PR 2009/24 - Income tax: FEA Plantations Project 2009 - Woodlot Option 2

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This document has changed over time. This is a consolidated version of the ruling which was published on *3 June 2009*

Product Ruling

Income tax: FEA Plantations Project 2009 – Woodlot Option 2

Contents Para

This publication provides you with the following level of protection:

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

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

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

*[**Note:** This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]*

No guarantee of commercial success

The Commissioner **does not** sanction or guarantee this product. Further, the Commissioner gives 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. The Commissioner recommends a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out in the **Ruling** part of this document are available, **provided that** the scheme is carried out in accordance with the information we have been given, and have described below in the **Scheme** part of this document. If the scheme is not carried out as described, participants lose the protection of this Product Ruling.

Terms of use of this Product Ruling

This Product Ruling has been given on the basis that the entity(s) who applied for the Product Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Product Ruling.

What this Ruling is about

1. This Product Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified in the Ruling section (below) apply to the defined class of entities, who take part in the scheme to which this Ruling relates. In this Product Ruling this scheme is referred to as the FEA Plantations Project 2009 – Woodlot Option 2, or simply as 'the Project'.

2. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated. Where used in this Ruling, the word 'associate' has the meaning given in section 318 of the *Income Tax Assessment Act 1936* (ITAA 1936). In this Ruling, terms defined in the Project agreements have been capitalised.

Class of entities

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

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

set out in the Ruling section of this Product Ruling.

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

5. Investors are those entities that:

- meet the definition of 'initial participant' in subsection 394-15(5); and
- are accepted to take part in the scheme specified below on or after the date this Product Ruling is made.

6. An Investor will have executed the relevant Project Agreement set out in paragraph 38 of this Ruling on or before 30 June 2009 and will hold a 'forestry interest' in the Project. **This Product Ruling only applies in respect of Investors who select Woodlot Option 2 in their application to participate in the scheme. Note that separate Product Rulings have been issued for Investors who selected other Woodlot options. These Product Rulings are as follows:**

- PR 2009/23 for Woodlot Option 1;
- PR 2009/25 for Woodlot Option 3;
- PR 2009/26 for Woodlot Option 4; and
- PR 2009/27 for Woodlot Unit 5.

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

- Investors who are accepted into this Project before the date of this Ruling or after 30 June 2009;
- Investors who participate in the scheme through offers made other than through the FEA Plantations Project 2009 Product Disclosure Statement;
- Investors who enter into the Project under Woodlot Option 1 or Woodlot Option 3, Woodlot Option 4 or Woodlot Unit 5;
- Investors whose application fee, including all loan moneys, are not paid in full to FEA Plantations Limited (FEA Plantations) by 30 June 2009, either by the Investor and/or on the Investor's behalf by a lending institution; or
- Investors who enter into finance agreements with Forest Enterprise Australia Limited (FEA), United Pacific Finance Pty Limited (UPF) or Commonwealth Bank of Australia (CBA) outside the terms specified in paragraphs 71 to 92 of this Ruling.

Superannuation Industry (Supervision) Act 1993

8. This Product Ruling does not address the provisions of the *Superannuation Industry (Supervision) Act 1993* (SISA 1993). The Tax Office gives no assurance that the product is an appropriate investment for a superannuation fund. The trustees of superannuation funds are advised that no consideration has been given in this Product Ruling as to whether investment in this product may contravene the provisions of SISA 1993.

Qualifications

9. The class of entities defined in this Product Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 41 to 92 of this Ruling.

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

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

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Date of effect

12. This Product Ruling applies prospectively from 6 May 2009, the date this Product Ruling is made. It therefore applies only to the specified class of entities that enter into the scheme from 6 May 2009 until 30 June 2009, being the closing date for entry into the scheme. This Product Ruling provides advice on the availability of tax benefits to the specified class of entities for all income years up to the income year in which the scheme is terminated in accordance with the Project Constitution.

13. However the Product Ruling only applies to the extent that there is no change in the scheme or in the entity's involvement in the scheme.

Changes in the law

14. Although this Product Ruling deals with the income tax laws enacted at the time it was issued, later amendments may impact on this Product Ruling. Any such changes will take precedence over the application of this Product Ruling and, to that extent, this Product Ruling will have no effect.

15. Entities who are considering participating in the scheme are advised to confirm with their taxation adviser that changes in the law have not affected this Product Ruling since it was issued.

Note to promoters and advisers

16. Product Rulings were introduced for the purpose of providing certainty about tax consequences for entities in schemes such as this. In keeping with that intention the Tax Office suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Product Ruling is issued.

Goods and Services Tax

17. All amounts and percentages referred to in this Product Ruling exclude the Goods and Services Tax (GST), unless otherwise specified. The transactions in respect of this scheme may, where appropriate, have GST implications. Those GST implications are outside the scope of this Product Ruling.

Ruling

Structure of the Project

18. The FEA Plantations Project 2009 – Woodlot Option 2 is a 'forestry managed investment scheme' as defined in subsection 394-15(1). Its purpose is the establishment and tending of Eucalypt trees for felling in Australia.

19. Subject to the stated qualifications, this part of the Product Ruling sets out in detail the taxation obligations and benefits for an 'initial participant'[1] in the defined class of entities (see paragraphs 3 to 7 of this Ruling) who is accepted to participate in the 'forestry managed investment scheme' described below at paragraphs 41 to 92 of this Ruling between 6 May 2009 and on or before 30 June 2009 inclusive.

20. An entity that takes part in the Project as a 'subsequent participant'[2] is not covered by this Product Ruling but may request a private ruling on their participation in the Project. A 'subsequent participant' is an entity that does not meet the definition of 'initial participant' in subsection 394-15(5).

Carrying on a business

21. An Investor (as described in paragraphs 3 to 6 of this Ruling) in the Project is not considered to be carrying on a business of primary production.

The '70% DFE rule' and the establishment of the trees

22. The taxation obligations and benefits set out below have been determined using the information provided to the Commissioner by FEA Plantations. On the basis of that information the Commissioner has decided that on 30 June 2009 it will be reasonable to expect that the '70% DFE rule'[3] will be satisfied. The Tax Office may undertake review activities during the term of the Project to verify the information relied on for the purposes of the '70% DFE rule'.

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[1] See subsection 394-15(5).
[2] See section 394-30.
[3] The '70% DFE rule' is set out in section 394-35.

23. The Ruling will only apply if FEA Plantations establishes all of the Trees that were intended to be established under the Project within 18 months of the end of the income year in which the first 'participant' in the Project is accepted.[4] For this Project the trees must be established by 31 December 2010.

24. In the context of this Project the Trees will be established when they are planted on the land acquired for the purposes of the Project at the average rate of 1,200 trees per hectare. FEA Plantations is required by section 394-10 of Schedule 1 of the TAA to notify the Tax Office if the trees are not established by 31 December 2010.

Allowable deductions

Sections 8-5, 394-10 and 394-20

25. An Investor in the Project can claim deductions for the amounts shown in the Table below that are paid to FEA Plantations (sections 8-5 and 394-10).

26. The deductibility of these amounts remains subject to a requirement that a CGT event[5] does not happen in relation to the Investor's 'forestry interest' before 1 July 2013 (see paragraphs 35 to 37 of this Ruling).

27. The amount is deductible in the income year in which it is paid, or is paid on behalf of the Investor (subsection 394-10(2) and section 394-20). Where an Investor does not fully pay an amount, or it is not fully paid on their behalf in an income year, it is deductible only to the extent to which it has been paid. Any unpaid amount is then deductible in the year or years in which it is actually paid.

28. Amounts that are allowable deductions under Division 394 cannot also be claimed as deductions under section 8-1 (section 8-10).

Fee	**Amount on a Woodlot basis**	**Year(s) deductible**
Establishment fee	$3,450	2009
Management and land sourcing fee	18% of the Investor's proportionate share of the Gross Harvest Proceeds, Salvage Value, or insurance proceeds.	Any year in which this amount is paid
Pruning fees	See Note (i)	Any year in which this amount is paid

[4] See subsection 394-10(4).
[5] Defined in section 995-1.

Note:

(i) The pruning fees per Woodlot will be $385 in year 3, $405 in year 5 and $430 in year 7. The pruning fees will increase in line with CPI. Investors will be notified by FEA Plantations of the years in which these amounts are paid.

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

Subsections 394-10(5) and 394-10(6)

29. Deductions for the establishment fee, the ongoing management and land sourcing fee and pruning fees that have been allowed as deductions under 394-10 in the first four years are not allowable where a 'CGT event' happens in relation to the 'forestry interest' of an Investor before 1 July 2013 (subsection 394-10(5)).

30. Where deductions for these amounts have already been claimed by an Investor the Commissioner may amend their assessment at any time within two years of the 'CGT event' happening (subsection 394-10(6)). The Commissioner's power to amend in these circumstances applies despite section 170 of the ITAA 1936.

31. Investors whose deductions are disallowed because of subsection 394-10(5) are still required to include in assessable income the market value of the 'forestry interest' at the time of the 'CGT event' or the decrease in the market value of the 'forestry interest' as a result of the 'CGT event'.

Deductions for interest on loans, borrowing costs and stamp duty

Section 8-1 and 25-25 of the ITAA 1997 and sections 82KZME and 82KZMF of the ITAA 1936

32. An Investor may claim tax deductions for the following fees and expenses on a Woodlot basis as set out in the following table.

Fee Type	**Year ended 30 June 2009**	**Year ended 30 June 2010**	**Year ended 30 June 2011**
Interest payable to FEA, UPF or CBA	As incurred See Note (i)	As incurred See Note (i)	As incurred See Note (i)
Borrowing Costs including Stamp Duty payable to UPF under the loan agreement	Must be calculated See Notes (ii) and (iv)	Must be calculated See Notes (ii) and (iv)	Must be calculated See Notes (ii) and (iv)
Borrowing Costs including Stamp Duty payable to CBA or FEA under the Loan Agreement	Must be calculated See Notes (iii) and (iv)	Must be calculated See Notes (iii) and (iv)	Must be calculated See Notes (iii) and (iv)

Notes:

(i) Interest on loans with FEA, UPF or CBA is deductible in the year in which it is incurred. However, the deductibility or otherwise of interest arising from loan agreements entered into with financiers other than FEA, UPF or CBA is outside the scope of this Ruling. Investors who borrow from lenders other than FEA, UPF or CBA or choose to prepay their interest may request a private ruling on the deductibility of the interest incurred or may self assess the deductibility of the interest incurred.

(ii) A loan establishment fee of $375 and stamp duty payable to UPF is a borrowing expense and is deductible under section 25-25. Where the term of the loan is less than 5 years, the deduction for the borrowing expense is spread over the period of the loan on a straight line basis from the date the loan begins. Where the term of the loan is 5 years or more, the deduction for the borrowing expense is spread over 5 years on a straight line basis from the date the loan begins.

(iii) An Establishment Fee of either $250 or 0.25% of the Loan Amount (whichever is greater) and stamp duty payable to CBA or FEA is a borrowing expense and is deductible under section 25-25. Where the term of the loan is less than 5 years, the deduction for the borrowing expense is spread over the period of the loan on a straight line basis from the date the loan begins. Where the term of the loan is 5 years or more, the deduction for the borrowing expense is spread over 5 years on a straight line basis from the date the loan begins.

(iv) The deductibility or otherwise of borrowing costs arising from loan agreements entered into with financiers other than FEA, UPF or CBA is outside the scope of this Ruling.

Assessable income, 'CGT events' and the 'forestry interests' of Investors who are 'initial participants'

Sections 6-10 and 394-25

33. Where a 'CGT event' (other than a 'CGT event' in respect of a thinning[6] – see paragraph 36 of this Ruling) happens to a 'forestry interest' held by an Investor in this Project the market value of the 'forestry interest', or the decrease in the market value of the 'forestry interest', is included in the assessable income of the Investor (sections 6-10 and 394-25) less any GST payable on those proceeds (section 17-5).

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

34. The relevant amount is included in the Investor's assessable income in the income year in which the 'CGT event' happens (subsection 394-25(2)).

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

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

Amounts received by Investors where the Project trees are thinned

Section 6-5

36. An amount received by an Investor in respect of a thinning of the Trees grown in this Project is not received as a result of a 'CGT event' and is not otherwise assessable under Division 394. The amount is a distribution of ordinary income that arises as an incident of an Investor holding a 'forestry interest' in the Project. Investors include amounts received for thinning the trees in their assessable income in the income year in which the amounts are derived (section 6-5) less any GST payable on those proceeds (section 17-5).

Prepayment provisions, non commercial losses and anti-avoidance provisions

Division 35 of the ITAA 1997 and sections 82KZM, 82KZME, 82KZMF and 82KL and Part IVA of the ITAA 1936

37. Where an Investor is accepted to participate in the Project set out at paragraphs 41 to 92 of this Ruling, the following provisions of the ITAA 1936 or the ITAA 1997 have application as indicated:

- Interest paid by an Investor to FEA, UPF or CBA does not fall within the scope of sections 82KZM, 82KZME and 82KZMF;
- losses arising from participation in the Project are not within the scope of Division 35;
- section 82KL does not apply to deny the deductions otherwise allowable; and
- the relevant provisions in Part IVA will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

Scheme

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

- Application for a Product Ruling as constituted by documents and correspondence received by the Tax Office on 8 December 2008 and 11 February 2009 and additional correspondence and emails received on 9 and 11 December 2008 and 12, and 15 January 2009 and 10, 12, 13, 18, 20, 23 and 26 February 2009 and 3, 11, 12, 17, 20, 24 and 31 March 2009 and 1, 2, 14, 15 and 16 April 2009;
- Draft Product Disclosure Statement for the FEA Plantations Project 2009 and **Application Form**, to be issued by FEA Plantations Limited (FEA Plantations), and the Responsible Entity, received on 13 February 2009;
- Constitution establishing the FEA Plantations Project 2009, received on 14 April 2009;
- Supplementary constitution prepared amending Constitution, received on 16 April 2009;
- Draft Compliance Plan for FEA Plantations Project 2009, received on 11 December 2008;
- Draft Forestry Right Deed between the Landowner, FEA Plantations and Forest Enterprises Australia Limited (the Guarantor), received on 12 February 2009;
- Lease Agreement between Landowner, FEA Plantations and FEA, received 31 March 2009;
- Head Management Agreement between Forest Enterprises Australia Limited and FEA Plantations, dated 31 May 2001;
- Draft Wood Purchase Agreement for the FEA Plantations Project 2009, between FEA Plantations and Forest Enterprises Australia Limited, received on 8 December 2008;
- Draft **Finance Application and Loan Agreement**, to be entered into by each Investor seeking finance and Forest Enterprise Australia Limited (the Lender), received on 24 March 2009;
- Draft **Finance Application and Terms Loan Finance Agreement** to be entered into by each Investor seeking finance and United Pacific Finance Pty Ltd (the Lender), received on 12 February 2009; and

- Draft **Finance Application and CBA Loan Agreement** to be entered into by each Investor seeking finance and Commonwealth Bank of Australia (the Lender), received on 24 March 2009.

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

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

40. The documents highlighted are those that an Investor 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 an Investor, or any associate of an Investor, will be a party to, which are a part of the scheme. The effect of these agreements is summarised as follows.

Overview

41. The main features of the FEA Plantations Project 2009 – Woodlot Option 2 are as follows:

Location	Tasmania, northern New South Wales and south east Queensland
Species of trees to be planted under the scheme	The establishment, management, harvesting and selling of a commercial plantation of Shining gum (*Eucalyptus nitens*), Dunn's white gum (*E. dunnii*), Spotted gum (*Corymbia citriodora ssp. variegata*) or similar species, for the purpose of harvesting and selling as pruned and unpruned sawlog and pulpwood.
Term of the Project	17 years from 30 June 2009
Date all trees are due to be planted on scheme land	30 December 2010
Number of trees per hectare	1,200 Trees per hectare
Number of hectares offered for cultivation	Approximately 1,600 hectares
Size of each 'forestry interest'	0.5 hectares (1 Woodlot)
Minimum allocation of 'forestry interests' per Investor	1 Woodlot
Minimum subscription	None
Initial cost	$3,450 per Woodlot

Ongoing costs	Pruning fees will be payable in approximately years 3, 5 and 7 after planting. This cost will be increased in line with CPI. Investors will be charged for the cost of insurance; required or optional.
Other costs	Management and land sourcing fee will be a percentage of Gross Harvest Proceeds or salvaged value.

42. The Project is a registered managed investment scheme under the *Corporations Act 2001*. FEA Plantations has been issued with an Australian Financial Service Licence 243515 and will be the Responsible Entity for the Project.

43. An offer to participate in the Project will be made through a Product Disclosure Statement (PDS). There are 5 options offered under the PDS. These are:

- Woodlot Option 1;
- Woodlot Option 2;
- Woodlot Option 3;
- Woodlot Option 4; and
- Woodlot Unit 5.

44. The offer under the PDS is for 16,000 hectares in total, which corresponds to approximately 35,000 'forestry interests' in the Project.

45. An entity that participates in the Project as an Investor in the Woodlot Option 2 will do so by acquiring a 'forestry interest' in the Project on or before 30 June 2009, which will consist of a minimum of 1 Woodlot of 0.5 hectares in size.

46. **This Product Ruling only applies to Woodlot Option 2.** Paragraph 6 of this Ruling details the Product Ruling numbers of Product Rulings that have been issued for other Woodlot options.

47. To participate in the Project Applicants must complete the Application Form and if applying for finance, complete the Finance Application Pack and pay the relevant application fee by 30 June 2009.

48. By signing the Application Form, the Applicant has agreed to be bound by the terms of the Constitution.

49. For the purposes of this Ruling, Applicants who are accepted to participate and have acquired an interest in the Project by 30 June 2009 will become an Investor in the Project.

50. FEA Plantations will identify sufficient land to be used for the Project. Plantations in this Project will be established close to existing plantations that the FEA Group has established in Tasmania, New South Wales and Queensland. Land utilised by the Project must meet the requirements set out in the Independent Forester's Report.

51. Each Investor will have a beneficial interest in their Woodlots, the Trees which are planted on their Woodlots and the produce derived from those Trees.

52. Investors are responsible for insurance to cover the standing timber in their Woodlots against loss or damage by fire and other risks as included in the insurance policy. If requested, FEA Plantations will use its best endeavours to arrange plantation insurance cover annually for an Investor's interest in the Project.

53. The PDS describes the insurance options available. The terms of the insurance that will be procured by FEA Plantations are set out in the plantation insurance policy. Investors insuring their Woodlots will be invoiced by FEA Plantations, the insurance premium together with an administration fee of 10% on 1 June each year for each plantation insurance period being 1 October to 30 September, commencing from the second growing year of the Plantation.

54. A Full Replacement Cost Insurance is available to all Investors however it will be compulsory for an Investor who obtains finance with a term longer than two years.

55. Investors will receive an annual written report in relation to the progress of the plantations in the Project during the Term of the Project.

56. A commercial thinning will be undertaken at approximately year 9 and a final harvest of the Trees and the sale of the timber will occur in approximately 16 years after planting, at which time, the Woodlot Option 2 Investor's interest in the Project will terminate.

Constitution

57. The Constitution establishes the Project and operates as a deed binding all Investors and FEA Plantations. The Constitution sets out the terms and conditions under which FEA Plantations agrees to act as Responsible Entity and thereby manage the Project. Upon acceptance into the Project, Investors are bound by the Constitution by virtue of their participation in the Project.

58. To participate in the Project, an Applicant must complete and sign the Application Form attached to the PDS.

59. All moneys received from applications shall be held by the Responsible Entity in the Application Fund, on trust for the Investor. FEA Plantations will only transfer money paid by an Applicant from the Application Fund when the Responsible Entity has issued an Interest to the Applicant (clause 15). If Application Money is paid and an Interest is not issued to the Applicant who paid the Application Money, then the Application Money must be refunded to the Applicant within 10 Business Days of refusing the application (clause 6.4 (c)).

60. The Constitution also sets out among other things, the following provisions relating to:

- the keeping of a register of Investors (clause 9);
- the transfer and transmission of Investors' Interests (clauses 10 and 11 respectively);
- termination events of Investor's interest (clause 12);
- procedures for defaulting Investors for failing to pay an amount owing (clause 13);
- Investor's income and distributions (clause 16);
- the general functions, powers and duties under which the Responsible Entity agrees to act for the Investors and manage the Project (clause 21);
- the rights of the Responsible Entity (clause 22);
- withdrawal rights available under the Project (clause 23);
- the handling of complaints (clause 24);
- the fees payable to, and expenses of the Responsible Entity (clause 25);
- insurance arrangements for the Project (clause 28);
- the liability and indemnity of the Responsible Entity (clause 29); and
- the winding up of the Project (clause 30).

61. The Responsible Entity must operate the Project and comply with its obligations which arise under the Constitution which governs the operation of the Project. Under clause 19.2 the Responsible Entity must establish, and manage the plantation in a commercially sound manner and in accordance with best silvicultural practice. In establishing and managing the plantation the Responsible Entity must ensure it, or its agent performs the services set out in Schedule 4 of the Constitution within the timeframes specified in that Schedule. These establishment services include:

- the completion of all preparatory work necessary for the planting of Trees on the Land including all ploughing and vermin control deemed necessary by the Manager;

- the supply and planting of healthy seedlings to an average density per hectare appropriate to the soil and climatic circumstances of the Land; and
- the control of weeds and other vegetation which might inhibit the growth of the Trees on the Land.

62. The Responsible Entity must complete all the above establishment services by 31 December 2010 on Woodlots allocated to Investors who have entered into the Project on or before 30 June 2009.

63. The Responsible Entity will, if necessary, replant any seedlings which die during the first 3 years after the date the Investor is registered as the holder of the Woodlot to 90% of the average initial planting density. Replanting will not be undertaken if:

(a) the 3 year period from the date the Investor is registered as the holder of the Woodlot has expired; or

(b) within the 3 year period from the date the Investor is registered as the holder of the Woodlot if the Responsible Entity has arranged general insurance cover for the plantations in that period.

64. The Responsible Entity will provide management services relating to the tending and rearing of the seedlings and the management and maintenance of the plantation established on the Land. These include:

- control of weeds, suckers, vermin or other pests which may impede the growth on of the seedlings;
- the general maintenance of the plantation, fire breaks, and access roads;
- the application of fertiliser on the Land to maintain satisfactory growth;
- pruning the Trees;
- the provision of an annual written report; and
- harvest the Trees including thinning, clear felling of the Trees and all other steps involved in harvesting the Trees.

65. On behalf of the Investor the Manager will determine the appropriate time for the thinning and clear fell of the Investor's Trees and will market and sell the Investor's timber.

Compliance Plan

66. As required by the *Corporations Act 2001*, the Responsible Entity has prepared a Compliance Plan. The purpose of the Compliance Plan is to ensure that the Responsible Entity manages the Project in accordance with its obligations and responsibilities contained in the Constitution and that the interest of an Investor is protected.

Forestry Right Deed

67. The Landowner grants to FEA Plantations the Forestry Rights described in clause 6 for the Term commencing on the Commencement Date and ending on the Termination Date. FEA Plantations will register a Forestry Right by lodging an Instrument Form detailing the particulars of the Forestry Right (in Tasmania), a Registration of profit a prendre (in Queensland) or a Transfer Creating Profit a Prendre or Forestry Right (in New South Wales), and lodge a caveat or other document with the Land Titles Office.

Wood Purchase Agreement

68. The Responsible Entity will enter into a Wood Purchase Agreement with FEA whereby FEA will agree to purchase the harvested wood for the purchase price, which is fair and reasonable having regard to the market prices at the time of harvest for wood of similar quality and quantity.

Pooling of wood and Investor's entitlement to a distribution

69. The Constitution (clause 16) sets out provisions relating to the pooling of amounts from the sale of the Investor's timber and the distribution of Proceeds Funds from that sale or from Insurance Proceeds.

Fees

70. The Project fees, per Woodlot, are set out in Schedule 3 of the Project Constitution:

- $3,450, payable on application for the plantation establishment services to be provided by 31 December 2010;
- management and land sourcing fee, 18% of either the Gross Harvest Proceeds or Salvage Value and/or insurance proceeds received by the Investor;

- an Investor electing to insure their Woodlot, FEA Plantations will invoice the Investor the relevant insurance premium together with an administration fee of 10% of the amount of the premium, on 1 June each year for each plantation insurance period being 1 October to 30 September commencing in the second growing year; and
- pruning fees payable in year 3 ($385), year 5 ($405) and year 7 ($430). These costs will be increased in line with CPI.

Finance

71. To finance all or part of the cost of their 'forestry interest' under Woodlot Option 2, an Investor has an option to fund their involvement in the Project with one of the three finance packages offered on commercial terms. Investors may borrow from Forest Enterprises Australia Limited (FEA) which is a lender associated with FEA Plantations or with United Pacific Finance Pty Ltd (UPF) or Commonwealth Bank of Australia (CBA) the Project's preferred lenders. Alternatively, an Investor may borrow from an independent lender external to the Project.

72. Only the finance arrangements set out below are covered by this Product Ruling. An Investor cannot rely on this Product Ruling if they enter into a finance arrangement with FEA, UFP or CBA that materially differs from that set out in the documentation provided to the Tax Office with the application for this Product Ruling. An Investor who enters into a finance arrangement with an independent lender external to the Project may request a private ruling on the deductibility or otherwise of interest incurred under finance arrangements not covered by this Product Ruling.

73. An Investor cannot rely on any part of this Product Ruling if the Application Money is not paid in full on or before 30 June 2009 by the Investor or, on the Investor's behalf, by a lending institution. Where an application is accepted subject to finance approval by any lending institution, Investors cannot rely on this Product Ruling.

74. The details of each loan term in respect of Woodlot Option 2 are summarised below:

Finance offered by FEA

75. An Investor can finance the cost of their Application by borrowing from FEA an amount equal to their Application Money less a 20% minimum deposit required to be paid on application by the Investor.

76. FEA will only provide loan funds to Investors if FEA has sufficient funds available to advance the loan monies for the Investors.

77. Subject to FEA accepting the Investor's Application, the Investor will be bound by the terms and conditions of the Loan Agreement.

78. FEA provides the loan on a full recourse basis and recovery action will be taken in respect of any default by the borrower. Security is provided by a charge over the whole right, title and interest of the benefits arising out of the Constitution. Overdue repayments will incur interest at the default rate of 15% per annum.

79. An Establishment Fee of either $250 or 0.25% of the Loan Amount, which ever is greater, is payable and may be capitalised to the loan account.

80. A one (1) year interest free or a two (2) year principal and interest finance option will be offered by FEA.

Finance offered by UPF

81. An Investor may borrow from UPF an amount up to 100% of the Application Money. The loan amounts from UPF are between $5,000 and $500,000 with an indicative fixed interest rate of approximately 11.25%. The Borrower must make monthly prepayments of principal and interest. Interest will be calculated under clause 3 at a rate specified in Item 8 of the Loan Agreement Schedule except, in the case of default by the Investor an additional 3% interest per annum will be charged.

82. Investors pay a loan establishment fee of $375, stamp duty and any additional legal fees. Break costs are also payable if the loan agreement ends early due to a default by the Investor or if the Investor chooses to repay the Monies Secured before the Repayment Date.

83. UPF provides loans on a full recourse basis. Security is provided by a charge over the whole right, title and interest of the benefits arising in favour of the Investor under the Project and recovery action will be taken in respect of any default by the borrower.

Principal and Interest Period and with Optional Interest Only Period

Finance Option
3 years principal & interest
5 years principal & interest
7 years principal & interest
7 years with 2 years interest only and 5 years principal & interest
10 years principal & interest
10 years with 3 years interest only and 7 years principal & interest
12 year principal & interest

Finance offered by CBA

84. The CBA will offer loan terms on a commercial basis and consider loans up to 100% of the Application Price. Details of the loans that will be offered to an Investor by the CBA are set out in the Loan Agreement and the CBA Loan Application Form.

85. An Establishment Fee of either $250 or 0.25% of the Loan Amount, which ever is greater, is payable and may be capitalised to the loan account. Stamp duty and a Monthly Loan Service Fee of $20 per month per loan is payable by the Investor.

86. The CBA will provide Investors with loans on a full recourse basis and will pursue legal action against any defaulting borrowers.

87. The terms specific to each loan offered by the CBA are contained in the Finance Application form which is included in the Finance Application Pack.

88. Features contained in the Loan Agreement are:

- subject to CBA's acceptance of the Application and the satisfaction of the conditions precedent set out in clause 3, CBA will on the Date of Advance make an Advance in an amount equal to the Principal Amount and any fees capitalised in accordance with clause 7.2, in order to meet the Investor's obligations under the relevant Agreements (clause 2(b));
- the advance to the Investor of the Principal Amount will not be made unless the CBA is satisfied that:
  - the Responsible Entity has received all of the documents required for the Borrower's involvement in the Project in a satisfactory form and substance (clause 3 (a));
  - each representation and warranty made by the Borrower under this Loan Agreement remains true at the Date of Advance (clause 3 (b));
  - no Event of Default has occurred (clause 3 (c));
- the Borrower is required to make payment or repayments of Interest and/or Principal Outstanding in the amounts and on the Repayment Dates set out in each Confirmation Notice (clause 4.1 (a));
- the Borrower must pay any outstanding balance of the Moneys Payable on the Final Repayment Date (clause 4.1(b));
- the Lender will provide the Borrower with a Confirmation Notice within 30 Days of the making of an Advance of the Funds, the Repayment Dates and Repayment Amounts over the life of the loan (clause 4.5);

- the Borrower must pay to the Lender Interest on the Principal Outstanding from the Date of Advance calculated at the Fixed Interest Rate or the Variable Interest Rate, whichever is selected by the Borrower in the Application. Such Interest is payable on each Repayment Date. Interest accrues daily and is computed on a daily basis on a year of 365 days (clause 5.1(a));
- any interest not paid by the Borrower when it is due and payable will incur interest at the Overdue Rate equal to the Fixed Interest Rate or the Variable Interest Rate, whichever is selected by the Borrower in the Application, plus 4.5% per annum (clause 5.1(b));
- as security for the due and punctual payment of all Moneys Payable to the Lender under this Loan Agreement, the Borrower charges by way of fixed charge all of the Borrower's interest in the Project to the Lender (clause 8.1);
- interest will be calculated daily and accrued monthly at the Interest Rate on the amount of any monies owing commencing on 30 June 2009 (clause 5); and
- other than the loan Establishment Fee and Monthly Loan Service Fee discussed above, the Borrower may also pay to the Lender fees outlined in clause 7.1 which include:
  - stamp Duty Administration Fee equal to 0.20% of the Principal Amount (clause 7.1(b));
  - all costs, expenses and fees connected with early repayment as set out in clause 4.3 (clause 7.1(f)).

Principal and Interest Loan Terms

89. Loans will be available at both fixed and variable interest rates. A minimum loan available to an Investor for a fixed rate loan is $10,000 and $4,000 for a variable rate loan. The interest rates for fixed loans will be set for the period of the loan and advised by the Lender on or before 30 June in the financial year of investment.

90. The principal and interest loan terms offered by the CBA under the CBA Finance Application to acquire an interest in the Woodlot Option 2 range between a minimum of 1 year and a maximum of 12 years.

Optional Interest Only Period, then a Principal and Interest Period

91. An interest only period of 36 months, followed by principal and interest repayments for the reminder of the term, provided that the total loan term is between 5 years and 12 years.

92. This Ruling does not apply if the finance arrangement entered into by the Investor which 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 FEA UPF or CBA, are involved or become involved in the provision of finance to Investors for the Project.

Commissioner of Taxation
6 May 2009

Appendix 1 – Explanation

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.

Structure of the Project

93. In return for payment of the establishment fee and the other fees and expenses required under the Constitution during the term of the Project, Investors will hold a 'forestry interest' in a 'forestry managed investment scheme'. The Project qualifies as a 'forestry managed investment scheme' because its purpose is for 'establishing and tending trees for felling in Australia' (see subsection 394-15(1))

94. Under the Constitution of the Project and the other supporting agreements, the holding of a 'forestry interest' in the Project gives each Investor a right to a share in the proceeds of the harvest and share of the proceeds of any thinning of the trees grown on the Project land. That share of proceeds is determined using the number of 'forestry interests' held by an Investor as a proportion of all 'forestry interests' held by 'participants'[7] in the Project.

Is the Investor carrying on a business?

95. The general indicators used by the Courts in determining whether an entity is carrying on a business are set out in Taxation Ruling TR 97/11 Income tax: am I carrying on a business of primary production?

96. More recently, and in relation to a managed investment scheme similar to that which is the subject of this Ruling, the Full Federal Court in *Hance v. FC of T*; *Hannebery v. FC of T* [2008] FCAFC 196; 2008 ATC 20-085 applied these principles to conclude that 'Investors' in that scheme were carrying on a business of producing almonds (at FCAFC 90; ATC 90).

97. Application of these principles to the arrangement set out above leads to the conclusion that an Investor (as described in paragraphs 4 to 6 of this Ruling), in the Project is not considered to be carrying on a business of primary production involving afforestation activities.

[7] The term 'participant' is defined in subsection 394-15(4).

Allowable deductions

Sections 8-5, 12-5, 394-10 and 394-20

98. Section 8-5 allows certain specific deductions to be claimed against the assessable income of a taxpayer. The list of specific deductions is shown in a table in section 12-5 and includes payments under a 'forestry managed investment scheme' that meet the requirements of subsection 394-10(1).

The '70% DFE rule'

Paragraph 394-10(1)(c) and section 394-35

99. The threshold test for Investor in the Project to be entitled to deductions under subsection 394-10(1) is the '70% DFE rule' in paragraph 394-10(1)(c). Under that rule it must be reasonable to expect that on 30 June 2009, the amount of 'direct forestry expenditure'[8] under the scheme will be no less than 70% of the amount of payments under the scheme.[9]

100. The amount of all 'direct forestry expenditure' is the amount of the net present value of all 'direct forestry expenditure' that FEA Plantations, as 'forestry manager'[10] of the Project, has paid or will pay under the scheme (subsection 394-35(2)).

101. The 'amount of payments under the scheme' is the amount of the net present value of all amounts (that is, the fees and expenses) that all current and future 'participants' in the scheme have paid or will pay under the scheme (subsection 394-35(3)).

102. Both of the above amounts are determined as at 30 June 2009 taking into account:

- the timing requirements in subsections 394-35(4) and (5);
- any amounts that can reasonably be expected to be recouped (subsection 394-35(6));
- the discount rate in subsection 394-35(7);and
- the market value rule in subsection 394-35(8).

103. Applying all of these requirements to the information provided by FEA Plantations of the Project the Commissioner has determined that the Project will satisfy the '70% DFE rule' on 30 June 2009.

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[8] See section 394-45.
[9] See subsection 394-35(1) and section 394-40.
[10] Defined in section 394-15(2).

The other elements for deductibility under subsection 394-10(1)

104. The requirement of paragraph 394-10(1)(d) that Investors in the Project not have day to day control over the operation of the Project is clear from the Constitution as are the alternative elements of paragraph 394-10(1)(e) relating to the number of Investors in the scheme and the Responsible Entity's role in other managed investment schemes.

105. The final requirement for deductibility requires all the Project trees to be established within 18 months of 30 June 2009 (see paragraph 394-10(1)(f) and subsection 394-10(4)). According to Schedule 4 the Constitution the trees required to be established under the scheme will be planted on the Project land by 31 December 2010.

106. Accordingly, subject to the qualifications set out below, amounts paid by Investors to FEA Plantations in relation their 'forestry interests' satisfy all requirements of subsection 394-10(1). The amounts are allowable deductions in the income year in which they are paid (subsection 394-10(2)).

107. Where an Investor does not fully pay an amount, or the amount is not fully paid on their behalf in an income year (see section 394-20), it is deductible only to the extent to which it has been paid. The unpaid balance is then deductible in the year or years in which it is actually paid. This may occur, for example, if all or part of the amount is borrowed and the financier fails to transfer the funds to the account of the 'forestry manager' on or before 30 June in an income year.

Loss of deductions previously allowed under section 394-10

108. Two situations may lead to a loss of deductions previously allowed to Investors.

109. The first of these situations will occur if FEA Plantations fails to establish the trees on the Project land within 18 months. Where this occurs FEA Plantations is required to notify the Commissioner within 3 months of the end of the 18 month period (section 394-10 of Schedule 1 to the TAA).

110. The second situation where an Investor may have deductions disallowed is where a 'CGT event' happens to their 'forestry interest' within 4 years from 30 June of the income year they paid an amount under the scheme, for example, the establishment fee (see subsection 394-10(5)).

111. For the purposes of this provision, the Commissioner is able to amend the assessment of an Investor within 2 years of the relevant 'CGT event' happening. The Commissioner's power to amend in these circumstances applies despite section 170 of the ITAA 1936 (subsection 394-10(6) of the ITAA 1997).

112. Where a 'CGT event' happens to the 'forestry interest' of an Investor within 4 years, the market value of the forestry interest at the time of the 'CGT event' or the decrease in the market value of the 'forestry interest' as a result of the 'CGT event' is still included in the assessable income of the Investor by section 394-25. The amount must be included in assessable income even where an amendment has disallowed or may disallow the deductions previously allowed under section 394-10.

Interest on loans to finance the 'forestry interest' of an Investor

Section 8-1

113. Where an Investor borrows money to fund their investment in the Project the deductibility of the interest incurred on the loan monies falls for consideration under the general deduction provisions of section 8-1. If the interest incurred by the Investor is deductible under the first positive limb in subsection 8-1(1) there is no requirement to consider whether it is also deductible under the second positive limb of that provision. Court decisions show that the same basic test applies to both limbs (see *Ronpibon Tin NL v. Federal Commissioner of Taxation* (1949) 78 CLR 47; (1949) 8 ATD 431, at CLR 56; ATD 435).

114. Under the first positive limb of subsection 8-1(1) the interest incurred by an Investor will be deductible if it is incurred in gaining or producing an Investor's assessable income and is not excluded by one of the negative limbs in subsection 8-1(2).

> The question of whether an outgoing [is] … incurred in gaining or producing the assessable income is a question of characterisation (*Fletcher & Ors v. Federal Commissioner of Taxation* (1991) 173 CLR 1; 91 ATC 4950; (1991) 22 ATR 613, at CLR 17; ATC 4957; ATR 621).
>
> To the extent that … outgoings of interest … can properly be characterised as of a kind referred to in the first limb of [section 8-1] they must draw their character from the use of the borrowed funds (*Fletcher*, at CLR 19; ATC 4958, ATR 623).
>
> [T]he characterisation of interest will generally be ascertained by reference to the objective circumstances of the use to which the borrowed funds are put (*Federal Commissioner of Taxation v. Roberts* (1992) 37 FCR 246; 92 ATC 4380; (1992) 23 ATR 494, at FCR 257; ATC 4388; ATR 504).

115. Investors in the Project use the borrowed funds to acquire a 'forestry interest' in a 'forestry managed investment scheme'. The holding of that 'forestry interest' will produce assessable income for an Investor in the form of the proceeds of a full or part disposal of the 'forestry interest' or, as a proportionate share of the harvest and thinning proceeds. The tests of deductibility of interest under the first limb of subsection 8-1(1) are, therefore, met unless one of the exclusions in subsection 8-1(2) apply.

116. For the purposes of this Project, only the capital exclusion in paragraph 8-1(2)(a) is relevant. The use of borrowed funds to purchase a capital asset, such as a 'forestry interest', does not mean that the interest outgoings are on capital account (see *Steele v. Federal Commissioner of Taxation* (1999) 197 CLR 459; 99 ATC 4242; (1999) 41 ATR 139, at CLR 470; ATC 4249; ATR 148).

> Interest [is a] periodic payment for the use, but not the permanent acquisition of a capital item. Therefore, a consideration of the often-cited three matters identified by Dixon J in *Sun Newspapers Ltd v. FC of T* … assigns interest … to revenue (*Australian National Hotels Ltd v. Federal Commissioner of Taxation* (1988) 19 FCR 234; 88 ATC 4627; (1988) 19 ATR 1575, at FCR 241; ATC 4633-4634; ATR 1582).

117. Therefore, the capital exclusion in subsection 8-1(2) does not apply to the interest and, subject only to the potential application of the prepayment provisions, a deduction for the interest can be claimed in the year in which it is incurred. (Note: the meaning of 'incurred' is explained in Taxation Ruling TR 97/7.)

Prepayment provisions

Sections 82KZL to 82KZMF

118. 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 that will not be wholly done within the same year of income as the year in which the expenditure is incurred. For schemes such as this Project, the main operative provisions are sections 82KZMD and 82KZMF of the ITAA 1936.

119. However, subsection 394-10(7) of the ITAA 1997 specifically provides that sections 82KZMD and 82KZMF of the ITAA 1936 do not affect the timing of amounts deductible under section 394-10 of the ITAA 1997.

Application of the prepayment provisions to this Project

Sections 82KZME and 82KZMF

120. Accordingly, under the scheme to which this Product Ruling applies, only deductions for interest payable under a loan with FEA, UPF or CBA will potentially fall within the prepayment provisions. However, the conditions applying to the loans to which this Ruling applies (see paragraphs 71 to 91 of this Ruling) do not require any prepayment of interest over the term of the loan. Accordingly, the prepayment provisions have no application to an Investor who enters into those loans.

121. If an Investor chooses to prepay interest on these loans that Investor may request a private ruling on how the prepayment provisions will affect the timing of their interest deduction.

Borrowing costs

Section 25-25

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

123. In this Project the loan establishment fee payable to FEA, UPF or CBA is incurred to borrow money that is used or is to be used solely for income producing purposes during each income year over the term of the loan.

124. The deduction for the borrowing expense is spread over the period of the loan or 5 years, whichever is the shorter (subsection 25-25(4)).

Assessable income, 'CGT events' and the 'forestry interests' of Investors who are 'initial participants'

Sections 6-10, 10-5 and 394-25

125. Section 6-10 includes in assessable income amounts that are not ordinary income. These amounts, called statutory income, are listed in the table in section 10-5 and include amounts that are included in the assessable income of 'initial participants' of a 'forestry managed investment scheme' by subsection 394-25(2).

Subsection 394-25(2)

126. Where a 'CGT event' (other than for a 'CGT event' in respect of a thinning)[11] happens to a 'forestry interest' held by an Investor in this Project, subsection 394-25(2) includes an amount in the assessable income of the Investor if:

- the Investor can deduct or has deducted an amount under section 394-10; or
- the Investor would have met the condition immediately above if subsection 394-10(5) had not applied to disallow the deduction(s). Paragraphs 35 to 37 and paragraphs 110 to 112 of this Ruling explain when deductions will be disallowed under subsection 394-10(5).

[11] A thinning under this scheme is not a 'CGT event'.

Market value rule applies to 'CGT events'

127. If, as a result of the 'CGT event' the Investor either:

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

then the market value of the 'forestry interest' at the time of the event, or the reduction of the market value of the 'forestry interest' as a result of the event, is included in the assessable income of the Investor in the income year in which the 'CGT event' happens (subsection 394-25(2)). A market value rule applies rather than the amount of money actually received from the 'CGT event' (subsection 394-25(3)). However, the market value and the actual amount of money received may be the same.

128. The market value amount included in the assessable income of an Investor is the value of the 'forestry interest' just before the 'CGT event', or where the Investor continues to hold their interest after the event, the amount by which the market value of the 'forestry interest' is reduced as a result of the 'CGT event' (subsection 394-25(2)).

129. Section 394-25 will apply where the 'forestry interest' is sold, is extinguished, or ceases, and will include 'CGT events' such as a full or partial sale of the 'forestry interest' or from a full or partial clear-fell harvest of the trees grown under the Project.

Amounts received by Investors where the Project trees are thinned

Section 6-5

130. Section 394-25 specifically excludes from the operation of Division 394 a 'CGT event' that happens in respect of a thinning (see paragraph 394-25(1)(c)).

131. Thinning amounts received by an Investor in this Project do not arise as a result of a 'CGT event' and are not otherwise assessable under Division 394. The receipt of an amount arising from a thinning of the Project trees is a distribution that arises as an incident of the Investor holding a 'forestry interest' in the Project. It is an item of ordinary income and is assessable under section 6-5 in the year in which it is derived.

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

132. Division 35 has no application to losses arising from the Investor's participation in the Project, as an Investor who is an 'initial participant' in the Project is not carrying on a business activity (see paragraphs 21 and 95 to 97 of this Ruling.

Section 82KL – recouped expenditure

133. The operation of section 82KL of the ITAA 1936 depends, among other things, on the identification of a certain quantum of 'additional benefit(s)'. Insufficient 'additional benefits' will be provided to trigger the application of section 82KL of the ITAA 1936. It will not apply to deny the deduction otherwise allowable under section 8-5 of the ITAA 1997.

Part IVA – general tax avoidance provisions

134. 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).

135. The FEA Plantations Project 2009 will be a 'scheme' and an Investor will obtain a 'tax benefit' from entering into the 'scheme', in the form of tax deductions for the amounts detailed at paragraphs 28 and 32 of this Ruling that would not have been obtained but for the scheme. However, it is not possible to conclude the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

136. Investors to whom this Ruling applies will derive assessable income from holding or disposing of their 'forestry interest' in the Project. There are no facts that would suggest that Investors 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 Investors will enter into the scheme for the dominant purpose of obtaining a tax benefit.

Appendix 2 – Detailed contents list

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

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 97/7; TR 97/11; TR 98/22;
PR 2009/23; PR 2009/25;
PR 2009/26; PR 2009/27

Subject references:

- 4 year holding period
- 70 per cent DFE rule
- carrying on a business
- DFE
- direct forestry expenditure
- forestry interest
- forestry MIS
- interest expenses
- managed investment schemes
- market value substitution rule
- non commercial losses
- payments under the scheme
- producing assessable income
- product rulings
- reasonable expectation
- tax avoidance
- taxation administration

Legislative references:

- ITAA 1936
- ITAA 1936 82KL
- ITAA 1936 Pt III Div 3 Subdiv H
- ITAA 1936 82KZL
- ITAA 1936 82KZLA
- ITAA 1936 82KZM
- ITAA 1936 82KZMA
- ITAA 1936 82KZMB
- ITAA 1936 82KZMC
- ITAA 1936 82KZMD
- ITAA 1936 82KZME
- ITAA 1936 82KZMF
- ITAA 1936 Pt IVA
- ITAA 1936 170
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1936 318
- ITAA 1997
- ITAA 1997 6-5
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- ITAA 1997 8-1
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- ITAA 1997 35-10
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- ITAA 1997 394-15(4)
- ITAA 1997 394-15(5)
- ITAA 1997 394-20
- ITAA 1997 394-25
- ITAA 1997 394-25(1)(c)
- ITAA 1997 394-25(2)
- ITAA 1997 394-25(3)
- ITAA 1997 394-30
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- ITAA 1997 394-35(2)
- ITAA 1997 394-35(3)
- ITAA 1997 394-35(4)
- ITAA 1997 394-35(5)
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- ITAA 1997 394-35(7)
- ITAA 1997 394-35(8)
- ITAA 1997 394-40
- ITAA 1997 394-45
- ITAA 1997 995-1
- TAA 1953
- TAA 1953 Sch 1 394-10
- SISA 1993
- Copyright Act 1968
- Corporations Act 2001

Case references:

- Australian National Hotels Ltd v. Federal Commissioner of Taxation (1988) 19 FCR 234; 88 ATC 4627; (1988) 19 ATR 1575
- Federal Commissioner of Taxation v. Roberts (1992) 37 FCR 246; 92 ATC 4380; (1992) 23 ATR 494
- Fletcher & Ors v. Federal Commissioner of Taxation (1991) 173 CLR 1; 91 ATC 4950; (1991) 22 ATR 613
- Hance v. FC of T; Hannebery v. FC of T [2008] FCAFC 196; 2008 ATC 20-085
- Ronpibon Tin NL v. Federal Commissioner of Taxation (1949) 78 CLR 47; (1949) 8 ATD 431
- Steele v. Federal Commissioner of Taxation (1999) 197 CLR 459; 99 ATC 4242; (1999) 41 ATR 139

Other references:

- Hannebery & Hance (NSD 492 – 493 of 2008)

ATO references

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