion can be drawn from the description of the arrangement that the initial fees have been inflated to result in reduced fees being payable in subsequent years.

120. There is also no evidence that might suggest the management services covered by these fees could not be provided within the relevant expenditure year. Thus, for the purposes of this Ruling, it can be accepted that no part of the initial fees for other primary services, management and other duties, and the fees for subsequent years, is for the Project Manager doing 'things' that are not to be wholly done within the expenditure year.

121. On this basis, provided a Grower incurs expenditure as required under the Project agreements, as set out in paragraph 49, then the basic precondition in subsection 82KZME(2) is not satisfied and, in these circumstances, section 82KZMF will have no application.

Growers who choose to pay fees for a period in excess of that required by the Project's agreements

122. Although not required under either the Management Agreement or the Allotment Agreement, a Grower participating in the Project may choose to prepay fees/interest for a period beyond the 'expenditure year'. Similarly, Growers who use financiers may either choose, or be required to prepay interest. Where this occurs, contrary to the conclusion reached in paragraph 121 above, section 82KZMF will apply to apportion the expenditure and allow a deduction over the period in which the prepaid benefits are provided.

123. For these Growers, the amount and timing of deductions for any relevant prepaid fees for land use, water supply, other primary services, management and other duties, or prepaid interest will depend upon when the respective amounts are incurred and what the 'eligible service period' is in relation to these amounts.

124. However, as noted above, prepaid fees of less than \$1,000 incurred in an expenditure year will be 'excluded expenditure' and will be not subject to apportionment under section 82KZMF.

Expenditure of a capital nature***Division 40 and Division 328***

125. Any part of the expenditure of a Grower that is attributable to acquiring an asset or advantage of an enduring kind is generally capital or capital in nature and will not be an allowable deduction under section 8-1. In this Project, expenditure attributable to vine covers, water facilities, the establishment of the grapevines and 'landcare operation is of a capital nature. This expenditure falls for consideration under Division 40 or Division 328 of the ITAA 1997.

126. The application and extent to which a Grower claims deductions under Division 40 and Division 328 depends on whether or not the Grower is an 'STS taxpayer'.

127. The tax treatment of capital expenditure has been dealt with in a representative way in paragraphs 75 and 82 (above) in the tables and the accompanying Notes.

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

128. 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.

129. 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.

130. 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.

131. 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.

132. 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).

133. 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 Allotment in the Project is unlikely to have their business activity pass one of the tests until the income year ended 30 June 2007 if that Grower is accepted into the Project on or before 31 October 2002 or 30 June 2008 if that Grower is accepted into the Project after 31 October 2002 but on or before 20 June 2003. Growers who acquire more than one interest(s) in the Project may however, find that their activity meets one of the tests in an earlier income year.

134. Therefore, prior to these respective times, 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.

135. 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 the business activity has started to be carried on and for that, or those income years:

- (i) because of its nature, the business activity has not satisfied, or will not satisfy one of the tests set out in Division 35; and
- (ii) 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.

136. Information provided with this Product Ruling application indicates that a Grower who acquires the minimum investment of one Allotment on or before 31 October 2002 in the Project is expected to be carrying on a business activity that will pass one of the tests in the income year ended 30 June 2007, or will produce a taxation profit, for the income year ended 30 June 2005. The Commissioner has decided for such a Grower that it would be reasonable to exercise the second arm of the discretion until the income year ended 30 June 2004.

137. Information provided with this Product Ruling application also indicates that a Grower who acquires the minimum investment of one Allotment after 31 October 2002 but on or before 20 June 2003 in the Project is expected to be carrying on a business activity that will pass one of the tests in the income year ended 30 June 2008, or will produce a taxation profit, for the income year ended 30 June 2006. The Commissioner has decided for such a Grower that it would be reasonable to exercise the second arm of the discretion until the income year ended 30 June 2005.

138. This Product Ruling is issued on a prospective basis (ie, 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 paragraph 84), in the manner described in the Arrangement (see paragraphs 14 to 65). 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.

139. 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 Independent Report, Marketing Report and Certified Practising Valuer's report on the Treviso Table Grape Project provided with the Product Ruling application; and
- independent, objective, and generally available information relating to the viticulture industry which

substantially supports cash flow projections and other claims, including prices and costs, in the Product Ruling application.

Section 82KL - recouped expenditure

140. 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

141. 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).

142. The Treviso Table Grape Project 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 73 to 82 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.

143. Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the harvesting and sale of their grapes. There are no facts that would suggest that Growers have the opportunity of obtaining a tax advantage other than the tax advantages identified in this Ruling. There is no non-recourse financing or round robin characteristics, and no indication that the parties are not dealing at arm's length or, if any parties are not dealing at arm's length, that any adverse tax consequences result. Further, having regard to the factors to be considered under paragraph 177D(b) 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 - Entitlement to GST input tax credits

144. 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	<u>\$2 200*</u>
Total due and payable by 1 January 2002 (includes GST of \$600)	<u>\$6 600</u>

*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:

$$1/11 \times \$4400 = \$400.$$

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:

$$1/11 \times \$2200 = \$200.$$

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).

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Commissioner of Taxation

15 May 2002

<i>Previous draft:</i>	- ITAA 1936 82KZME
Not previously issued in draft form	- ITAA 1936 82KZME(1) - ITAA 1936 82KZME(2)
<i>Related Rulings/Determinations:</i>	- ITAA 1936 82KZME(3)
IT 360; PR 1999/95; TR 92/1;	- ITAA 1936 82KZME(4)
TR 92/20; TR 97/11; TR 97/16;	- ITAA 1936 82KZME(7)
TD 93/34; TR 98/22; TR 2000/8	- ITAA 1936 82KZMF - ITAA 1936 82KZMF(1)
<i>Subject references:</i>	- ITAA 1936 Pt IVA - ITAA 1936 177A
- carrying on a business	- ITAA 1936 177C
- commencement of business	- ITAA 1936 177D
- fee expenses	- ITAA 1936 177D(b)
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- tax benefits under tax avoidance schemes	- ITAA 1997 35-10(3) - ITAA 1997 35-10(4)
- tax shelters	- ITAA 1997 35-30
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<i>Legislative references:</i>	- ITAA 1997 35-45
- TAA 1953 Pt IVA	- ITAA 1997 35-55
- ITAA 1936 Div 3 - Pt III	- ITAA 1997 35-55(1)
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 - ITAA 1997 Subdiv 328-D
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- FCT v. Lau 84 ATC 4929

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NO: 2002/000529

ISSN: 1441 1172