Product Ruling

Income tax: WA Blue Gum Project 2010

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.

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 WA Blue Gum Project 2010, 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 Growers.

5. Growers 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. A Grower will have executed the relevant Project Agreements set out in paragraph 45 of this Ruling on or before 30 June 2010 and will hold a 'forestry interest' in the Project.

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

- entities who are accepted into this Project before the date of this Ruling or after 30 June 2010;
- entities who participate in the scheme through offers made other than through the WA Blue Gum Project 2010 Product Disclosure Statement; or who enter into an undisclosed arrangement with:
  - the promoter or a promoter associate, or

- an independent adviser

that is interdependent with scheme obligations and/or scheme benefits (which may include tax benefits or harvest returns) in any way;

- entities whose application fee, including all loan moneys, are not paid in full to WA Blue Gum Limited (WABG) by 30 June 2010, either by the Grower and/or on the Grower's behalf by a lending institution; or
- entities who enter into finance agreements with Albany Financial Pty Ltd outside the terms specified in paragraphs 89 to 91 of this Ruling.

Qualifications

8. 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 45 to 92 of this Ruling.

9. 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.

Superannuation Industry (Supervision) Act 1993

11. This Product Ruling does not address the provisions of the *Superannuation Industry (Supervision) Act 1993* (SISA 1993). The Australian Taxation Office (ATO) 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

12. This Product Ruling applies prospectively from 9 June 2010, the date this Product Ruling is made. It therefore applies only to the specified class of entities that enter into the scheme from 9 June 2010 until 30 June 2010, 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 ATO 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 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 Product Ruling as a Grower) to be entitled to claim input tax credits for the GST included in any creditable acquisition that it makes, it must be registered or required to be registered for GST and hold a valid tax invoice.

Ruling

Structure of the Project

18. The WA Blue Gum Project 2010 is a 'forestry managed investment scheme' as defined in subsection 394-15(1). Its purpose is establishing 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 at paragraphs 45 to 92 of this Ruling between **9 June 2010** and on or before 30 June 2010 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. For the purpose of Division 394 a Grower (as described in paragraphs 3 to 7 of this Ruling) who will stay in the Project until its completion will be considered to be carrying on a business of primary production. An individual Grower will be subject to the operation of Division 35 (see paragraph 40 of this Ruling).

Concessions for 'small business entities'[3]

22. From the 2007-2008 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').

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 these choices 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 with in this Ruling.

[1] See subsection 394-15(5).
[2] See section 394-30.
[3] The meaning of 'small business entity' is explained in section 328-110.

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

Section 394-35 and subsection 394-10(4)

24. The taxation obligations and benefits set out below have been determined using the information provided to the Commissioner by WABG. On the basis of that information the Commissioner has decided that on 30 June 2010 it will be reasonable to expect that the '70% DFE rule'[4] will be satisfied. The ATO may undertake review activities during the term of the Project to verify the information relied on for the purposes of the '70% DFE rule'.

25. The Ruling will only apply if WABG 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.[5] For this Project the Trees must be established no later than 31 December 2011.

26. 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 1,000 trees per hectare. WABG is required by section 394-10 of Schedule 1 of the TAA to notify the ATO if the Trees are not established by 31 December 2011.

Allowable deductions

Sections 8-5, 394-10, 394-20 and Division 27

27. A Grower in the Project can claim deductions for the amounts shown in the Table below that are paid to WABG Plantations (sections 8-5 and 394-10).

28. The deductibility of these amounts remains subject to a requirement that a CGT event[6] does not happen in relation to the Grower's 'forestry interest' before 1 July 2014 (see paragraphs 36 to 38 of this Ruling).

29. The amount is deductible in the income year in which it is paid, or is paid on behalf of the Grower (subsection 394-10(2) and section 394-20). This requires cash to flow from the Grower, or from another entity on the Grower's behalf, to WABG's or the Custodian's bank account in the year in which the deduction is claimed. Any form of payment that does not involve the movement of cash into WABG's bank account will not qualify for a deduction under subsection 394-10(2).

30. Where a Grower 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.

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[4] The '70% DFE rule' is set out in section 394-35.
[5] See subsection 394-10(4).
[6] Defined in section 995-1.

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

Fee	**Amount**	**Deductible in income year ended**
Establishment fee	$5,500	30 June 2010 See Note (i)
Annual Contribution	Tending Fee $121 per hectare Rent $506 per hectare	Any year in which this amount is paid. See Note (i) and (ii) Any year in which this amount is paid. See Note (i) and (iii)
Incentive Fee	15% of the amount by which the net proceeds from the sale of timber exceeds $17,600 per hectare indexed from 30 June 2010.	Any year in which this amount is paid. See Note (i)

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) The Tending Fee of $121 per hectare per annum will be indexed by CPI from 30 June 2010. The tending services will commence from when the trees are planted and continue until the trees have been harvested. No Tending Fee is payable in respect of any year ended 30 June for any hectare upon which no trees have yet been planted. WABG will refund any Tending Fee, or portion thereof, paid in respect of any unplanted hectare.

(iii) The Rent of $506 per hectare per annum will be indexed by CPI from 30 June 2010. The Rent is payable under the terms of the Sub-lease 2010 which will commence on or after the execution of the respective head lease held by WABG.

‘CGT event’ within 4 years for Growers who are ‘initial participants’

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

32. Deductions for the establishment fees, tending fees, rent and unforseen expenses 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 a Grower before 1 July 2014 (subsection 394-10(5)).

33. Where deductions for these amounts have already been claimed by a Grower the Commissioner may amend their assessment at any time within two years of the ‘CGT event’ happening (subsection 394-10(6) of the ITAA 1997). The Commissioner’s power to amend in these circumstances applies despite section 170 of the ITAA 1936.

34. Growers 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 to finance the ‘forestry interest’ of a Grower

Section 8-1

35. A Grower may claim tax deductions for the following fees and expenses as set out in the following table.

Fee Type	**Deductible in income year ended**
Interest payable to Albany Financial Pty Ltd	30 June of the year in which the interest is incurred See Note (iv)
Credit card merchant fees incurred by a Grower	30 June of the year in which the interest is incurred See Note (v)

Notes:

(iv) Interest payable for loans with Albany Financial Pty Ltd 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 Albany Financial Pty Ltd is outside the scope of this Ruling. Investors who borrow from lenders other than Albany Financial Pty Ltd or who 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.

(v) Credit card merchant fees incurred by a Grower using their credit card to pay any fees under the Project will be deductible under section 8-1. The deduction is allowable in the year in which the merchant fee is incurred.

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

Sections 6-10 and 394-25

36. Where a 'CGT event' happens to a 'forestry interest' held by a Grower 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 Grower (sections 6-10 and 394-25).

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

38. '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 Grower; or
- any other 'CGT event' that results in a reduction of the market value of the 'forestry interest held by the Grower.

Amounts received by Growers for Carbon and other environmental credits

Section 6-5

39. An amount received by a Grower in respect of carbon and/or other environmental credits or from the repayment of fees under this Project are not received as a result of a 'CGT event' and is not otherwise assessable under Division 394. The amount(s) are a distribution of ordinary income that arises as an outcome of a Grower holding a 'forestry interest' in the Project. Growers include amounts received in their assessable income in the income year in which the amounts are derived (section 6-5).

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

Section 35-55 – annual exercise of Commissioner's discretion

40. The Commissioner will exercise the discretion in subsection 35-55(1) once the following conditions are satisfied for the year concerned:

- the Grower carried on their business of afforestation during the income year; and
- the business activity that is carried on is not materially different to that in the scheme described in this Product Ruling; and
- the Grower has incurred a taxation loss for the income year from carrying on that business activity.

41. If these conditions are met for a given year, the Commissioner will exercise the discretion for that year under:

- paragraph 35-55(1)(b) for a Grower in the Project who satisfies the income requirement in subsection 35-10(2E); and
- paragraph 35-55(1)(c) for a Grower in the Project who does not satisfy the income requirement in subsection 35-10(2E).

42. If the Commissioner determines that the discretion will not be exercised for a particular year or years the Grower will be informed of that decision and the reasons. In any year where the discretion is not exercised losses incurred by a Grower will be subject to the loss deferral rule in section 35-10 and the Grower will not be able to offset the losses from the Project against other assessable income.

43. The issue of this Product Ruling of itself does not constitute the exercise of the Commissioner's discretion in sub-section 35-55(1) for any income year.

Prepayment provisions, non commercial losses and anti-avoidance provisions

Sections 82KZM, 82KZME, 82KZMF and 82KL and Part IVA of the ITAA 1936

44. Where a Grower is accepted to participate in the Project set out at paragraphs 45 to 92 of this Ruling, the following provisions of the ITAA 1936 have application as indicated:

- interest paid by a Grower to Albany Financial Pty Ltd does not fall within the scope of sections 82KZM, 82KZME and 82KZMF;
- 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

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

- Application for a Product Ruling as constituted by documents and correspondence received on 21 December 2009, and additional correspondence and documents received 1 February 2010; 2 March 2010; 3 May 2010 and 17 May 2010;
- Draft Product Disclosure Statement for the WABG Project 2010, received 21 December 2009;
- **Draft Constitution** for the WABG Project 2010, dated December 2009;
- Draft Compliance Plan for WABG Project 2010, received 21 December 2009;
- Draft Sub–Lease to be entered into by WABG and the Sub–Lessor, received 21 December 2009;
- Draft Sub-Lease 2010 to be entered into by each Grower and WABG, received 21 December 2009;
- Draft Agreement to Sub–Lease 2010, which may be entered into by each Grower and WABG, received 21 December 2009;
- Draft Amendment to the schedule of Draft Agreement to Sub-Lease, received 17 May 2010;
- Draft Project Management Contract 2010, to be entered into by each Grower and WABG, received 21 December 2009;
- Draft Amendment to the schedule of Draft Project Management contract 2010, received 17 May 2010;
- Draft Plantation Service Agreement to be entered into between WABG (Project Manager) and WACAP Treefarms Pty Ltd (the Contractor), received 21 December 2009;
- Wood Purchase Agreement 2010, to be entered into by each Grower, WABG (the Project Manager) and WA Chip & Pulp Co Pty Ltd (the Purchaser), received 21 December 2009;
- Draft Agreement for the Provision of consulting Services between WABG and URS Australia Pty Ltd, received 21 December 2009;
- **Draft Loan Agreement between** Albany Financial Pty Ltd and a Grower received, 21 December 2009;

- Scheme Property Custody Agreement between WABG and Sandhurst Trustee Limited (the Custodian), received 21 December 2009;
- Draft Guarantee Agreements for WABG and Albany Financial Pty Ltd required where the Grower is a company, received 21 December 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.

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

47. 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. The effect of these agreements is summarised as follows:

Overview

48. The main features of the WABG Project 2010 are as follows:

Location	South West of Western Australia between Bunbury and Albany
Species of trees to be planted	*Eucalyptus Globulus* (Tasmanian Blue Gum)
Term of the Project	10 years from 30 June 2010 but up to 12 years
Date all Trees must be planted on scheme Land	31 December 2011
Number of Trees per hectare	1,000 Trees
Number of hectares offered for establishment	Approximately 500 hectares
Size of each 'forestry interest' (Woodlot)	1 hectare
Minimum allocation of 'forestry interests' per Investor	Three Woodlots
Minimum subscription	None
Initial cost	$5,500 per Woodlot

Ongoing costs	Annual tending fee charged to a Grower $121 per hectare to manage the plantation; Rent $506 per annum (increased annually by CPI)
Other costs	Incentive fee: 15% of the amount by which the net proceeds from the sale of timber exceeds $17,600 per hectare, indexed from 30 June 2010. Insurance fee: Annual premium rate of approximately 0.7% of the insured value. Harvest fee: the cost incurred by the Project Manager. Unforseen expenses incurred by the Project manager in relation to fertiliser and/or insect issues.

49. The Project is a registered managed investment scheme under the *Corporations Act 2001*. WABG has been issued with an Australian Financial Service Licence 246264 and will be the Responsible Entity for the Project.

50. An offer to participate in the Project will be made through a Product Disclosure Statement (PDS). The offer under the PDS is for 500 hectares, which corresponds to 500 'forestry interests' in the project.

51. An entity that participates in the Project as a Grower will do so by acquiring a 'forestry interest' in the Project on or before 30 June 2010.

52. To participate in the Project Applicants must complete the Application Form and Power of Attorney Form attached to the PDS and, if applying for finance, complete the relevant Finance Application Form and pay the initial contribution amount by 30 June 2010.

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

54. For the purposes of this Ruling, Applicants who are accepted to participate in the Project and who execute either the Agreement to Sub-lease or the Sub-lease and the Project Management Contract on or before 30 June 2010, will become Growers in the Project

55. WABG will identify sufficient land to be used for the Project. A Grower will Sub-lease from WABG an area of land called a Leased Area. Woodlots in this Project will be established close to existing plantations that the WABG Group has established in the south west region in Western Australia. Land utilised by the Project must meet the requirements set out in the Independent Forester's Report.

56. Each Grower will have a beneficial interest in their Woodlots, the Trees which are planted on their Woodlots, the produce derived from those Trees, and the returns from the sale of the timber grown on the Woodlots.

57. Growers are responsible for insurance to cover the standing timber on their Woodlots against loss or damage by fire and other risks. WABG will use its best endeavours to arrange plantation insurance cover annually for a Grower's Interest in the Project.

Constitution

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

59. All moneys received from applications shall be held by the Responsible Entity in the Application Fund, for the purpose of depositing all money received from applicants and accrued interest and all income and other earnings from the Project including Harvest Income on trust for the Growers (clause 6).

60. If the Application Money remains in the Application Fund for 12 months after it was received by the Responsible Entity then the Application Money must be refunded to the Applicant unless the Applicant directs the Responsible Entity in writing to hold the money for a further period (clause 6.4).

61. Once WABG has accepted the application and all of the Project Agreements have been executed, the Application Money may be released against the establishment fee due to WABG.

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

- the purpose of the Project (clause 2);
- the holding of the Project Property (clause 5);
- the form for payment of the Application Money and interest and refunds (clause 6);
- the distribution of Harvest Income and pooling (clause 7);
- the keeping of a register of Growers (clause 9);
- the assignment of Growers interests (clause 10);
- the powers of investment and power to borrow (clause 11 and 12 retrospectively);
- additional powers and other activities of the Responsible Entity (clauses 14 and 15 retrospectively);

- the meeting of Growers including voting requirements (clause 19);
- complaints handling and dispute resolution (clause 20 and 21 retrospectively);
- the period and termination of the project (clause 23);
- the winding up of the project (clause 24);
- amendments to the project agreements including the constitution (clause 25 and 26 retrospectively).

Compliance Plan

63. As required by the Corporations Act, 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 a Grower is protected.

Project Management Contract 2010

64. Growers engage WABG, as the Project Manager, for the term of the Project to carry out such services as are required to Establish and tend the Plantation for felling in accordance with the Plantation and Tending Plan and sound silvicultural and environmental practices.

65. The Project Management Contract will commence upon its execution and terminate when the whole of the Plantation has been Harvested (clause 5).

66. Commencing on the date that a Sub-Lease is entered into by the Grower, WABG will perform or cause to be performed all the Plantation Services listed in clause 4.2 in relation to the Land and the Plantation. The Plantation Services include the Establishment of the Plantation within the Establishment Period, ending no later than 31 December 2011.

67. The Establishment of the Plantation requires the planting of the seedlings at an average stocking rate of approximately 1,000 Trees per hectare.

68. The Harvesting of the Plantation shall be conducted in accordance with the terms of the Wood Purchase Agreement (clause 10).

69. At the cost of the Grower, WABG will keep current policies of fire insurance on behalf of the Grower with a reputable insurer, provided that such insurance is reasonably available (clause 4.2(i)).

70. The Project Management Contract also sets out provisions relating to:

- the rights and duties of the Project Manager (clause 6);
- the Grower's ability to express opinions and give recommendations to the Project Manager, object to and disallow any changes to the Plantation Development and Tending Plan (clause 7);
- the Project Manager's obligation to report to the Grower (clause 8);
- carbon and other environmental credits and debits (clause 11);
- the Project Manager's entitlement to fees (clause 13 and Part 4 of the Schedule);
- termination (clause 14); and
- dispute resolution (clause 16).

Plantation Services Agreement

71. The Project Manager will engage the Contractor as an independent contractor to carry out the Plantation Services required to Establish and tend the Plantation on the Land during the Term in accordance with the Plantation Development and Tending Plan and sound silvicultural and environmental practices for the purposes of felling and Harvesting the Plantation.

Sub-lease 2010

72. Either at the time their application is accepted or when sufficient suitable land is available prior to 30 September 2011, Growers will enter into a Sub-lease with WABG, as the Landholder, to use the Leased Area for the purpose of Establishing, tending and Harvesting a plantation of eucalyptus trees for commercial wood production. The Leased Area is set out in Part 1 of the Schedule.

73. WABG will make application for approvals required so that it is entitled to grant this Sub-lease to the Grower and that all relevant consents have been obtained (clauses 3 and 4).

74. WABG and the Grower acknowledge that the Plantation and the carbon, environmental or any other credits derived from the Plantation are and shall remain the property of the Grower until the end of the Term and the Grower shall be entitled to Harvest the Plantation and to retain all income from the sale of the Wood (clause 9.17).

75. If there is damage to or reduction in the viability of the Plantation, the Grower is required to reduce the Plantable Area by the area which has been damaged or is no longer viable or, where the whole of the Plantation is damaged or no longer commercially viable, to terminate the Sub-lease. The area which has been destroyed or is no longer viable will be deemed surrendered back to WABG and reinstate the land and recede it to pasture, if directed by the Landholder (clause 10). The Grower's share of the Relevant Harvest Income will be proportionally reduced.

76. The Sub-lease (Part 3 of the schedule) operates on and from its commencement date until completion of Harvesting. The Grower may extend the Term by giving written notice to WABG (clause 5).

77. The Sub-lease also sets out provisions relating to:

- the Rent payable by Growers (clause 6);
- the Grower's covenants, the Landholder's covenants and mutual covenants (clauses 7, 8 and 9);
- termination (clauses 13 and 14); and
- dispute resolution (clause 15).

Agreement to Sub-lease 2010

78. Where there is no Project Land available for a Grower on or before 30 June 2010, the Grower will be required to enter into an Agreement to Sub-lease with WABG.

79. Pursuant to the terms of the Agreement to Sub-lease the parties undertake to enter into a Sub-lease of the Land on or before the Starting Date, being a date no later than 30 September 2011, which will allow all the Establishment services referred to in the Project Management Contract to be completed within the Establishment Period. The parties are bound by all the provisions of the Sub-lease from the Starting Date.

Wood Purchase Agreement

80. Growers authorise WABG, as the Project Manager, to sell the Wood under the Wood Purchase Agreement on their behalf. WABG agrees to sell and the Purchaser agrees to purchase for the Purchase Price all Wood grown on the Land, Harvested and Delivered in accordance with the Harvest Plan and on terms and conditions set out in the Wood Purchase Agreement.

81. The Purchaser may Harvest, Deliver and purchase the Wood, for a price offered as being fair and reasonable at the relevant time. WABG may seek alternative prices for Harvest and Delivery and an alternative Purchase Price for the Wood. Where such alternatives are obtained the Purchaser retains the right to match the price offered by the other party.

Pooling of Wood and Grower's entitlement to a distribution

82. The Constitution (clause 7) sets out provisions relating to the pooling of amounts from the sale of the Growers timber and the distribution of Proceeds Funds from that sale. This Product Ruling only applies where the following principles apply to the pooling and distribution arrangements:

- only Growers who have contributed Wood from their Leased Area to the pool making up the Relevant Harvest Income are entitled to benefit from distributions from those proceeds; and
- wood is only pooled with the Wood of Growers accepted to participate in the WA Blue Gum Project 2010.

Schemes Property Custody Agreement

83. WABG, as Responsible Entity, has engaged Sandhurst Trustees Limited to act as the Custodian of the Property. The Property includes all Application Money and Harvest Income until disbursed or distributed in accordance with the Constitution and Project Agreements, but does not include property legally vested in a Grower.

Fees

84. The Project fees are set out under the terms of the Project Management Contract and the Sub-lease, a Grower will make payments as described below on a per hectare basis.

***Fees payable under the Project Management Contract* (Part 4 of the Schedule)**

- the Application Money of $5,500 for Establishment of the Plantation within the Establishment Period, payable on application;
- an annual tending fee of $121, Indexed, for the tending of the Plantation, commencing from the date the Woodlots are established until the Plantation has been Harvested. The first annual tending fee is payable on 30 November 2010, and thereafter on 30 September in each year;

- a fee of 15% of the amount that results when the Relevant Harvest Income due to the Grower exceeds $17,600, Indexed. This fee will be paid by way of deduction from the Proceeds Fund upon the date on which the Harvest Income is distributed to the Grower;
- the Grower's proportion of Harvest (including roading and supervision), Delivery and other expenses incurred by WABG arising out of the sale of the Wood. This fee will be paid by way of deduction from the Proceeds Fund upon the date on which the Harvest Income is distributed to the Grower;
- any unforseen expenses in relation to fertiliser and/or insect issues may be borne between the Growers in proportion to the number of hectares held by each Grower. The Growers may vote to meet such expenses at a meeting convened by WABG; and
- the insurance premium at cost plus a 10% service fee to insure the Plantation against fire, payable to WABG on 15 November 2010 and thereafter on 15 November of each year.

***Fees payable under the Sub-lease* (Part 2 of the Schedule)**

- if a Grower enters into the Sub-lease on or before 30 June 2010, annual Rent of $506, Indexed, as consideration for the granting of the Sub-lease, is payable for the period beginning 1 July 2010 until the Plantation has been Harvested. The first Rent is payable on 30 November 2010, and thereafter on 30 September in each year; or

85. A merchant fee for the use of a credit to pay the fees under the Project may also be incurred.

Finance

86. To finance all or part of the cost of their 'forestry interest' a Grower can enter into a Loan Agreement with Albany Financial Pty Ltd (a lender associated with WABG) or, alternatively, borrow from an independent lender external to the Project.

87. Only the finance arrangements set out below are covered by this Product Ruling. A Grower cannot rely on this Product Ruling if they enter into a finance arrangement with Albany Financial Pty Ltd that materially differs from that set out in the documentation provided with the application for this Product Ruling. A Grower 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.

88. A Grower cannot rely on any part of this Ruling if the Application Monies are not paid in full on or before 30 June 2010 by the Grower or, on the Grower's behalf, by a lending institution.

Finance offered by Albany Financial Pty Ltd

89. Subject to Albany Financial Pty Ltd accepting the Grower's application to finance the Application Money, the Grower will be bound by the terms and conditions of the Loan Agreement. Albany Financial Pty Ltd will provide the Grower with the loan on a full recourse basis and will pursue recovery action against any defaulting borrowers.

90. The key features of the Loan Agreement are:

- a Principal Sum of up to 80% of the Application Money;
- no application or establishment fee;
- a loan term of 5 years, ending on 15 June 2015;
- a requirement to pay equal monthly principal and interest instalments by way of direct debit, commencing on 15 July 2010;
- a fixed interest rate of 11.95% per annum; and a fixed interest rate of 16% per annum applies in the event of overdue repayments of the Principal Sum.

91. As security for the payment of any outstanding monies under the Loan Agreement, the Grower will assign to Albany Financial Pty Ltd its right, title and interest in and under the Project Management Contract, the Sub-lease, the Wood Purchase Agreement, all money payable to the Grower under the Wood Purchase Agreement or under any policies of insurance. The assignment shall be void upon the repayment of all outstanding monies under the Loan Agreement.

Other qualifications relating to finance

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

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' are or will be granted to the borrowers for the purpose of section 82KL 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 Albany Financial Pty Ltd on the terms outlined at paragraphs 89 to 91 of this Ruling, are involved or become involved in the provision of finance to Growers for the Project.

Commissioner of Taxation
9 June 2010

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 Initial contribution, Annual contribution and Expenses required under the Project Management Contract and Sub-lease during the term of the Project, Growers 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 Grower 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 a Grower as a proportion of all 'forestry interests' held by 'participants'[7] in the Project.

Is the Grower 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 'Growers' 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 Growers (as described in paragraphs 3 to 7 of this Ruling), who stay in the Project until its completion, will be carrying on a business of primary production involving forestry 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 Growers 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 2010, 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 WABG, 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, initial contribution, annual contributions 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 2010 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 WABG of the Project the Commissioner has determined that the Project will satisfy the '70% DFE rule' on 30 June 2010.

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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 Growers in the Project not have day to day control over the operation of the Project is clear from the Project Agreements as are the alternative elements of paragraph 394-10(1)(e) relating to the number of Growers in the scheme and WABG 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 2010 (see paragraph 394-10(1)(f) and subsection 394-10(4)). The planting timeline provided with the application for this Ruling by WABG indicates that all the Trees required to be established under the scheme will be planted on the Project Land no later than 31 December 2011.

106. Accordingly, subject to the qualifications set out below, amounts paid by Growers to WABG 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. Amounts that are allowable deductions under Division 394 cannot also be claimed as deductions under section 8-1 (section 8-10).

108. Where a Grower 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 subsection 394-10(1)

109. Two situations may lead to a loss of deductions previously allowed to Growers.

110. The first of these situations will occur if WABG fails to establish the Trees on the Project Land within 18 months of the end of the income year in which the first Grower is accepted into the Project where this occurs WABG 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).

111. The second situation where a Grower 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)).

112. For the purposes of this provision, the Commissioner is able to amend the assessment of a Grower 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).

113. Where a 'CGT event' happens to the 'forestry interest' of a Grower 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 Grower 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 Grower

Section 8-1

114. Where a Grower 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 Grower 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).

115. Under the first positive limb of subsection 8-1(1) the interest incurred by a Grower will be deductible if it is incurred in gaining or producing a Grower'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).

116. Growers 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 a Grower 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) applies.

117. 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).

118. 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

119. 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 section 82KZMF of the ITAA 1936.

120. 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

121. Accordingly, under the scheme to which this Product Ruling applies, only deductions for interest payable under a loan with Albany Financial Pty Ltd will potentially fall within the prepayment provisions. However, the conditions applying to the loans to which this Ruling applies (see paragraphs 86 to 92 of this Ruling) do not require any prepayment of interest over the term of the loan. Accordingly, the prepayment provisions have no application to Growers who enters into those loans.

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

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

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

123. 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)

124. Where a 'CGT event' happens to a 'forestry interest' held by a Grower in this Project, subsection 394-25(2) includes an amount in the assessable income of the Grower if:

- the Grower can deduct or has deducted an amount under section 394-10; or
- the Grower would have met the condition immediately above if subsection 394-10(5) had not applied to disallow the deduction(s). Paragraphs 32 to 34 and paragraphs 104 to 108 of this Ruling explain when deductions will be disallowed under subsection 394-10(5).

Market value rule applies to 'CGT events'

125. If, as a result of the 'CGT event' the Grower either:

- no longer holds the 'forestry interest'; or
- otherwise – where the Grower 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 Grower 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.

126. The market value amount included in the assessable income of a Grower is the value of the 'forestry interest' just before the 'CGT event', or where the Grower 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)).

127. 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 Growers for carbon and other environmental credits

Section 6-5

128. Carbon and/or other environmental credit amounts received by a Grower 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 is a distribution that arises from a Grower 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.

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

129. Based on information provided with the application for this Product Ruling, a Grower accepted into the Project in the year ended 30 June 2010 who carries on a business of afforestation individually is expected to incur losses from their participation in the Project which will be subject to Division 35. These losses will be subject to the loss deferral rule in section 35-10 unless an exception applies or, for each income year in which losses are incurred, the Commissioner exercises the discretion in subsection 35-55(1) on 30 June of that specific income year.

130. The expectations to the loss deferral rule depend upon the circumstances of individual Growers and are outside the scope of this Ruling.

131. The Commissioner will apply the principles set out in Taxation Ruling TR 2007/6 Income tax: non-commercial business losses: Commissioner's discretion when exercising the discretion.

132. Where a Grower with income for Non-commercial Loss NCL purposes of less than $250,000 (that is, the Grower satisfies the income requirement in subsection 35-10(2E)) incurs a loss in an income year form carrying on their business activity in a way that is not materially different to the scheme described in this Product Ruling, and the discretion in paragraph 35-55(1)(b) is exercised for that year, the Commissioner will be satisfied that:

- it is because of the nature that the business activity of the 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 afforestation industry, the Grower's business activity will satisfy one of the four tests set out in Division 35 or produce assessable income for an income year greater than the deductions attributable to if for that year (apart from the operation of subsection 35-10(2) and (2C)

133. Where a Grower with income for NCL purposes of $250,000 or more (that is, the Grower does not satisfy the income requirement in subsection 35-10(2E)) incurs a loss in an income year from carrying on their business activity in a way that is not materially different to the scheme described in this Product Ruling, and the discretion in paragraph 35-55(1)(c) is exercised for that year, the Commissioner will be satisfied that:

- it is because of its nature that the business activity of the Grower will not produce assessable income greater than the deductions attributable to it; and
- there is an objective expectation that within a period that is commercially viable for the afforestation industry, the Grower's business activity will produce assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsections 35-10(2) and (2C)

134. A Grower will satisfy the income requirement in subsection 35-10(2E) where the sum of the following amounts is less than $250,000:

- taxable income for that year (ignoring any loss arising from participation in the Project or any other business activity);
- total reportable fringe benefits for that year;

- reportable superannuation contributions for that year; and
- total net investment losses for that year.

135. In each individual year where the Commissioner's discretion is exercised a Grower within either paragraphs 131 or 132 of this Ruling who would otherwise be required to defer a loss arising from their participation in the Project under section 35-10 until a later income year is able to offset that loss against their other assessable income.

Section 82KL – recouped expenditure

136. 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 deductions otherwise allowable under section 8-1 and section 8-5 of the ITAA 1997.

Part IVA – general tax avoidance provisions

137. 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).

138. The Project will be a 'scheme' and a Grower will obtain a 'tax benefit' from entering into the 'scheme', in the form of tax deductions for the amounts detailed at paragraphs 31 and 35 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.

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

Appendix 2 – Detailed contents list

140. 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;
TR 2007/6

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
- ITAA 1997 6-10
- ITAA 1997 8-1
- ITAA 1997 8-1(1)
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- ITAA 1997 8-1(2)(a)
- ITAA 1997 8-5
- ITAA 1997 8-10
- ITAA 1997 10-5
- ITAA 1997 12-5
- ITAA 1997 Div 27
- ITAA 1997 Div 35
- ITAA 1997 35-10
- ITAA 1997 35-10(2)
- ITAA 1997 35-10(2C)
- ITAA 1997 35-10(2E)
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- ITAA 1997 35-55(1)
- ITAA 1997 35-55(1)(b)
- ITAA 1997 35-55(1)(c)
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- ITAA 1997 394-10(1)(e)
- ITAA 1997 394-10(1)(f)
- ITAA 1997 394-10(2)
- ITAA 1997 394-10(4)
- ITAA 1997 394-10(5)
- ITAA 1997 394-10(6)
- ITAA 1997 394-10(7)
- ITAA 1997 394-15(1)
- ITAA 1997 394-15(2)
- ITAA 1997 394-15(4)
- ITAA 1997 394-15(5)
- ITAA 1997 394-20
- ITAA 1997 394-25
- ITAA 1997 394-25(2)
- ITAA 1997 394-25(3)
- ITAA 1997 394-30
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- ITAA 1997 394-35(1)
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- ITAA 1997 394-35(3)
- ITAA 1997 394-35(4)
- ITAA 1997 394-35(5)
- ITAA 1997 394-35(6)
- 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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