



# ***PR 2006/8 - Income tax: Gunns Plantations Limited Woodlot Project 2006 '2007 Growers'***

 This cover sheet is provided for information only. It does not form part of *PR 2006/8 - Income tax: Gunns Plantations Limited Woodlot Project 2006 '2007 Growers'*

 This document has changed over time. This is a consolidated version of the ruling which was published on *8 March 2006*



## Product Ruling

### Income tax: Gunns Plantations Limited Woodlot Project 2006 '2007 Growers'

Contents	Para
<b>BINDING SECTION:</b>	
What this Ruling is about	1
Date of effect	12
Withdrawal	14
Scheme	15
Ruling	61
<b>NON BINDING SECTION:</b>	
Appendix 1:	
Explanation	71
Appendix 2:	
Detailed contents list	107

#### **ⓘ This Ruling provides you with the following level of protection:**

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

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

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

## No guarantee of commercial success

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

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

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out in the **Ruling** part of this document are available, **provided that** the scheme is carried out in accordance with the information we have been given, and have described below in the **Scheme** part of this document.

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

Potential participants should be aware that the Tax Office will be undertaking review activities to confirm the scheme has been implemented as described below and to ensure that the participants in the scheme 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 entity(ies) 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 Ruling is about

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

### Relevant taxation provision(s)

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 of the ITAA 1997;
- section 17-5 of the ITAA 1997;
- section 25-25 of the ITAA 1997;
- Division 27 of the ITAA 1997;
- Division 35 of the ITAA 1997;
- Subdivision 61-J of the ITAA 1997;
- Division 328 of the ITAA 1997;
- section 82KL of the *Income Tax Assessment Act 1936* (ITAA 1936);
- sections 82KZME to 82KZMG of the ITAA 1936; and
- Part IVA of the ITAA 1936.

### Goods and Services Tax

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

### Changes in the Law

4. Although this Ruling deals with the laws 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 entities**

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

8. The class of entities to whom this Ruling applies does not include:

- entities who intend to terminate their involvement in the scheme prior to its completion, or who otherwise do not intend to derive assessable income from it;
- entities who participate in the Project through offers made other than through the Product Disclosure Statement;
- entities who finance their participation in the Project through loans other than those loans described at paragraphs 48 to 56 of this product ruling;
- Gunns Plantations Ltd or its associates; and
- entities who are accepted to participate in the Project before 1 July 2006 and after 30 June 2007.

**Qualifications**

9. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 15 to 60.

10. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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## Date of effect

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12. This Ruling applies prospectively from 8 March 2006, 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).

13. If a taxpayer has a more favourable private ruling (which is legally binding), the taxpayer can rely on the private ruling if the income year to which the private ruling relates has ended, or has commenced but not yet ended. However, if the scheme 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

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14. This Product Ruling is withdrawn and ceases to have effect after 30 June 2009. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all entities within the specified class who enter into the scheme specified below. Thus, the Ruling continues to apply to those entities, even following its withdrawal, who entered into the specified scheme prior to withdrawal of the Ruling. This is subject to there being no change in the scheme or in the entities' involvement in the scheme.

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## Scheme

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

- Application for a Product Ruling dated 25 October 2005 as constituted by documents provided on 15 November 2005, 3 January 2006, 10 January 2006 and additional correspondence dated 16 December 2005, 13 January 2006, 17 January 2006, 26 January 2006, 2 February 2006, 20 February 2006, 21 February 2006, 22 February 2006 and 23 February 2006;
- Draft **Product Disclosure Statement** for Gunns Plantations Woodlot Project 2006, received 16 November 2005 and amended 2 February 2006;
- Draft **Constitution** of the Gunns Plantations Woodlot Project 2006, received 16 November 2005;
- Draft Compliance Plan for the Gunns Plantations Woodlot Project 2006, received 16 November 2005;
- Draft Forestry Right Deed between the owner of the Land (as Landowner) and the Gunns Plantations Limited (Gunns Plantations), received 16 November 2005;
- Draft **Sub-Forestry Right Deed** between Gunns Plantation Limited and the Grower, received 16 November 2005;
- Draft **Agreement to Grant a Sub-Forestry Right** between Gunns Plantations Limited and the Grower, received 16 November 2005;
- Draft **Management Agreement** between Gunns Plantations Limited (as Manager) and Gunns Limited and the Grower, received 16 November 2005;
- Draft **Woodlot Finance Package** for the Gunns Plantations Woodlot Project 2006 between Gunns Finance Pty Ltd (Gunns Finance) and Growers entering into the Project by 30 June 2007 as '2007 Growers', received 25 January 2006;
- Draft **Finance Application** for the Gunns Plantations Limited Woodlot Project 2006 between Allco Managed Investments Ltd as trustee for the Gateway Momentum Funding Trust No. 1 (Allco Managed Investments) and 'Growers' entering into the Project by 30 June 2007 as '2007 Growers', received 20 February 2006;
- Draft Indicative Term Sheet, received 20 February 2006;

- Draft **Terms Arrangement** between Gunns Plantations Limited and 'Investor' and 'Guarantor' for 'Investor' entering into the Project by 30 June 2007 for investment in the 2006/2007 financial year, received 25 January 2006;
- Deed Poll by Gunns Limited in favour of the Growers, received 10 January 2006 and amended 21 February 2006;
- Draft Wood Sale Agreement received 10 January 2006; and
- Draft Custody Agreement between Gunns Plantations Limited (as Trustee) and Gunns Limited (as Custodian), received 16 November 2005.

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

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

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

## Overview

18. The salient features of the Gunns Plantations Limited Woodlot 2006 Project are as follows:

Location	Tasmania and New South Wales
Type of business to be carried on by each participant	Commercial growing of <i>Eucalyptus globulus</i> (Tasmanian Blue-Gum), <i>Pinus radiata</i> (Radiata Pine) and <i>Eucalyptus nitens</i> (Shining Gum) trees under one of three planting options: <b>Planting Option 1:</b> Hardwood pulpwood <b>Planting Option 2:</b> Hardwood veneer and pulpwood <b>Planting Option 3:</b> Softwood pulpwood and sawlog
Number of hectares offered for cultivation	12,000 hectares, however, oversubscriptions may be accepted
Size of each interest	One hectare

Number of trees per hectare	Option 1: Minimum average of 1,100 Option 2: Minimum average of 1,100 Option 3: Minimum average of 1,333
Term of the Project	Planting Option 1: 13 years Planting Option 2: 20 years Planting Option 3: 25 years
Initial cost per hectare	'Establishment Fee' of \$6,820
Other costs	Growers will be charged for the cost of any insurance except public liability insurance. A 'Base Line Pruning Fee' will be payable for 'Planting Option 2' in years 4 (\$736), 6 (\$788) and 7 (\$840) per 'Woodlot'. These base costs will be increased in line with CPI. A fee for sales commission, rental and maintenance will be charged at the time of thinning (Year 9 for Option 1 and Option 2 and Years 13 and 18 for Option 3) and at the end of the Project. The fee will equal 9.9% of the 'Wood Sale Proceeds' from the 'Woodlot'.

19. The Project is registered as a Managed Investment Scheme under the *Corporations Act 2001*. Gunns Plantations Limited (Gunns Plantations) have been issued with an Australian Financial Service Licence and will be the Responsible Entity for the Project.

20. An offer to participate in the Project will be made through a PDS. The offer under the PDS is for 12,000 hectares in the Project and will invite participants to apply for one or more one hectare 'Woodlot' in the Project.

21. To participate in the Project participants must complete the 'Application Form' and the Power of Attorney Form in the PDS and pay the 'Application Fee'. The 'Application Fee' will be banked into the relevant 'Applications Portion Account' for the respective 'Planting Option' chosen by the Grower. Payment of the 'Application Fee' constitutes full payment of the 'Establishment Fee'. In accordance with clause 7 and 8 of the Constitution these monies will be released to Gunns Plantations when certain specified criteria have been met.

22. Growers will establish and manage a commercial plantation of '*Eucalyptus globulus*' and '*Eucalyptus nitens*' trees or '*Pinus radiata*' trees and carry on a commercial business of afforestation during the 'Term' of the Project.



23. Growers will enter into a Sub-Forestry Right Deed with Gunns Plantations as the 'Landlord'. The Sub-Forestry Right Deed will comprise contractual rights in relation to an identifiable area of land called a 'Woodlot'. The Sub-Forestry Right Deed will enable Growers to access the land to establish, maintain and ultimately harvest the 'Woodlot'. Growers will also contract with Gunns Plantations as the 'Manager', under a Management Agreement, to have 'Trees' planted on their 'Woodlot(s)' for the purpose of eventual felling and sale in approximately 13, 20 or 25 years, depending on which Planting Option is chosen.

24. The three Planting Options available to Growers are:

**Planting Option 1 Eucalyptus – Hardwood Pulpwood**

- Either '*Eucalyptus nitens*' or '*Eucalyptus globulus*' will be planted and maintained for approximately 13 years before being harvested and sold as woodchip logs. Under this option, Growers will receive a thinning payment in approximately year 9.

**Planting Option 2 Eucalyptus – Hardwood Veneer and Pulpwood**

- Either '*Eucalyptus nitens*' or '*Eucalyptus globulus*' will be planted and maintained for approximately 20 years before being harvested and sold as both high value hardwood veneer logs and woodchip logs. The 'Trees' will be pruned three times in the first 10 years and will be commercially thinned in approximately year 9.

**Planting Option 3 Pinus radiata – Softwood Pulpwood and Sawlog**

- '*Pinus radiata*' will be planted and maintained for approximately 25 years before being harvested and sold as both high value softwood sawlogs and woodchip logs. The 'Trees' will be commercially thinned in approximately years 13 and 18.

25. Growers whose 'Applications' are accepted on or before 30 June 2007 will commence participation as '2007 Growers'. **This Ruling only applies in respect of '2007 Growers'. Note that a separate Product Ruling, PR 2005/7 has been issued for Growers who enter into the Project from 1 July 2005 to 30 June 2006.**

26. Gunns Plantations have the right to accept oversubscriptions. There is no minimum amount that must be raised under the PDS. The land for the Project will be leased by Gunns Plantations either from Gunns Limited ('Gunns') or a third party land owner. Additional land will be secured if necessary.

**Constitution**

27. The Constitution for the Project sets out the general functions, powers and duties under which the Responsible Entity agrees to act for the Growers and to manage the Project. The Forestry Right Deed, Management Agreement, Sub-Forestry Right Deed and Draft Wood Sale Agreement are Schedules to the Constitution. These agreements will be executed on behalf of each Grower who has signed the 'Application Form' and 'Power of Attorney Form' in the PDS and who is accepted into the Project. After acceptance and execution of the Agreements, Growers are bound by the Constitution, Sub-Forestry Right Deed and Management Agreements by virtue of their participation in the Project. The Responsible Entity will keep a register of Growers accepted into the Project.

**Compliance Plan**

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

**Forestry Right Deed and Sub-Forestry Right Deed**

29. Each Landowner as the registered proprietor of the 'Land' will grant to Gunns Plantations a Forestry Right Deed over the 'Land' for the purpose of carrying out the 'Permitted Activities' for the 'Term' of the Project. Each Landowner and Gunns Plantations will sign a 'Registration Instrument' and any other document required to enable the Forestry Right Deed, or any rights established by the grant of the 'Forestry Right', to be registered against the title or titles to the 'Land'.

30. Gunns Plantations (as Grantor) subsequently grant the 'Forestry Right' to the Grower under the Sub-Forestry Right Deed, to establish, plant, tender, maintain and harvest the 'Trees' for the 'Term' of the Project. The Grower's and Grantor's rights and obligations are set out in clause 4 and 5 of the Sub-Forestry Right Deed respectively. The Grower has, at all times, full right, title and interest in the 'Trees' and the right to have the 'Trees' sold for the benefit of the Grower.

**Agreement to Grant a Sub-Forestry Right**

31. The 'Agreement to Grant a Sub-Forestry Right' is granted by Gunns Plantations to a Grower upon acceptance of the application in cases where Gunns Plantations are not immediately in a position to grant the Grower a Sub-Forestry Right Deed, in respect of the Grower's 'Woodlot'.

32. Gunns Plantations undertake to take all reasonable steps to grant the Sub-Forestry Right Deed in respect of the Grower's 'Woodlot'. It is a requirement of their Australian Financial Services Licence that Gunns Plantations will enter into and lodge for registration the Forestry Right Deed within 9 months after the date of the Grower being accepted into the Project. If the Forestry Right Deed is not lodged for registration within 9 months after the issue of interest in the Project to the Grower, Gunns are required to offer the Grower a refund of the 'Application Fee'.

### **Management Agreement**

33. Each Grower enters into a Management Agreement with Gunns Plantations (as Manager). The Manager will carry out the 'Services' in respect of the Grower's 'Woodlot' in accordance with the terms and conditions set out in this agreement. The 'Services' means the 'Establishment Services', the 'Maintenance Services', and the 'Pruning Services' (only for Growers who participate in 'Planting Option 2').

34. Growers contract with the Manager to establish and maintain the Growers 'Woodlot' until maturity. The Manager undertakes to use its best endeavours to ensure that all 'Establishment Services' and 'Maintenance Services' are carried out in accordance with good silvicultural practices.

35. Under Clause 4 of the Management Agreement the Manager will provide 'Establishment Services' on each 'Woodlot' within 12 months from the date that the 'Establishment Fee' is paid, or the Manager is first permitted under the Sub-Forestry Right Deed to access the land for the purpose of commencing the 'Establishment Services'. However, if that period extends beyond 30 June of the financial year immediately following the year in which the 'Establishment Fee' is paid, the Responsible Entity is to ensure that the 'Establishment Services' will be provided by that 30 June. Clause 5 sets out the 'Maintenance Services' under which the Manager, on behalf of the Grower, must do all things necessary to rear the 'Trees' and maintain the Grower's 'Woodlots' in accordance with good silvicultural practice.

36. Under clause 6 the Manager will also conduct 'Pruning Services', if required, in accordance with the following guidelines:

- the 'Trees' subject to 'Planting Option 1' and 'Planting Option 3' will not be pruned; and
- in respect of the 'Trees' subject to 'Planting Option 2', the 'Trees' will be pruned 3 times before such 'Trees' reach approximately 10 years of age.

37. The Manager will be entitled to a 'Maintenance Fee' for providing 'Maintenance Services', which will be deducted by Gunns (as the Custodian) on behalf of the Manager from the 'Wood Sale Proceeds' and paid to the Manager in accordance with the Constitution.

38. If requested by the Grower, the Manager will endeavour to procure insurance cover against destruction or damage of the Grower's 'Woodlot' by fire and other usual risks. The Manager will invoice the Grower for the relevant insurance premium together with an administration charge of 10% of the amount of the premium for each year or part thereof.

39. The Manager will be responsible for insuring the 'Plantation' against public risk for an amount of not less than \$10,000,000 during the 'Term' of the Project.

40. Under clause 5 the Manager guarantees to maintain a minimum stocking level of 90% of the average initial planting density for the first 2 years of the Project for all options.

#### **Deed Poll and draft Wood Sale Agreement**

41. Under the Management Agreement, the Grower appoints the Manager as agent to sell the 'Wood' on its behalf, on terms no less favourable than those set out in the draft Wood Sale Agreement.

42. The draft Wood Sale Agreement sets out the terms and conditions under which the Manager, as agent for each 'Selling Grower', sells the 'Relevant Log Type' from the 'Region' to a potential 'Purchaser'.

43. In addition, Gunns have entered into a Deed Poll to purchase 'Wood' from 'Planting Option 1' and 'Planting Option 2' and the pulp wood grown in Tasmania under 'Planting Option 3', for a 'Purchase Price' that is determined to be fair and reasonable having regard to several factors including the market price of similar wood and its quality. In respect of the 'Sawlogs' and other pulp wood harvested under 'Planting Option 3', the Manager, in the Management Agreement, has committed to negotiate a separate off-take agreement with potential purchasers.

#### **Fees**

44. Under the Management Agreement the 'Establishment Fee' payable for the 'Establishment Services' is \$6,820.

45. There are no ongoing fees for rent or maintenance charges. A single fee for sales commission, rent and maintenance will be payable from any harvest proceeds estimated to be at the time of thinning (Year 9 for Option 1 and Option 2 and Years 13 and 18 for Option 3) as well as at 'Harvest' in Year 13, 20 or 25 depending on the 'Planting Option' taken. The single fee will equal 9% of the 'Wood Sale Proceeds' from the 'Woodlot'.

46. A 'Base Line Pruning Fee' will be payable for 'Planting Option 2' in years 4 (\$736), 6 (\$788) and 7 (\$840) per 'Woodlot'. This Base Line Pruning Fee' will be increased in line with the 'Consumer Price Index'.

## **Pooling of 'Trees' and distribution of proceeds**

47. The Management Agreement sets out the arrangements relating to the pooling of Growers' 'Trees' and the distribution of proceeds from that sale. This Product Ruling only applies where the following principles apply to those pooling and distribution arrangements:

- only Growers who have contributed 'Trees' from a 'Harvested Woodlot' to the pool making up the proceeds are entitled to benefit from distributions from those proceeds;
- 'Trees' can only be pooled with the 'Trees' of Growers accepted to participate in the Gunns Plantations Woodlot Project 2006 on or before 30 June 2007; and
- the 'Trees' in each 'Planting Option' will be pooled separately for the benefit of the Growers in that particular 'Planting Option'.

## **Finance**

48. Growers who do not pay the 'Application Fee' in full upon application and who do not receive approval to pay their fees under the Terms Arrangement below have options to borrow either from Gunns Finance or Allco Managed Investments. Growers can also borrow from an independent lender.

49. Finance arrangements other than the Terms Arrangement, the Woodlot Finance Package and the Finance Application set out below, are not covered by this Product Ruling. Growers who enter into such finance agreements may request a private ruling on the deductibility or otherwise of interest incurred under the agreement.

50. Growers cannot rely on this Product Ruling if they enter into a finance package with Gunns Finance or Allco Managed Investments that materially differs from those provided to the Tax Office by Gunns Plantations with the application for this Product Ruling.

## **Finance by Gunns Finance**

51. Growers (called 'Borrowers' in the Woodlot Finance Package) can borrow from Gunns Finance provided that the conditions precedent in clause 3 of Part B of the 'Loan Terms' are satisfied. The 'Term' of the 'Loan' is for 3, 5, 10 or 15 years. The 15 year loan is only available to Growers who invest in either Planting Option 2 or Planting Option 3.

52. Common features to each of these Loans include:

- the Grower's application to participate in the Project has been accepted by Gunns Plantations;
- the Grower pays a loan 'Establishment Fee' of \$150;
- Gunns Finance will take security over the Growers 'Woodlot';
- an initial deposit equal to 20% of the 'Application Fee' applies;
- an interest rate of 10.5% applies for the first 5 years. The interest rate will be reviewed at the end of each 5 year period and fixed for each following 5 years at 4 percentage points above the ANZ Banking Group Ltd's 5 year swap reference rate;
- an additional 2% interest per annum applies to overdue amounts due and payable;
- 'Repayment Amounts' are due as per Item 5 of the Loan Schedule and the Part J Woodlot Project Repayment Schedule; and
- Growers who enter into these finance arrangements will be required to make equal monthly repayments of the balance over the 'Term' of the 'Loan'.

53. At the absolute discretion of Gunns Finance, the initial deposit required under the Woodlot Finance Package may vary from 0% to 20% of the 'Application Fee'. Similarly, the interest rates may be varied within good commercial terms at the absolute discretion of Gunns Finance.

54. The Grower agrees to repay the 'Loan', and pay interest and all other 'Outstanding Monies' to Gunns Finance. The Grower will pay the 'Repayment Amount' on the 'Repayment Date' of each month during the 'Term' of the 'Loan' as detailed in Part D – Loan Schedule.

### **Finance by Allco Managed Investments**

55. Allco Managed Investments may also make loans available to Growers under the Finance Application for periods of 3, 5, 6, 7, 10 or 15 years. The 15 year 'Loan' is only available to Growers who invest in either Planting Option 2 or Planting Option 3.

56. There are three types of 'Loan' on offer by Allco Managed Investments. The first type is a 'Loan' with monthly principal and interest repayments and may be for 3, 5, 10 or 15 years. The second type of 'Loan' involves a two year interest only period followed by monthly principal and interest repayments and may be for 5, 7 or 10 years duration in total. The third type of 'Loan', which is only available to Growers who participate in Planting Option 2 or Planting Option 3, involves a three year interest only period followed by

monthly principal and interest repayments and may be for 6, 10 or 15 years duration in total. Common features contained in each of these loans are that:

- the Grower's application to participate in the Project has been accepted by Gunns Plantations subject to the finance approval;
- the Grower pays a loan 'Establishment Fee' of \$250 plus 0.5% of the amount financed;
- Allco Managed Investments will take security over the Growers 'Woodlot';
- an initial deposit of between 0% and 50% of the 'Application Fee' applies;
- interest rates will vary between 10% and 11% and will be fixed for the term of the loan at the time of approval;
- an additional 3% interest per annum applies to overdue amounts due and payable;
- Growers who enter into these finance arrangements will be required to make equal monthly repayments of the outstanding balance, commencing at the end of the interest only period; and
- Growers who break the term of the loan will be liable for break costs.

## Terms Arrangement

57. If Gunns Plantations Limited accept that the 'Application Fee' can be paid under the Terms Arrangement, then the Grower must complete the Terms Arrangement and a direct debit request. Gunns Plantations Limited reserves the right to either accept or reject the application.

58. If accepted by Gunns Plantations Limited, the Grower will be required to pay their 'Application Fee' as follows:

- 10% on application;
- Balance via 11 equal monthly instalments of \$558 per 'Woodlot' plus applicable stamp duty;
- Gunns Plantations will take security over the Grower's 'Woodlot'; and
- Provided that all instalments are made on time, no interest will be levied to the Grower.

59. '2007 Growers' cannot rely on any part of this Ruling if the Application Fee, other than an Application Fee payable subject to a finance arrangement or a 'Terms Arrangement', is not paid in full on or before 30 June 2007. Where an application is accepted by Gunns Plantations Limited, subject to finance approval by any lending institution, Growers can not rely on this Ruling if written evidence of that approval has not been given to Gunns Plantations Limited by the relevant lending institution on or before 30 June 2007.

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

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



## Ruling

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### Application of this Ruling

61. Subject to paragraph 8, this Ruling applies only to a Grower who is accepted to participate in the Project on or before 30 June 2007 as a '2007 Grower' and who has executed a Management Agreement and either an Agreement to Grant a Sub-Forestry Right or a Sub-Forestry Right Deed on or before that date.

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

63. 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.

### The Simplified Tax System (STS)

#### *Division 328*

64. To be an 'STS taxpayer' a Grower must be eligible to be an 'STS taxpayer' and must have elected to be an 'STS taxpayer'. For a Grower participating in the Project, the recognition of income and the timing of tax deductions is different under the STS where a Grower who was an 'STS taxpayer' prior to the 1 July 2005 continues to use the cash accounting method (called the 'STS accounting method' – see section 328-115 of the ITAA 1997).

65. For such Growers, a reference in this Ruling to an amount being deductible when 'incurred' will mean that amount is deductible when paid and a reference to an amount being included in assessable income when 'derived' will mean that amount is included in assessable income when received.

### 25% entrepreneurs tax offset

#### *Subdivision 61-J*

66. For the first income year starting on or after 1 July 2005, Subdivision 61-J of the ITAA 1997 provides for a tax offset of up to 25% of income tax liability related to the business income of a business in the STS with annual group turnover of less than \$75,000. Entitlement to the offset varies depending on the type of entity and is therefore outside the scope of this Ruling.

### Assessable income

#### *Section 6-5*

67. 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 of the ITAA 1997), will be assessable income of the Grower under section 6-5 of the ITAA 1997.

**Deductions for the 'Establishment Fee' and for interest****Section 8-1**

68. A Grower who is accepted to participate in the Project on or before 30 June 2007 may claim tax deductions, on a per Woodlot basis, under section 8-1 of the ITAA 1997, for the revenue expenses set out in the Table below.

<b>Fee Type</b>	<b>Year ended 30 June 2007</b>	<b>Year ended 30 June 2008</b>	<b>Year ended 30 June 2009</b>
'Establishment Fee'	\$6,820 See Notes (i) & (ii)		
Interest on loans with Gunns Finance or Allco Managed Investments	As incurred See Notes (iii) & (iv)	As incurred See Notes (iii) & (iv)	As incurred See Notes (iii) & (iv)
Loan 'Establishment Fee' for loans with Gunns Finance or Allco Managed Investments	Must be calculated See Note (v)	Must be calculated See Note (v)	Must be calculated See Note (v)

**Notes:**

- (i) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (for example input tax credits): Division 27 of the ITAA 1997.
- (ii) Under section 82KMG of the ITAA 1936 the 'Establishment Fee' is expenditure for 'seasonally dependent agronomic activities' (see paragraphs 94 to 97) and is deductible in the income year in which it is incurred.
- (iii) Loan arrangements entered into with financiers other than Gunns Finance Pty Ltd or Allco Managed Investments are outside the scope of this Ruling. Growers who borrow from lenders other than Gunns Finance Pty Ltd or Allco Managed Investments may request a private ruling on the deductibility of the interest incurred.
- (iv) This Ruling does not apply to Growers who choose or who are required to prepay interest under a loan agreement (including loans from lenders other than

Gunns Finance Pty Ltd or Allco Managed Investments). All Growers who finance their participation in the Project should read the discussion of the prepayment rules in paragraphs 92 to 100 as those rules may be applicable if interest is prepaid. Any Grower who prepays interest may request a private ruling on the taxation consequences of their participation in the Project.

- (v) The loan 'Establishment Fee' payable to Gunns Finance Pty Ltd or Allco Managed Investments is a borrowing expense and is deductible under section 25-25 of the ITAA 1997. It is incurred for borrowing moneys that are used or are to be used during that income year solely for income producing purposes. The deduction is spread over the period of the loan or 5 years, whichever is the shorter. The deductibility or otherwise of borrowing costs arising from loan agreements entered into with financiers other than Gunns Finance Pty Ltd or Allco Managed Investments is outside the scope of this Ruling.

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

### ***Section 35-55 – exercise of Commissioner's discretion***

69. A Grower who is an individual accepted into the Project by 30 June 2007 as a '2007 Grower' may have losses arising from their participation in the Project that would be deferred to a later income year under section 35-10 of the ITAA 1997. Subject to the Project being carried out in the manner described above, the Commissioner will exercise the discretion in paragraph 35-55(1)(b) of the ITAA 1997 for Growers who participate under one of the following 'Planting Options':

- 'Planting Option 1' for the income years ending 30 June 2007 to 30 June 2020 or the income year preceding the 'Final Harvest' of the Grower's 'Trees' (whichever occurs sooner);
- 'Planting Option 2' for the income years ending 30 June 2007 to 30 June 2027 or the income year preceding the 'Final Harvest' of the Grower's 'Trees' (whichever occurs sooner); and/or
- 'Planting Option 3' for the income years ending 30 June 2007 to 30 June 2032 or the income year preceding the 'Final Harvest' of the Grower's 'Trees' (whichever occurs sooner).

This conditional exercise of the discretion will allow those losses to be offset against the Grower's other assessable income in the income year in which the losses are incurred.

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

70. For a Grower who participates in the Project and incurs expenditure as required by the Management Agreement and the Sub-Forestry Right Deed the following provisions of the ITAA 1936 apply:

- expenditure by a Grower who participates in the Project does not fall within the scope of sections 82KZME and 82KZMF;
- section 82KL does not apply to deny the deductions otherwise allowable; and
- the relevant provisions in Part IVA of the ITAA 1936 will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

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**Commissioner of Taxation**8 March 2006

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## Appendix 1 – Explanation

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

### Is the Grower carrying on a business?

71. For the amounts set out in the Table above to constitute allowable deductions the Grower's afforestation activities as a participant in the Gunns Plantations Woodlot Project 2006 must amount to the carrying on of a business of primary production.

72. Where there is a business, or a future business, the gross proceeds from the sale of the 'Wood' 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.

73. For schemes such as that of the Gunns Plantations Woodlot Project 2006, 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 *Commissioner of Taxation v. Lau* (1984) 6 FCR 202; 84 ATC 4929; (1984) 16 ATR 55.

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

- the Grower has an identifiable interest in land (by lease) or rights over the land (by licence) on which the Grower's trees are established;
- the Grower has a right to harvest and sell the 'Wood' 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 a afforestation business; and
- the weight and influence of general indicators point to the carrying on of a business.

75. In this Project, each Grower enters into a Management Agreement and a Sub-Forestry Right Deed, and in some situations, where land is not immediately available, an Agreement to Grant a Sub-Forestry Right.

76. Under the Sub-Forestry Right Deed each individual Grower will have rights over a specific and identifiable area of approximately one hectare of land. The Sub-Forestry Right Deed provides the Grower with an ongoing interest in the specific trees on the Woodlot for the 'Term' of the Project. Under the 'Forestry Right' the Grower must use the land in question for the purpose of carrying out afforestation activities, and for no other purpose. The 'Forestry Right' allows the Manager to come onto the land to carry out its obligations under the Management Agreement.

77. Under the Management Agreement the 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 Manager has provided evidence that it holds the appropriate professional skills and credentials to provide the 'Services' to establish and maintain the 'Woodlot' on the Grower's behalf.

78. The Manager is also engaged to harvest and sell, on the Grower's behalf, the 'Wood' grown on the Grower's 'Woodlot'.

79. 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.

80. 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 'Wood' that will return a before-tax profit, that is, a profit in cash terms that does not depend in its calculation on the fees in question being allowed as a deduction.

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

82. The 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.

83. The Grower's degree of control over the Manager as evidenced by the Management Agreement, and supplemented by the *Corporations Act 2001*, 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.

84. 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 Grower's afforestation activities in the Gunns Plantations Woodlot Project 2006 will constitute the carrying on of a business.

## **The Simplified Tax System**

### ***Division 328***

85. Subdivision 328-F of the ITAA 1997 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.

86. The question of whether a Grower is eligible to be an 'STS taxpayer' is outside the scope of this Product Ruling (but refer to Taxation Ruling TR 2002/6 and Taxation Ruling TR 2002/11). 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 'Establishment Fee' and interest**

### ***Section 8-1***

87. Consideration of whether the 'Establishment Fee' is deductible under section 8-1 of the ITAA 1997 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.

88. The 'Establishment Fee' 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 'Wood') is to be gained from this business. They will thus be deductible under the first limb of section 8-1 of the ITAA 1997. 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 'Establishment Fee'. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

### **Interest deductibility**

#### **Section 8-1**

##### *(i) Growers who use Gunns Finance Pty Ltd or Allco Managed Investments as the finance provider*

89. Some Growers may finance their participation in the Project through a loan facility with Gunns Finance Pty Ltd or Allco Managed Investments. Whether the resulting interest costs are deductible under section 8-1 of the ITAA 1997 depends on the same reasoning as that applied to the deductibility of the 'Establishment Fee' under the Management Agreement.

90. The interest incurred for the year ended 30 June 2007 and in subsequent years of income will be in respect of a loan to finance the Grower's business operations 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 of the ITAA 1997.

##### *(ii) Growers who DO NOT use Gunns Finance Pty Ltd or Allco Managed Investments as the finance provider*

91. 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 or Allco Managed Investments 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.



**Prepayment provisions*****Sections 82KZL to 82KZMG***

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

93. For the Scheme that applies to this Product Ruling, only sections 82KZL (an interpretive provision) and 82KZMG of the ITAA 1936 are relevant (but see paragraphs 96 to 97 for comments on the possible application of sections 82KZME and 82KZMF of the ITAA 1936).

***Section 82KZMG***

94. Expenditure that meets the requirements of section 82KZMG of the ITAA 1936 is excluded from the application of the prepayment rules that would otherwise apply. Section 82KZMG provides a '12 month rule' that, in effect, facilitates an immediate deduction for certain prepaid expenditure incurred under a plantation forestry managed agreement. The 12 month rule applies to expenditure for 'seasonally dependent agronomic activities' that will be carried out during the establishment period of a particular planting of trees. Seasonally dependent agronomic activities are explained in Taxation Determination TD 2003/12. Whilst the establishment period itself may exceed 12 months, each seasonally dependent agronomic activity must be completed within 12 months of commencement of its eligible service period (as defined in subsection 82KZL(1) of the ITAA 1936), and by the end of the following income year.

***Application of the prepayment provisions to this Project***

95. Under the Management Agreement, a Grower incurs an initial 'Establishment Fee' consisting of expenditure of \$6,820 that:

- is for 'seasonally dependent agronomic activities'; and
- meets the other requirements of section 82KZMG of the ITAA 1936.

96. A Grower who is not an 'STS taxpayer' can claim an immediate deduction for the expenditure in the income year in which the fee is incurred.

97. A Grower who is an 'STS taxpayer' can claim an immediate deduction for this expenditure in the income year in which the amount is paid. Where the 'Establishment Fee' of a Grower who is an 'STS taxpayer' is not wholly paid in the year in which it is incurred it is only deductible in that year to the extent to which it is paid by, or paid for the Grower.

#### *Sections 82KZME and 82KZMF*

98. Under the Scheme to which this Product Ruling applies fees for rent under the Sub-Forestry Right Deed and the Maintenance Fee and the Sales Commission payable under the Management Agreement are only payable as a percentage of the proceeds from the harvest and sale of the 'Trees', or from insurance proceeds. Interest payable under each of the finance packages offered by Gunns Finance is incurred and payable monthly in arrears. Accordingly, the prepayment provisions in sections 82KZME and 82KZMF of the ITAA 1936 have no application to this Scheme.

99. However, sections 82KZME and 82KZMF may have relevance if a Grower in this Project chose to prepay interest under a finance agreement with Gunns Finance or Allco Managed Investments, or chose or is required to prepay interest under a loan agreement with a lender other than Gunns Finance or Allco Managed Investments. Where such a prepayment is made these prepayment provisions will also apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes them from the operation of section 82KZMF.

100. Growers who choose to prepay interest are not covered by this Product Ruling and may instead request a private ruling on the tax consequences of their participation in this Project.

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

#### ***Section 35-55 – exercise of Commissioner's discretion***

101. In deciding to exercise the discretion in paragraph 35-55(1)(b) of the ITAA 1997 on a conditional basis for the income years discussed in paragraph 65 the Commissioner has applied the principles set out in Taxation Ruling TR 2001/14 Income tax: Division 35 – non-commercial business losses. Accordingly, based on the evidence supplied, the Commissioner has determined that for those income years:

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

- a Grower who would otherwise be required to defer a loss arising from their participation in the Project under subsection 35-10(2) until a later income year is able to offset that loss against their other assessable income.

102. The exercise of the Commissioner's discretion under paragraph 35-55(1)(b) of the ITAA 1997 is conditional on the Project being carried on in the manner described in this Ruling during the income years specified. If the Project is carried out in a materially different way to that described in the Ruling a Grower will need to apply for a private ruling on the application of section 35-55 to those changed circumstances.

## **Section 82KL – recouped expenditure**

103. The operation of section 82KL of the ITAA 1936 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 of the ITAA 1997.

## **Part IVA – general tax avoidance provisions**

104. For Part IVA of the ITAA 1936 to apply there must be a 'scheme' (section 177A), a 'tax benefit' (section 177C) and a dominant purpose of entering into the scheme to obtain a tax benefit (section 177D).

105. The Gunns Plantations Woodlot Project 2006 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 paragraph 68 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.

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

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

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

	<b>Paragraph</b>
<b>What this Ruling is about</b>	<b>1</b>
Relevant taxation provision(s)	2
Goods and Services Tax	3
Changes in the Law	4
Note to promoters and advisers	6
Class of entities	7
Qualifications	9
<b>Date of effect</b>	<b>12</b>
<b>Withdrawal</b>	<b>14</b>
<b>Scheme</b>	<b>15</b>
Overview	18
Constitution	27
Compliance Plan	28
Forestry Right Deed and Sub-Forestry Right Deed	29
Agreement to Grant a Sub-Forestry Right	31
Management Agreement	33
Deed Poll and draft Wood Sale Agreement	41
Fees	44
Pooling of 'Trees' and distribution of proceeds	47
Finance	48
Finance by Gunns Finance	51
Finance by Allco Managed Investments	55
Terms Arrangement	57
<b>Ruling</b>	<b>61</b>
Application of this Ruling	61
The Simplified Tax System (STS)	64
<i>Division 328</i>	64
25% entrepreneurs tax offset	66
<i>Subdivision 61-J</i>	66
Assessable income	67
<i>Section 6-5</i>	67

Deductions for the 'Establishment Fee' and for interest	68
<i>Section 8-1</i>	68
Division 35 – deferral of losses from non-commercial business activities	69
<i>Section 35-55 – exercise of Commissioner's discretion</i>	69
<i>Sections 82KZME, 82KZMF and 82KL and Part IVA</i>	70
<b>Appendix 1 – Explanation</b>	<b>71</b>
Is the Grower carrying on a business?	71
The Simplified Tax System	85
<i>Division 328</i>	85
Deductibility of 'Establishment Fee' and interest	87
<i>Section 8-1</i>	87
Interest deductibility	89
<i>Section 8-1</i>	89
<i>(i) Growers who use Gunns Finance Pty Ltd or Allco Managed Investments as the finance provider</i>	89
<i>(ii) Growers who DO NOT use Gunns Finance Pty Ltd or Allco Managed Investments as the finance provider</i>	91
Prepayment provisions	92
<i>Sections 82KZL to 82KZMG</i>	92
<i>Section 82KZMG</i>	94
<i>Application of the prepayment provisions to this Project</i>	95
<i>Section 82KZME and 82KZMF</i>	98
Division 35 – deferral of losses from non-commercial business activities	101
<i>Section 35-55 – exercise of Commissioner's discretion</i>	101
Section 82KL – recouped expenditure	103
Part IVA – general tax avoidance provisions	104
<b>Appendix 2 – Detailed contents list</b>	<b>107</b>

## References

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### *Previous draft:*

Not previously issued as a draft

### *Related Rulings/Determinations:*

PR 2006/7; TD 93/34;  
TD 2003/12; TR 92/20;  
TR 97/11; TR 98/22; TR 2000/8;  
TR 2001/14; TR 2002/6;  
TR 2002/11

### *Subject references:*

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

### *Legislative references:*

- ITAA 1936 82KL
- ITAA 1936 Pt III Div 3 Subdiv H
- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)

- ITAA 1936 82KZM
- ITAA 1936 82KZMA
- ITAA 1936 82KZMB
- ITAA 1936 82KZMC
- ITAA 1936 82KZMD
- ITAA 1936 82KZME
- ITAA 1936 82KZMF
- ITAA 1936 82KZMG
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 17-5
- ITAA 1997 25-25
- ITAA 1997 Div 27
- ITAA 1997 Div 35
- ITAA 1997 35-10
- ITAA 1997 35-10(2)
- ITAA 1997 35-55
- ITAA 1997 35-55(1)(b)
- ITAA 1997 Subdiv 61-J
- ITAA 1997 Div 328
- ITAA 1997 328-115
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- TAA 1953
- Copyright Act 1968
- Corporations Act 2001

### *Case references:*

- Commissioner of Taxation v. Lau (1984) 6 FCR 202; 84 ATC 4929; (1984) 16 ATR 55

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