

# ***PR 2008/45 - Income tax: Great Southern 2008 Wine Grape Income Project - 2008 Growers***



This cover sheet is provided for information only. It does not form part of *PR 2008/45 - Income tax: Great Southern 2008 Wine Grape Income Project - 2008 Growers*



## Product Ruling

### Income tax: Great Southern 2008 Wine Grape Income Project – 2008 Growers

---

Contents	Para
<b>LEGALLY BINDING SECTION:</b>	
What this Ruling is about	1
Date of effect	10
Ruling	19
Scheme	30
<b>NOT LEGALLY BINDING SECTION:</b>	
Appendix 1:	
Explanation	77
Appendix 2:	
Detailed contents list	102

#### **! 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, 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 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.

## **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. 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.

## **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 provision(s) 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 'Great Southern 2008 Wine Grape Income Project – 2008 Growers' 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 capitalised terms shown in inverted commas are specifically defined in the Project agreements.

### Class of entities

3. This part of the Product Ruling specifies which entities can rely on the tax benefits set out in the Ruling section of this Product Ruling and which entities cannot rely on those tax benefits.
4. The class of entities who can rely on those tax benefits are referred to as Growers. Growers will be those entities that are accepted to participate in the scheme specified in paragraphs 30 to 76 of this Ruling, on or after the date this Product Ruling is made, and who have executed the relevant Project Agreements set out in paragraph 30 of this Ruling on or before 15 June 2008. They must 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.
5. The class of entities who can rely on the tax benefits set out in the Ruling section of this Product Ruling 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;
  - who are accepted into this Project before the date of this Ruling or are accepted after 15 June 2008;
  - who fail to pay the 'Application Fee' of \$3,300 per 'Vinelot', in full by 15 June 2008,<sup>1</sup> including where this amount is to be paid partly or fully on the Grower's behalf by a lending institution (except where paragraph 75 of this Ruling applies);
  - who participate in the scheme through offers made other than through the Product Disclosure Statement for the Project;

---

<sup>1</sup> Or the next business day, where 15 June 2008 falls on a Saturday or Sunday.

- who enter into arrangements to fund their participation in the Project with Great Southern Finance Pty Ltd, or with any associate of Great Southern Finance Pty Ltd, that do not comply with the written undertakings given to the Tax Office by Great Southern Finance Pty Ltd dated 14 March 2006 and 11 May 2006; or
- who enter into arrangements with Great Southern Finance Pty Ltd, or with the Preferred Financier, to fund their participation in the Project other than through those finance arrangements specified in paragraph 71 of this Ruling.

**Qualifications**

6. 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 30 to 76 of this Ruling.

7. 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.

8. This work is copyright. Apart from any use as permitted under the Copyright Act 1968, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to:

Commonwealth Copyright Administration  
Attorney General's Department  
Robert Garran Offices  
National Circuit  
Barton ACT 2600

or posted at: <http://www.ag.gov.au/ccca>

**Superannuation Industry (Supervision) Act 1993**

9. 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.

## Date of effect

---

10. This Product Ruling applies prospectively from 14 May 2008, the date this Product Ruling is made. It, therefore, applies only to the specified class of entities that enter into the scheme from 14 May 2008 until 15 June 2008, 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 the income years up to 30 June 2010.

11. However this Product Ruling only applies to the extent that:

- there is no change in the scheme or in the entity's involvement in the scheme;
- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

12. If this Product Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

13. If this Product Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Product Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

14. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

## Changes in the law

15. Although this Product Ruling deals with the laws enacted at the time it was issued, later amendments to the law may impact on this Product Ruling. Any such changes will take precedence over the application of this Product Ruling and, to the extent of those amendments this Product Ruling will be superseded.

16. 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**

17. 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**

18. All fees and expenditure referred to in this Product 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.

## **Ruling**

---

**Application of this Ruling**

19. Subject to the stated qualifications, this part of the Product Ruling sets out in detail the taxation obligations and benefits for a Grower in the defined class of entities set out in paragraphs 4 and 5 of this Ruling who enters into and participates in the scheme described at paragraph 30 to 76 of this Ruling.

20. The Grower's participation in the Project must constitute the carrying on of business of primary production. A Grower is not eligible to claim any tax deductions until the Grower's application to enter the Project is accepted by GSMAL and their business of primary production under the Project has commenced.

21. Provided the Project is carried out as described below, the Grower's business of primary production will commence at the time of execution of their Lease, Licence and Management Agreement (LLMA) by Great Southern Managers Australia Ltd (GSMAL) under the Power of Attorney given to GSMAL by the Grower.

**Concessions for 'small business entities'<sup>2</sup>**

22. From the 2007-08 income year, a range of concessions previously available under the Simplified Tax System (STS), will be available to an entity if it carries on a business and satisfies the \$2 million aggregated turnover test (a 'small business entity').

---

<sup>2</sup> The meaning of 'small business entity' is explained in section 328-110.

23. A 'small business entity' can choose the concessions that best suit its needs. Eligibility for some small business concessions is also dependent on satisfying some additional conditions. Because of the choices available to a small business entity, and the eligibility conditions, the application of the small business concessions to Growers who qualify as a 'small business entity' is not able to be dealt within this Ruling.

### **Assessable income**

#### **Sections 6-5 and 17-5**

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

25. The Grower recognises ordinary income from carrying on the business of viticulture at the time that the income is derived. Amounts may be derived in an income year that is earlier than the income year in which they are received or they are entitled to be received.

26. Specific to this Project, any 'shortfall amount' refunded to Growers by GSMAL will be assessable income in the year in which the 'shortfall amount' is derived.

### **Deductions for management fees, rent and/or licence fees, borrowing expenses, interest and capital expenditure**

#### **Sections 8-1 and 25-25 and Divisions 27 and 40 of the ITAA 1997 and sections 82KZME and 82KZMF of the ITAA 1936**

27. As set out in the Tables below a Grower may claim tax deductions for the following fees and expenses on a per Vinelot basis.

<b>Fee Type</b>	<b>Year ending 30 June 2008 (Initial Period)</b>	<b>Year ending 30 June 2009 (Second Period)</b>	<b>Year ending 30 June 2010 (Third Period)</b>
<b>Initial Management Period Fees</b>	\$2,640 See Notes (i) & (ii)	Nil	Nil
<b>'Second Period Fees' and 'Third Period Fees'</b>	Must be calculated See Notes (i) & (ii) & (iii)	Must be calculated plus 49.5% of 'Net Proceeds of Sale' (if any) See Notes (i) & (ii) & (iii)	Must be calculated plus 49.5% of 'Net Proceeds of Sale' (if any) See Notes (i) & (ii) & (iii)
<b>Rent and/or licence fees</b>	Nil	\$385 See Notes (i) & (iv)	\$621.50 See Notes (i) & (iv)

<b>Interest on loans with Great Southern Finance or with the Preferred Financier</b>	Nil	The amount of interest incurred in the 'Second Period' See Notes (v) & (vi)	The amount of interest incurred in the 'Third Period' See Notes (v) & (vi)
<b>Loan 'Application Fee' or loan establishment fee</b>	Must be calculated See Notes (i) & (vii)	Must be calculated See Notes (i) & (vii)	Must be calculated See Notes (i) & (vii)
<b>Establishment of horticultural plants</b>	Must be calculated. The amount deductible will be notified by GSMAL See Notes (i), & (viii)	Must be calculated. The amount deductible will be notified by GSMAL See Notes (i), & (viii)	Must be calculated. The amount deductible will be notified by GSMAL See Notes (i), & (viii)

**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
- (ii) In the year ending 30 June 2008, in addition to the 'Initial Management Period Fees' of \$2,640, a Grower who acquires **one 'Vinelot'** will incur and prepay an amount of \$660 for the 'Second Period Fees' and the 'Third Period Fees'. Because this amount is under \$1,000 it is 'excluded expenditure' for the purposes of the prepayment provisions in sections 82KZME and 82KZMF of the ITAA 1936. It is, therefore, deductible in full in the year ending 30 June 2008 under section 8-1 of the ITAA 1997. Paragraphs 86 to 92 of this Ruling set out a more detailed discussion of the prepayment provisions as they apply to this scheme. However, where a Grower acquires **two or more 'Vinelots'** then the prepaid amounts for the 'Second Period Fees' and the 'Third Period Fees' will exceed \$1,000 and will not be 'excluded expenditure'. The prepaid amount will, therefore, **NOT** be deductible in the year ending 30 June 2008 and will have to be apportioned using the formula in subsection 82KZMF(1) of the ITAA 1936. This formula apportions expenditure over the 'eligible service period' or 10 years, whichever is the lesser. The 'eligible service period' in respect of the prepaid 'Second Period Fees' and 'Third Period Fees' commences on 1 July 2008 and ends on 30 June 2010.



Applying this formula to the prepaid amount, a deduction of \$330 per 'Vinelot' is allowable in each of the years ending 30 June 2009 (the 'Second Period') and 30 June 2010 (the 'Third Period') under section 8-1 of the ITAA 1997.

- (iii) In addition to the \$330 per Vinelot that will be incurred by Growers for 'Ongoing Management Services' to be provided in both the 'Second Period' and the 'Third Period' (that is the years ending 30 June 2009 and 30 June 2010) Growers will incur a further fee for the 'Ongoing Management Services' to be provided in each of those income years. This further fee will be calculated as 49.5% of the 'Net Proceeds of Sale'. GSMAL will notify Growers of these additional amounts (if any) and the year in which the deductions can be claimed.
- (iv) From the year ending 30 June 2009 Growers will incur an annual fixed amount for rent and/or licence fees. The rent and/or the licence fees payable will be deducted from 'Net Proceeds of Sale' after deduction of the fee referred to in Note (iii). Where the 'Net Proceeds of Sale' are insufficient to cover the full amount of rent and/or licence fees, the 'shortfall amount' will be carried forward to the following 'Financial Year'. If the 'Net Proceeds of Sale' in the following 'Financial Year' are insufficient to cover the 'shortfall amount' Growers will be invoiced and the unpaid balance will be payable by 31 October of that 'Financial Year'.
- (v) The deductibility or otherwise of interest arising from agreements entered into with financiers other than those with Great Southern Finance Pty Ltd or with the 'Preferred Financier', is outside the scope of this Ruling. The interest covered by this Product Ruling relates only to the loans set out in paragraph 71 of this Ruling.
- (vi) This Product Ruling also does not apply to a prepayment of interest made to any lender, including any prepayment of interest made to Great Southern Finance Pty Ltd, or to the 'Preferred Financier', under any of the loans set out in paragraphs 71 of this Ruling. Growers who prepay interest for a period that extends beyond the income year in which the interest is incurred may request a private ruling on its deductibility.

- (vii) The loan 'Application Fee'/loan establishment fee payable to either Great Southern Finance Pty Ltd or to the 'Preferred Financier' is a borrowing expense and is deductible under section 25-25. It is incurred for borrowing money that is used, or is 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 Great Southern Finance or with the Preferred Financier is outside the scope of this Ruling.
- (viii) Growers in the Project are entitled to a deduction at the write off rate of 13% for the balance of the establishment expenditure for 'Vines' situated on the 'Established Area' of their 'Vinelot(s)'. They can also claim a deduction for write off of the 'Vines' that are situated on the 'Young Area' of their 'Vinelot(s)', when those 'Vines' enter their first commercial season. In accordance with section 40-575, GSMAL, the Responsible Entity, will inform Growers of the amount that is deductible for the vines on the 'Established Area' and will also inform Growers when the Grapevines on the 'Young Area' of their 'Vinelot(s)' enter their first commercial season and the amount that is deductible for the write off of those vines.

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

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

28. A Grower who is an individual accepted into the Project by 15 June 2008 may have losses arising from their participation in the Project that would be deferred to a later income year under section 35-10. Subject to the Project being carried out in the manner described below, the Commissioner will exercise the discretion in paragraph 35-55(1)(b) for Growers for the income years ended **30 June 2008 to 30 June 2011**. 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 arise.

## Anti-avoidance provisions

### *Section 82KL and Part IVA*

29. For a Grower who commences participation in the Project and incurs the expenditure that is required under the LLMA, the following provisions of the ITAA 1936 have application as indicated:

- section 82KL does not apply to deny the deductions otherwise allowable; and
- the relevant provisions in Part IVA will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

## Scheme

---

30. The Scheme that is the subject of this Ruling is identified and described in the following documents and correspondence:

- Application for a Product Ruling with accompanying attachments, including those specifically listed below, received on 31 October 2007;
- Additional correspondence received on 10 January 2008, 17 January 2008, 21 January 2008, 24 January 2008, 8 February 2008, 14 February 2008, 21 February 2008, 28 February 2008, 4 March 2008, 14 March 2008, 10 April 2008, 17 April 2008, 21 April 2008, 2 May 2008, 3 May 2008, 5 May 2008 and 6 May 2008;
- Correspondence submitted prior to receipt of the application, on 14 March 2006 and 11 May 2006;
- **Product Disclosure Statement** for the Great Southern 2008 Wine Grape Income Project issued by Great Southern Managers Australia Ltd on 3 January 2008, accessed and downloaded at [www.great-southern.com.au](http://www.great-southern.com.au) on 2 May 2008;
- Draft **Constitution** for the Great Southern 2008 Wine Grape Income Project, received on 31 October 2007, as amended by the third variation received on 6 May 2008;
- Draft Compliance Plan for the Great Southern 2008 Wine Grape Income Project, received on 31 October 2007, as amended by versions received on 5 May 2008 and 6 May 2008;

- Draft **Lease, Licence and Management Agreement** (the LLMA) (attached to the Constitution as Schedule 1) between GSMAL (as the Lessor, Licensor and Responsible Entity) and the relevant Grower, received on 5 May 2008;
- Draft **Standard Terms for Lease, Licence and Management Agreement** (attached to the Constitution as Schedule 2) between GSMAL (as the Lessor, Licensor and Responsible Entity) and the relevant Grower, received on 5 May 2008;
- **Application for Term Finance – Principal and Interest Loan** for Great Southern Wine Grape Income Project between Great Southern Finance Pty Ltd (as lender or as agent of the Preferred Financier) and the relevant Grower (as finance applicant), dated 25 February 2008, accessed and downloaded at [www.great-southern.com.au](http://www.great-southern.com.au) on 2 May 2008;
- Brochure entitled 'New 'Best of breed' finance from Great Southern', dated 5 March 2008, accessed and downloaded at [www.great-southern.com.au](http://www.great-southern.com.au) on 2 May 2008;
- Draft Management Services Agreement between GSMAL and Great Southern Ltd, received on 31 October 2007;
- Draft Marketing Services Agreement between GSMAL and Great Southern Securities Pty Ltd, received on 31 October 2007;
- Proforma Lease between Great Southern Vineyard Holdings Pty Ltd (as Owner) and GSMAL (as Lessee), received on 31 October 2007; and
- Draft Head Lease for the properties known as 'Klienig', 'Dohnt', and 'Rosebank', received on 4 March 2008.

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

31. The documents highlighted are those that a Grower 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.

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

**Overview**

33. The main features of the Great Southern 2008 Wine Grape Income Project are as follows:

Location	Vineyards located in South Australia, Western Australia, NSW, and Victoria.
Type of business to be carried on by each Grower	Commercial growing of wine grapes.
Number of hectares offered for cultivation	Approximately 922 hectares.
Size of each Vinelot	0.1 hectares consisting of: <ul style="list-style-type: none"> <li>• 0.05 hectares of vines in an 'Established Area' – these will be vines three years old or greater; and</li> <li>• 0.05 hectares of vines in a 'Young Area' – these will be vines less than 3 years old, radically pruned vines or grafted vines.</li> </ul>
Number of vines per hectare	Will depend on the variety, but at least 1,100.
Term of the Project	20 years and 2 weeks (or 22 years and 2 weeks if a specified IRR is not achieved).
Initial cost per 'Vinelot' (referred to as the 'Application Fee')	\$3,300 (includes an amount of \$660 being prepaid fees for the 'Second Period' – the year ending 30 June 2009 and the 'Third Period' – the year ending 30 June 2010).
Ongoing costs	<ul style="list-style-type: none"> <li>• Management fee of 49.5% of 'Net Proceeds of Sale' annually for the term of the Project</li> <li>• Rent and/or licence fee of \$385 in the 'Second Period'</li> <li>• Rent and/or licence fee of \$621.50 in the 'Third Period'</li> <li>• Thereafter, rent and/or a licence fee of \$621.50 indexed to the higher of 2.5% or CPI</li> </ul>
Other costs	Growers will be charged for the cost of all insurance except Public Liability Insurance

34. The Project is registered as a Managed Investment Scheme under the *Corporations Act 2001*. GSMAL has been issued with an Australian Financial Services Licence Number 240787 and will be the Responsible Entity for the Project. Under the Product Disclosure Statement (the PDS) GSMAL proposes to offer 5,000 interests called 'Vinelots', each of 0.1 hectares. There is no minimum subscription for this Project and there is provision for oversubscriptions to be accepted up to the available 922 hectares.

35. This Product Ruling is only applies to Growers whose 'Vinelots' is each made up of an 'Established Area' on any of the specific vineyards listed below and of a 'Young Area' on any of the specific vineyards listed below.

36. An 'Established Area' is defined in the Constitution as being:

- 'part of a Vineyard comprising an area of approximately 0.05 hectares upon which Vines have been established for 3 years or greater, as at the Commencement Date'.

37. A 'Young Area' is defined in the Constitution as being:

- 'part of a Vineyard comprising an area of approximately 0.05 hectares upon which Vines have been established less than 3 years as that the Commencement Date or have undergone Radical Pruning as at the Commencement Date or will be established between the Commencement Date and 31 October 2008'.

38. The vineyards relevant for the purposes of this Product Ruling are:

- 'Gnangara' located in Manjimup in Western Australia consisting of 101.072 hectares that is specified to be an 'Established Area';
- 'Rowe Road' located in Margaret River in Western Australia consisting of 25.103 hectares that is specified to be a 'Young Area';
- 'Boh River' located in the Riverland area of South Australia consisting of 172.801 hectares that is defined as a 'Young Area' and 19.133 hectares that is defined as an 'Established Area';
- 'Dohnt' located in the Coonawarra area of South Australia consisting of 2.628 hectares that is defined as a 'Young Area' and 27.075 hectares that is defined as an 'Established Area';
- 'Kleinig' located in the Barossa Valley area of South Australia consisting of 206.357 hectares that is defined as an 'Established Area';

- 'Griffith-Beer' located in the Riverina area of New South Wales consisting of 41.347 hectares that is defined as a 'Young Area';
- 'Griffith-Joeky' located in the Riverina area of New South Wales consisting of 11.96 hectares that is defined as a 'Young Area';
- 'Griffith-Rossetto' located in the Riverina area of New South Wales consisting of 90.791 hectares that is defined as a 'Young Area' and 24.983 hectares that is defined as an 'Established Area';
- 'Rosebank' in the Grampians area of Victoria consisting of 82.319 hectares that is defined as an 'Established Area'; and
- 'Millewa' in the Murray Darling area of Victoria consisting of 116.309 hectares that is defined as a 'Young Area'.

39. The 'Griffith-Joeky', 'Griffith-Beer', 'Griffith-Rossetto', 'Gnangara', 'Boh River', 'Millewa' and 'Rowe Road' vineyards are all owned by Great Southern Vineyard Holdings Pty Ltd (GSVH), a wholly owned subsidiary of GSMAL, and will be leased to GSMAL for the purposes of the Project. The 'Dohnt', 'Kleinig' and 'Rosebank' vineyards are owned by an unlisted widely held trust that is not part of the Great Southern Group, and will be leased to GSMAL for the purposes of the Project.

40. Prior to the 'Commencement Date' of the Project GSMAL will procure the construction and installation of all of the Vineyard Infrastructure, including the 'Fixtures', and any 'Radical Pruning' planned, and will plant 174 hectares of new vines by 31 October 2008. The 'Commencement Date' for the Project will be on or before 15 June 2008.

41. Growers will lease and/or licence (as relevant) their 'Vinelots' from GSMAL from the 'Commencement Date' of the Project and enter into a contract with GSMAL to manage their 'Vinelots' for the eventual harvest and sale of their 'Grape Produce'. GSMAL will manage and cultivate the 'Vines' for the Growers and be responsible for harvesting, marketing and selling the 'Grape Produce' on their behalf.

42. Upon application, each Grower will execute a 'Power of Attorney' (set out on pages 70 and 71 of the PDS) enabling GSMAL to act on their behalf as required during the 'Term' of the Project.

43. The 'Term' of the Project is to be 20 years and 2 weeks but can be extended by an additional two years if the Grower's 'Internal Rate of Return' over the original 'Term' of the Project does not equal or exceed an average of 9% per annum.

**Constitution**

44. The Constitution establishes the Project and operates as a deed binding on all of the Project's Growers and GSMAL. The Constitution sets out the terms and conditions under which GSMAL agrees to act as responsible entity and manage the Project. Growers are bound by the terms of the Constitution by virtue of their participation in the Project.

45. All moneys received from applications will be paid to the Responsible Entity and deposited into an 'Application Fund' held in its name, as bare trustee for the 'Applicants' (clause 5).

46. Under the 'Power of Attorney' given by each Grower to GSMAL the LLMA will be executed on the Grower's behalf on, or before 15 June 2008 (clause 6.3).

47. The Responsible Entity will register any lease over land that is subject to a Headlease. In registering such leases the Responsible Entity will use its best endeavours to register the Headlease in such a way that it cannot be adversely affected by any existing or subsequent mortgage, secured creditor, or transferee (other than in connection with a borrowing or other transaction that is entered into by the Responsible Entity in accordance with the Constitution and its duties as responsible entity of the Project) (clause 6.4).

48. The 'Application Moneys' will be released by the Responsible Entity when it is reasonably satisfied that certain specified criteria in the Constitution have been met (clauses 6.6, 7 and 8 of the Constitution).

49. Among the other things, the Constitution sets out details summarised as follows:

- the functions, powers and duties of the Responsible Entity (clause 12);
- the complaints procedure (clause 13);
- the provision of a written report by an 'Independent Viticulture Expert' to Growers by specific dates (clause 18);
- transfer of a Grower's interests (clause 20);
- the issue to each Grower within 2 months of the execution of the LLMA of a certificate setting out details including the name of the Grower and the number and description of the Grower's 'Vinelots' (clause 27);
- the requirement for the Responsible Entity to keep an up-to-date register of Growers (clause 28);
- procedures relating to distributions of each Grower's 'Proportional Interest' of the 'Proceeds Fund' (clause 31); and
- termination of the Project (clauses 35 and 36).



## **Compliance Plan**

50. As required by the *Corporations Act 2001*, a Compliance Plan has been adopted by GSMAL for the Project. The purpose of the Compliance Plan is to ensure that GSMAL manages the Project in accordance with its obligations and responsibilities contained in the Constitution and that the interests of Growers are protected.

## **Lease, Licence and Management Agreement**

51. Growers participating in the arrangement will enter into an LLMA, which includes the 'Standard Terms for the LLMA'. The parties to the LLMA will be GSMAL (as Responsible Entity, Lessor and Licensor) and the relevant Grower.

## **Standard Terms for the LLMA**

### ***Lease and/or Licence (Part 1 of the Standard Terms for the LLMA)***

52. As relevant, Growers are granted a lease and/or a 'Licence' of their 'Vinelot', including the 'Vines' and the 'Viticulture Infrastructure' for the 'Term' of the Project (clause 2). A 'Licence' will be granted where all or part of a Grower's 'Vinelots' are located on a vineyard located in New South Wales and a lease will be granted where the vineyard is located in Victoria, South Australia, or Western Australia. Depending on where a Grower's Vinelots are located, some Growers will have a lease and a licence and other Growers will have only a lease or only a licence.

53. The lease and/or licence will be over an identifiable area of land commencing from 15 June 2008 and ending 20 years after the end of the 'Initial Management Period' or until the Project is terminated. If the lease and/or licence has not been terminated pursuant to the provisions of the Constitution, the lease and/or licence can be extended to the 'Extended Termination Date', being an additional two years, if the Grower's 'Internal Rate of Return' over the original 'Term' of the Project does not equal or exceed an average of 9% per annum (clause 37).

54. The rent and/or licence fee payable by a Grower is set out in clause 3, and includes circumstances where the 'Net Proceeds of Sale' are insufficient to pay the rent and/or licence fees (clause 3.5). Each Grower must pay the 'Rent' and/or the 'Licence Fee' to the Lessor and/or Licensor in the amounts specified in Item 6 of Schedule 1 to the LLMA.

55. The 'Vinelot' must only be used by the Grower for the purpose of conducting their viticulture business (clause 5).

56. On or before 15 June 2008 the Lessor and Licensor will:
- procure the construction of the 'Viticulture Infrastructure' on the 'Vinelot', which includes the 'Fixtures', for the purposes of conducting proper and efficient viticulture; and
  - ensure that all 'Vines' have been planted in the ground, and all associated irrigation and trellising has been installed for those 'Vines', on or before 'Commencement Date' of 15 June 2008, except that the newly planted 'Vines' in the 'Young Areas' may be planted in the ground between the 'Commencement Date' of 15 June 2008 and 31 October 2008 (and if necessary the associated irrigation and trellising for those 'Vines' may also be installed between the 'Commencement Date' of 15 June 2008 and 31 October 2008) (clause 10.4(a)).
57. Under the lease and/or the licence the Grower must:
- pay annual insurance premiums as applicable for the 'Vines', the 'Viticulture Infrastructure' and the 'Grape Produce' on the 'Vinelot' (clause 5.4);
  - keep the 'Vinelot' in good and substantial repair (clause 6.1); and
  - at the expiration of the lease, yield up to the Lessor and Licensor, the 'Vinelot', the 'Vines', and the 'Viticulture Infrastructure' (clause 8).

***Insurance***

58. GSMAL will use its best endeavours to arrange insurance of the 'Vinelot' on behalf of the Grower to cover against fire and other usual risks. The insurance will be deducted from the 'Net Proceeds of Sale', however, such costs will not exceed the 'Net Proceeds of Sale' in any financial year (clause 12.1).

***Management services (Part 2 of the Standard Terms for the LLMA)***

59. Each Grower appoints GSMAL to perform the 'Initial Management Services' and the 'Ongoing Management Services' from the 'Commencement Date' of 15 June 2008 (clause 14). GSMAL will supervise and manage all viticultural activities on behalf of the Grower. The services to be performed are set out in detail in Schedules 2 and 3.

60. The 'Initial Management Services' will be performed during the 'Initial Management Period', being the period from 15 June 2008 to 30 June 2008. The services include:

- all inspection, supervision and management activities as necessary from the 'Commencement Date' in respect of the services listed in Schedule 2 that are carried out by subcontractors;
- the obtaining of formal verification by 30 June 2008 from an 'Independent Viticulture Expert' that the Vinelot is of an appropriate standard and all required services have been performed and performed to an appropriate standard;
- cultivating, tending, culling, watering, pruning, replanting, spraying and otherwise caring for the 'Vines', as necessary;
- keeping in good repair and condition any access road or roads within the 'Vineyard', keeping in good repair and condition all waterways, dams, irrigation and pumping equipment within the 'Vineyard', as necessary; and
- undertaking pest control, fungicide control and vine disease measures as necessary.

61. Provision of the 'Ongoing Management Services' will commence on 1 July 2008. The 'Ongoing Management Services' are defined to mean all commercial viticultural activities required to be carried on to manage and maintain the 'Vines' according to good viticultural and vineyard practice, including but not limited to:

- cultivating, tending, culling, watering, pruning, replanting, spraying and otherwise caring for the 'Vines' as and when required;
- keeping in good order and condition any access road or roads within the 'Vineyard', keeping in good repair and condition all waterways, dams, irrigation and pumping equipment within the 'Vineyard', as required;
- undertaking pest control, fungicide control and vine disease measures as required on the 'Vinelots';
- controlling rabbits and other vermin by fumigating and poisoning and complying with the provisions of all statutes, regulations and by-laws (and all amendments) thereto with respect to the same, and any other statutes, rules or regulations and by-laws relating to or affecting the 'Vinelot' or the Grower in respect thereof;
- keeping in good repair and condition all fences, trellising, irrigation and adequate fire-breaks within the 'Vineyard'; and

- obtaining a 'Report' from the 'Independent Viticulture Expert' within 6 months after the completion of planting of all vines within the Project, at least six monthly for the first year thereafter and then annually, to be provided to the Grower.

62. The consequences of damage, complete or partial destruction, or of reduction in the viability of the 'Vinelot' and the effects on the 'Grower's Proportional Interest' and the 'Grower's Proportional Share' are contained in clause 13.

### ***Harvesting and sale***

63. Commencing from the date of the first harvestable grape crop, or at such other time or times as the Responsible Entity in its absolute discretion considers appropriate, the Responsible Entity will harvest, or arrange for the harvest of, the 'Grape Produce' for Growers in the Project (clause 18).

64. Each Grower has appointed GSMAL, as agent, to sell their 'Grape Produce' for the maximum practicable price available (clause 19) and the purchaser of the Grape Produce may be GSMAL (clause 19.4). At all times the Grower has full right, title and interest in the 'Grape Produce' and the right to have the 'Grape Produce' sold for their benefit (clause 11.3).

65. GSMAL will ensure that the 'Gross Proceeds of Sale' are paid into the 'Proceeds Fund' account (clause 21.1). The Grower's 'Proportional Share of the Costs of Harvesting' will be paid to GSMAL, or the relevant third party from the 'Gross Proceeds of Sale' (clause 21.2). GSMAL will also pay the rent and/or licence fee, and the management fee from the 'Net Proceeds of Sale'. On or before each 'Distribution Date', GSMAL will distribute to the Growers, out of the Proceeds Fund, each 'Grower's Proportional Interest' of the 'Proceeds Fund' relating to the last 'Accounting Period'.

### ***Pooling of 'Grape Produce'***

66. Each Grower's 'Grape Produce' will be pooled with the 'Grape Produce' of other Growers in the Project and the Grower will be entitled to a proportionate share of the 'Net Proceeds of Sale' of the total 'Grape Produce' of all Growers in the Great Southern 2008 Wine Grape Income Project. The Constitution (clause 31) and the Standard Terms for the LLMA (clause 21) set out provisions relating to the 'Grower's entitlement' to 'Net Proceeds of Sale'.

67. This Product Ruling only applies where the following principles apply to the pooling and distribution arrangements:

- only Growers who have contributed 'Grape Produce' to the sales pool in a 'Financial Year' are entitled to benefit from distributions of 'Net Proceeds of Sale' from the pooled 'Grape Produce'; and

- any pooled 'Grape Produce' must consist only of 'Grape Produce' contributed by Growers in the Great Southern 2008 Wine Grape Income Project.

## **Fees (Items 6 and 7 of the LLMA)**

68. The fees payable under the LLMA per Vinelot are as follows:

### ***Management fees***

- an 'Application Fee' of \$3,300, payable on or before the 'Commencement Date'.  
  
This amount is made up of \$2,640 for the 'Initial Management Services', \$330 being part payment for the 'Ongoing Management Services' in the 'Second Period' and \$330 being part payment for the 'Ongoing Management Services' in the 'Third Period';
- an additional 'Fee' of 49.5% of a Grower's 'Net Proceeds of Sale' is payable for the 'Ongoing Management Services' in the 'Second Period' and in the 'Third Period'; and
- a 'Fee' of 49.5% of a Grower's 'Net Proceeds of Sale' is payable for the 'Ongoing Management Services' in each year in the 'Fourth Period', (the Fourth Period begins at the end of the 'Third Period' and concludes at the 'Termination Date' or, alternatively, at the end of the 'Extended Termination Date').

### ***Rent and/or licence fees***

- no rent and/or a licence fee is payable for the period from the 'Commencement Date' to 30 June 2008;
- rent and/or a licence fee of \$385 is payable for the 'Financial Year' from 1 July 2008 to 30 June 2009;
- rent and/or a licence fee of \$621.50 is payable for the 'Financial Year' from 1 July 2009 to 30 June 2010; and
- for each 'Financial Year' thereafter, rent and/or a licence fee of \$621.50 indexed to the higher of 2.5% and the percentage change in the CPI.

**Finance**

69. Growers can fund their participation in the Project:

- partly or wholly from their own financial resources;
- by borrowing a part of, or the full amount of the 'Application Fee' of \$3,300 per 'Vinelot' plus the loan 'Application Fee' (for interest free loans) or the loan establishment fee (for principal and interest loans) from Great Southern Finance Pty Ltd (a lender that is an associate of GSMAL);
- by borrowing a part of, or the full amount of the 'Application Fee' of \$3,300 plus the loan establishment fee from the 'Preferred Financier'<sup>3</sup> (with GSMAL acting as the agent for the 'Preferred Financier'); or
- by borrowing a part of, or the full amount of the Project 'Application Fee' from a lender not associated with the Project.

70. Normal debt recovery procedures, including legal action, will be taken in the case of defaulting borrowers by both Great Southern Finance Pty Ltd and the 'Preferred Financier'.

71. The options that will be offered to Growers by Great Southern Finance Pty Ltd and the 'Preferred Financier' are summarised as follows:

***Great Southern Finance Pty Ltd*****12 months interest free loans:**

- the loan is repayable by equal monthly principal instalments over a period of 12 months;
- instalments of the loan are paid by direct debit commencing 15 July 2008;
- interest free loans of up to \$3,300 per 'Vinelot' are available with any balance of the 'Application Fee' payable by the Grower on or before the 'Commencement Date' (see paragraph 74 of this Ruling);
- a loan 'Application Fee' of up to 3% of the amount borrowed may be payable by the borrower. The loan 'Application Fee' is added to the principal borrowed and is repayable by the same equal monthly instalments; and
- no interest is applicable.

<sup>3</sup> The 'Preferred Financier' has declined to be named in this Product Ruling.

## **Principal and Interest Loans:**

- Great Southern Finance Pty Ltd offers principal and interest loans with a repayment term of two years up to a term of no more than 15 years;
- commencing from 15 July 2008, 'Borrowers' are required to make equal monthly principal and interest repayments over the term of the loan;
- interest rates will be fixed for the term of the loan and are set on an arms length basis with reference to a commercial margin over the inter bank SWAP rate for that term; and
- a category of principal and interest loans (called 'Platinum' loans) with lower interest rates will be available to 'Borrowers' who satisfy a net asset and income test and satisfy certain additional documentary requirements.

For Principal and Interest loans with Great Southern Finance Pty Ltd the following will apply:

- up to the full amount of the 'Application Fee' of \$3,300 per 'Vinelot' can be borrowed;
- a loan establishment fee may be payable, comprising an application fee of 0.5% of the loan amount. The loan establishment fee is added to the principal borrowed and is repayable by the same equal monthly instalments;
- principal and interest loans with a term of 5 years or more may be subject to a 'Trail fee' of up to 0.5% which is built into the interest rate on the loan; and
- the security for the loan is taken by way of a fixed charge, over the Grower's interest under the LLMA.

## ***The 'Preferred Financier'***

### **Principal and Interest Loans:**

- the 'Preferred Financier' offers principal and interest loans with a repayment term of two years up to a term of no more than 15 years;
- loans with the 'Preferred Financier' can be comprised of an interest only period of either two years (for loans with a term of five years or six years) or three years (for loans with a term of seven years or more) followed by a principal and interest period for the remainder of the term of the loan;

- commencing from 15 July 2008, 'Borrowers' are required to make equal monthly interest payments during the interest only period, if any, followed by equal monthly principal and interest repayments over the remainder of the term of the loan;
- a category of principal and interest loans (called 'Platinum' loans) with lower interest rates will be available to 'Borrowers' who satisfy a net asset and income test and satisfy certain additional documentary requirements.; and
- interest rates will be fixed for the term of the loan and are set on an arms length basis with reference to a commercial margin over the inter bank SWAP rate for that term.

For Principal and Interest loans with the 'Preferred Financier', the following will apply:

- up to the full amount of the 'Application Fee' of \$3,300 per 'Vinelot' can be borrowed;
- a loan establishment fee may be payable, comprising an application fee of 0.5% of the loan amount. The loan establishment fee is added to the principal borrowed and is repayable by the same equal monthly instalments;
- principal and interest loans (other than 'Platinum' loans) with a term of 5 years or more may be subject to a 'Trail fee' of up to 0.5% which is built into the interest rate on the loan; and
- the security for the loan is taken by way of a fixed charge, over the Grower's interest under the LLMA.

72. This Ruling will not apply to Growers who enter into any finance arrangement, other than those set out above, that are offered by Great Southern Finance Pty Ltd, or by any 'associate' of the Responsible Entity.

73. This Ruling will also not apply to Growers who enter into finance arrangements with Great Southern Finance Pty Ltd, or with any associate of Great Southern Finance Pty Ltd, that do not comply with the written undertakings given to the Tax Office by Great Southern Finance Pty Ltd dated 14 March 2006 and 11 May 2006. Growers may wish to seek assurances from Great Southern Finance Pty Ltd that these undertakings will be complied with.

74. Growers cannot rely on any part of this Ruling if the 'Application Fee' of \$3,300 is not paid in full to the Responsible Entity on or before 15 June 2008. This condition applies whether the amount is payable by the Grower or, partly or fully on the Growers behalf, by a lending institution including Great Southern Finance Pty Ltd or the 'Preferred Financier'.



75. Where an application is accepted by the Responsible Entity and that application is subject to finance approval by any lending institution other than Great Southern Finance Pty Ltd or the 'Preferred Financier', Growers cannot rely on this Ruling if written evidence of that approval has not been given to the Responsible Entity by the relevant lending institution on or before 15 June 2008.

76. This Ruling does not apply if a Grower enters into a finance agreement that 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' 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 terms or rate of interest are of a non-arm's length nature;
- repayments of the principal and 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) back to the lender or any associate;
- 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 Great Southern Finance Pty Ltd are involved or become involved in the provision of finance to Growers for the Project.

## 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?**

77. For the amounts set out in paragraph 27 of this Ruling to constitute allowable deductions, the Grower's viticultural activities as a participant in the Great Southern 2008 Wine Grape Income Project must amount to the carrying on of a business of primary production.

78. Two Taxation Rulings are relevant in determining whether a Grower will be carrying on a business of primary production.

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

80. Taxation Ruling TR 2000/8 Income tax: investment schemes, is more specific to arrangements such as the Great Southern 2008 Wine Grape Income Project, particularly paragraph 89 of that Ruling. As Taxation Ruling TR 2000/8 sets out, the relevant principles have been established in court decisions such as *Commissioner of Taxation v. Lau* (1984) 6 FCR 202; 84 ATC 4929; (1984) 16 ATR 55.

81. Having applied these principles to the arrangement set out above, a Grower in the Great Southern 2008 Wine Grape Income Project is accepted to be carrying on a business of growing and harvesting 'Grape Produce' for sale.

### **Deductibility of management fees, rent and/or licence fees, and interest on loans with Great Southern Finance Pty Ltd or the 'Preferred Financier'**

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

82. The 'Initial Management Fee', the 'Second Period Fees', the 'Third Period Fees' and the rent and/or the licence fee identified at paragraph 27 of this Ruling are deductible under section 8-1 (see paragraphs 43 and 44 of TR 2000/8). A 'non-income producing' purpose (see paragraphs 47 and 48 of TR 2000/8) is not identifiable in the arrangement.

83. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply. Other than in the second Table in paragraph 27 of this Ruling where the prepayment provisions are specifically stated to apply (see paragraphs 86 to 92 of this Ruling) a deduction for these amounts can be claimed in the year in which they are incurred. (Note: the meaning of 'incurred' is explained in Taxation Ruling TR 97/7.)

84. Some Growers may finance their participation in the Project through a finance agreement with Great Southern Finance Pty Ltd or the 'Preferred Financier'. Applying the same principles as those used for the management fees and the rent and/or licence fees, interest incurred under such loans has sufficient connection with the gaining of assessable income to be deductible under section 8-1.

85. Other than where the prepayment provisions apply a Grower can claim a deduction for such interest in the year in which it is incurred.

## **Prepayment provisions**

### ***Sections 82KZL, 82KZME and 82KZMF***

86. 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 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.

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

87. The expenditure incurred by a Grower in the Project for that part of the 'Application Fee' that is for the provision of services for the years ended 30 June 2009 and 30 June 2010 is expenditure to which the prepayment provisions apply.

88. This expenditure meets the requirements of subsections 82KZME(1) and (2) of the ITAA 1936 and is incurred under an 'agreement' as described in subsection 82KZME(3) of the ITAA 1936. Therefore, unless one of exceptions is section 82KZME of the ITAA 1936 applies the amount and timing of tax deductions for that expenditure will be determined under the formula in section 82KZMF of the ITAA 1936.

89. For Growers who acquire **one 'Vinelot' only** the prepaid fees for the 'Second Period' and the 'Third Period' are less than \$1,000. They are, therefore, 'excluded expenditure' as defined in subsection 82KZL(1) of the ITAA 1936. Under subsection 82KZME(7) of the ITAA 1936, 'excluded expenditure' is not subject to the operation of section 82KZMF of the ITAA 1936 and is, therefore, deductible in the year incurred.

90. However, Growers who acquire **two of more 'Vinelots'** will incur prepaid fees for the 'Second Period' and the 'Third Period' that will exceed \$1,000. Those Growers are required to calculate the deduction for each year using the formula in subsection 82KZMF(1) of the ITAA 1936. Section 82KZMF of the ITAA 1936 apportions the deduction for the prepaid fees for the 'Second Period' and the 'Third Period' over the eligible service period, which commences on 1 July 2008 and ends on 30 June 2010. This results in the deductions shown in the Table in paragraph 27 of this Ruling.

91. Other fees, including the annual rent and/or licence fees, and the interest payable under loan agreements with Great Southern Finance or the 'Preferred Financier' are not subject to the prepayment provisions.

92. As noted in the Ruling section above, Growers who 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.

### **Expenditure of a capital nature**

#### ***Division 40***

93. Any part of the expenditure of a Grower that is attributable to acquiring an asset or advantage of an enduring kind is generally capital or capital in nature and will not be an allowable deduction under section 8-1. In this Project, expenditure attributable to the establishment of the grapevines as horticultural plants is of a capital nature. This expenditure falls for consideration under Division 40.

94. Grapevines are a 'horticultural plant' as defined in subsection 40-525(2). As Growers in the Project will hold their 'Vinelot(s)' under a lease and/or licence, the condition in item 2 and/or 3 of subsection 40-525(2) is met and a deduction for the decline in value of the 'Vines' as 'horticultural plants' is available under paragraph 40-515(1)(b). The deduction for the 'Vines' is determined using the formula in section 40-545 and is based on the capital expenditure incurred that is attributable to their establishment. If the 'Vines' have an 'effective life' of greater than 13 but fewer than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 13%. The deduction is allowable when the 'Vines' enter their first commercial season (item 2 of section 40-530).

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

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

95. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for the years ended **30 June 2008 to 30 June 2011**, the Commissioner has applied the principles set out in Taxation Ruling TR 2007/6 Income tax: non-commercial business losses: Commissioner’s discretion. 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; and
- there is an objective expectation that within a period that is commercially viable for the viticultural industry, a Grower’s business activity will satisfy one of the four tests set out in Division 35 or produce a taxation profit.

96. 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.

97. The exercise of the Commissioner’s discretion under paragraph 35-55(1)(b) 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**

98. 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. It will not apply to deny the deduction otherwise allowable under section 8-1 of the ITAA 1997.

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

99. 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).

100. The Project will be a 'scheme'. A Grower will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraph 27 of this Ruling that would not have been obtained but for the scheme. However, it is not possible to conclude that the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

101. 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 'Grape Produce'. There are no facts that would suggest that Growers have the opportunity of obtaining a tax advantage other than the tax advantages identified in this Ruling. There are no non-recourse financing or round robin characteristics, and no indication that the parties are not dealing with each other at arm's length, or, if any parties are not 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

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

	<b>Paragraph</b>
<b>What this Ruling is about</b>	<b>1</b>
Class of entities	3
Qualifications	6
Superannuation Industry (Supervision) Act 1993	9
<b>Date of effect</b>	<b>10</b>
Changes in the law	15
Note to promoters and advisers	17
Goods and Services Tax	18
<b>Ruling</b>	<b>19</b>
Application of this Ruling	19
Concessions for 'small business entities'	22
Assessable income	24
<i>Sections 6-5 and 17-5</i>	24
Deductions for management fees, rent and/or licence fees, borrowing expenses, interest and capital expenditure	27
<i>Sections 8-1 and 25-25 and Divisions 27 and 40 of the ITAA 1997 and sections 82KZME and 82KZMF of ITAA 1936</i>	27
Division 35 – deferral of losses from non-commercial business activities	28
<i>Section 35-55 – exercise of Commissioner's discretion</i>	28
Anti-avoidance provisions	29
<i>Section 82KL and Part IVA</i>	29
<b>Scheme</b>	<b>30</b>
Overview	33
Constitution	44
Compliance Plan	50
Lease, Licence and Management Agreement	51
Standard Terms of the LLMA	52
<i>Lease and/or Licence (Part 1 of the Standard Terms of the LLMA)</i>	52
<i>Insurance</i>	58
<i>Management services (Part 2 of the Standard Terms of the LLMA)</i>	59

<i>Harvesting and sale</i>	63
<i>Pooling of 'Grape Produce'</i>	66
Fees (Items 6 and 7 of the LLMA)	68
Finance	69
<b>Appendix 1 – Explanation</b>	<b>77</b>
Is the Grower carrying on a business?	77
Deductibility of management fees, rent and/or licence fees, and interest on loans with Great Southern Finance Pty Ltd or the 'Preferred Financier'	82
<i>Section 8-1</i>	82
Prepayment provisions	86
<i>Sections 82KZL, 82KZME and 82KZMF</i>	86
<i>Application of the prepayment provisions to this Project</i>	87
Expenditure of a capital nature	93
<i>Division 40</i>	93
Division 35 – deferral of losses from non-commercial business activities	95
<i>Section 35-55 – exercise of Commissioner's discretion</i>	95
Section 82KL – recouped expenditure	98
Part IVA – general tax avoidance provisions	99
<b>Appendix 2 – Detailed contents list</b>	<b>102</b>



## References

---

*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 97/7; TR 97/11; TR 98/22;  
TR 2000/8; TR 2007/6

*Subject references:*

- carrying on a business
- commencement of business
- fee expenses
- interest expenses
- management fee
- non-commercial losses
- producing assessable income
- product rulings
- public rulings
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters
- tax shelters project
- taxation administration

- ITAA 1936 82KZMF(1)
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1936 318
- 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 Div 40
- ITAA 1997 40-515(1)(b)
- ITAA 1997 40-520(2)
- ITAA 1997 40-525(2)
- ITAA 1997 40-530
- ITAA 1997 40-545
- ITAA 1997 328-110
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968
- Corporations Act 2001
- SISA 1993

*Legislative references:*

- ITAA 1936 82KL
- ITAA 1936 Pt III Div 3 Subdiv H
- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZME
- ITAA 1936 82KZME(1)
- ITAA 1936 82KZME(2)
- ITAA 1936 82KZME(3)
- ITAA 1936 82KZME(7)
- ITAA 1936 82KZMF

*Case references:*

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

---

ATO references

NO: 2007/15420

ISSN: 1441-1172

ATO law topic: Income Tax ~~ Product ~~ vineyards & wineries