



Product Ruling

Income tax: Tanunda Hill Vineyard Project Stage II

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Preamble

*The number, subject heading, and the **What this Product Ruling is about** (including **Tax law(s)**, **Class of persons and Qualifications sections**), **Date of effect**, **Withdrawal**, **Arrangement and Ruling parts of this document** are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. Product Ruling PR 1999/95 explains Product Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

No guarantee of commercial success

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

Potential participants must form their own view about the commercial and financial viability of the product. This will involve a consideration of important issues such as whether projected returns are realistic, the 'track record' of the management, the level of fees in comparison to similar products, how this product fits an existing portfolio, etc. We recommend a financial (or other) adviser be consulted for such information.

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

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

Potential participants should be aware that the ATO will be undertaking review activities to confirm the arrangement has been implemented as described below and to ensure that the participants in the arrangement include in their income tax returns income derived in those future years.

Terms of Use of this Product Ruling

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

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

What this Product Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' identified below apply to the defined class of persons who take part in the arrangement to which this Ruling refers. In this Ruling this arrangement is sometimes referred to as the Tanunda Hill Vineyard Project Stage II or simply as 'the Project'.

Tax law(s)

2. The tax laws dealt with in this Ruling are:
- Section 6-5 of the *Income Tax Assessment Act 1997* ('ITAA 1997');
 - Section 8-1 (ITAA 1997);
 - Section 17-5 (ITAA 1997);
 - Division 27 (ITAA 1997);
 - Division 35 (ITAA 1997);
 - Division 40 (ITAA 1997);
 - Division 70 (ITAA 1997);
 - Division 328 (ITAA 1997);
 - Part 3-1 (ITAA 1997);
 - Section 82KL of the *Income Tax Assessment Act 1936* ('ITAA 1936');
 - Section 82KZL (ITAA 1936);
 - Section 82KZME (ITAA 1936);
 - Section 82KZMF (ITAA 1936);
 - Division 6 (ITAA 1936); and
 - Part IVA (ITAA 1936).

Goods and Services Tax

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

Changes in the Law

4. The Government is currently evaluating further changes to the tax system in response to the *Ralph Review of Business Taxation* and continuing business tax reform is expected to be implemented over a number of years. Although this Ruling deals with the taxation legislation enacted at the time it was issued, later amendments may impact on this Ruling. Any such changes will take precedence over the application of this Ruling and, to that extent, this Ruling will be superseded.

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

Note to promoters and advisers

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

Class of persons

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

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

- under clause 5 of the Management Agreement, elect to carry out their own maintenance and/or take the 'Grapes Attributable to the Grower's Allotment'; or
- intend to terminate their involvement in the arrangement prior to its completion or who otherwise do not intend to derive assessable income from it.

Qualifications

9. The Commissioner rules on the precise arrangement identified in the Ruling. If the arrangement described in the Ruling is materially different from the arrangement that is actually carried out, the Ruling has no binding effect on the Commissioner. The Ruling will be withdrawn or modified.

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Date of effect

11. This Ruling applies prospectively from 2 April 2003, the date this Ruling is made. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

12. If a taxpayer has a more favourable private ruling (which is legally binding), the taxpayer can rely on that private ruling if the income year to which it relates has ended or has commenced but not yet ended. However if the arrangement covered by the private ruling has not commenced, and the income year to which it relates has not yet commenced, this Ruling applies to the taxpayer to the extent of the inconsistency only (see Taxation Determination TD 93/34).

Withdrawal

13. This Product Ruling is withdrawn and ceases to have effect after 30 June 2006. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons within the specified class who enter into the arrangement specified below. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangement prior to withdrawal of the

Ruling. This is subject to there being no change in the arrangement or in the person's involvement in the arrangement.

Arrangement

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

- Application for Product Ruling dated 23 December 2002 as constituted by documents provided on 23 December 2002, 11 February 2003, 25 February 2003 and 28 February 2003 and additional correspondence dated 11 February 2003, 25 February 2003, 28 February 2003 and 19 March 2003;
- Draft Product Disclosure Statement of The Tanunda Hill Vineyard Project Stage II received with the application for Product Ruling;
- **Draft Constitution of the Tanunda Hill Vineyard Project Stage II received with the application for Product Ruling;**
- **Draft Constitution of Tanunda Hill Property Trust ('the Land Owner') received with the application for Product Ruling;**
- Draft Compliance Plan of the Tanunda Hill Vineyard Project Stage II received with the application for Product Ruling;
- Draft Compliance Plan of the Tanunda Hill Property Trust Stage II received with the application for Product Ruling;
- **Draft Allotment Agreement of the Tanunda Hill Vineyard Project Stage II between the Land Owner and each Grower, received with the application for Product Ruling;**
- **Draft Management Agreement of the Tanunda Hill Vineyard Project Stage II between Blaxland Vineyards Limited ('BVL', 'the Responsible Entity') and each Grower, received with the application for Product Ruling;**

- Draft Contract for the Establishment and Maintenance of a Vineyard between BVL and Advanced Viticulture and Management Pty Limited ('AVM') received with the application for Product Ruling;
- Draft contract for the Sale and Purchase of Wine Grapes between Orlando Wyndham Group Pty Ltd ('Orlando'), BVL, the Land Owner and each several Grower received with the application for Product Ruling;

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

15. The documents highlighted are those that the Growers enter into. There are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower, or an associate of the Grower will be a party to that are part of the arrangement to which this Ruling applies.

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

Overview

17. This arrangement is called the Tanunda Hill Vineyard Project Stage II.

Location	Barossa Valley Region of South Australia near Tanunda.
Type of business each participant is carrying on	A long term commercial viticulture business.
Number of hectares under cultivation	80 hectares
Name used to describe the project	Tanunda Hill Vineyard Stage II
Minimum subscription for the project	25 Interests
Size of each Allotment	0.5 hectares
Number of vines per hectare	1,667
Expected production	11.7 tonnes/hectare
The term of the project in years	15 years
Initial cost	\$7,342

Initial costs on a per hectare basis	\$14,684
2 nd year costs	\$12,707
3 rd year costs	\$8,596
4 th year costs	\$6,784
Ongoing costs	Fees for ongoing management, water supply, the licence of the land and trellising, processing and marketing the grapes and an incentive fee.
Cost of stapled investment being Units in Tanunda Hill Property Trust	\$8,100

18. Growers applying under the Product Disclosure Statement, are parties to the Constitution, Management Agreement and an Allotment Agreement. Growers will execute a power of attorney enabling the Responsible Entity to act on their behalf to execute a Management Agreement and Allotment Agreement.

19. The minimum subscription is 25 Interests. Each Grower must subscribe for a minimum of one Interest. Each Interest in the project is represented by, among other things, one Allotment.

20. The Management Agreement and Constitution will bind a participant who enters into the Tanunda Hill Vineyard Project Stage II and utilises the services of BVL. These documents detail, among other things, the fees and charges for which an investor is liable. Once a Grower's application has been accepted, the Responsible Entity will be responsible for providing the Primary Services in Year 1 and establishing irrigation on each Allotment prior to 30 June 2003 or within 30 days of the commencement of the Management Agreement whichever is the later. Acceptance of applications received between 20 June 2003 and 30 June 2003 will be deferred until 1 July 2003. The Responsible Entity will advise Growers when certain 'business operations' have been commenced on their behalf, for example, when their vines have been planted.

21. The Allotment Agreement gives a Grower a licence over an identifiable area of land (an 'Allotment(s)') for the purpose of developing a vineyard until the Project is terminated on 30 June 2018. The term of the Project is expected to be 15 years. Each Allotment is 0.5 hectares in size. The Allotments will be planted between August and December 2003 for those Growers that enter the project prior to 1 December 2003. The Responsible Entity will plant approximately 833 vines per Allotment (1,667 per hectare) during this planting

period following the execution of the Management Agreement and Allotment Agreement.

22. The Project Land is situated in the Barossa Valley Region of South Australia, adjacent to Tanunda Hill Stage 1, near Tanunda. Tanunda Hill Property Trust is to purchase the land. Growers or their associates (i.e. Superannuation fund, Trust or spouse) will be required to take up units in the Tanunda Hill Property Trust.

23. Tanunda Hill Property Trust will licence an Allotment of 0.5 hectares to the Grower for the purpose of carrying on a long-term commercial viticulture project. Tanunda Hill Property Trust will also licence to the Grower to use the trellising system and the delivery of water for irrigation purposes on the Allotment.

Constitution

24. The Constitution for the Project sets out the terms and conditions under which the Responsible Entity agrees to act for the Growers and to manage the Project. The Allotment Agreement and Management Agreement are Schedules to the Constitution. These Agreements will be executed on behalf of each Grower who has signed the Application Form and a Power of Attorney Form attached to the Product Disclosure Statement and who is accepted into the project. After acceptance and execution of the Agreements Growers are bound by the Constitution, the Allotment Agreement, and Management Agreement by virtue of their participation in the Project. The Responsible Entity will keep a register of Growers accepted into the Project.

Reference to Years

25. The payment of fees and performance of services by the relevant entities for the Project is dependant upon when a Grower enters the Project. References made throughout the Management and Allotment agreements to 'Year 1' and 'Year 2' of the Project apply as follows:

- (a) If a Grower enters the Project on or before 20 June 2003, then reference to 'Year 1' means the period from that date of entrance in the Project to 30 June 2003 and 'Year 2' means the period 1 July 2003 to 30 June 2004.
- (b) If a Grower enters the project after 20 June 2003 but before 1 December 2003, then reference to 'Year 1' and 'Year 2' each means the period 1 July 2003 to 30 June 2004 and the agreements and this Ruling must

be interpreted accordingly to give effect to each of those Years referring to the same period.

26. This Product Ruling only applies to Growers entering the project on or before 30 November 2003, however, in addition to Growers entering the project as outlined in paragraph 25, under the Product Disclosure Statement a Grower may also enter the Project:

- (a) from 1 December 2003 up to and including 20 June 2004, then reference to 'Year 1' in the Management and Allotment Agreements means the period from the date of entrance in the Project to 30 June 2004 and 'Year 2' means the period 1 July 2004 to 30 June 2005.
- (b) after 20 June 2004 but before 1 December 2004, then reference to 'Year 1' and 'Year 2' in the Management and Allotment Agreements each means the period 1 July 2004 to 30 June 2005 and the agreements must be interpreted accordingly to give effect to each of those years referring to the same period.

Growers who enter the project during the periods set out in this paragraph (i.e. paragraph 26 of this Ruling) are not covered by this Product Ruling.

Management Agreement

27. Each Grower enters into a Management Agreement with the Responsible Entity. The termination of the Project is the earlier of the termination of the Grower's Interest and 30 June 2018. Growers contract with the Responsible Entity to carry out the initial services, to plant, develop, manage and maintain the vines. The payment of fees by the Grower to the Responsible Entity is dependent upon the date of acceptance of the Grower's application.

28. The Responsible Entity will carry out the following Primary Services for the Grower in Year 1 of the Project. These services consist of:

- obtaining all relevant Government approvals for the Allotment;
- developing with consultants an integrated irrigation and drainage plan for the Allotment;
- engaging contractors to develop a soil plan and surveyors to develop contour maps;
- completing an electro-magnetic soil survey and establishing GPS points;

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- finalising and marking out vineyard layout;
- removing internal fencing and remnant vegetation;
- eradicating weeds, pests and vermin from the Allotment;
- preparing the Allotment land;
- establishing a cover crop on the Allotment;
- establishing drainage on the Allotment in accordance with the drainage plan;
- providing supervision and management of the duties in this clause;
- supervising the growing of the rootlings set aside for the Grower in various nurseries;
- developing a management plan for all Allotments in conjunction with the various grape purchasers; and
- all administration and compliance duties.

29. In addition to the duties specified above, the Responsible Entity will also arrange for the following services to be carried out on or in respect of the Allotment:

- Establish a dam to provide water for the Allotment; and
- establish the Allotment Irrigation System.

30. Growers who join the scheme prior to 20 June 2003 will have their primary services carried out prior to 30 June 2003. Growers who apply for entry into the scheme between 20 June 2003 and 30 June 2003 will have their acceptance deferred until the following year with their primary services being carried out in that year. These Growers will not be able to claim any tax deductions in the year ended 30 June 2003.

31. The Responsible Entity will pool for sale all produce of each Grower's business with that of each other Grower and will market and sell all such produce. Grape Sale Agreements will be entered into with various contracted grape buyers to purchase 87% of the grapes harvested. The proceeds of the pooled sales will be paid to the Responsible Entity for crediting to the account of each Grower on a proportional basis. Where the produce from a Grower's Allotment is of sufficient reduced quality or quantity, that Grower's share of the pooled sale proceeds may be reduced.

32. The Responsible Entity is entitled to be paid by the Grower a processing fee of \$375 per tonne (indexed from the date of execution of the Management Agreement) for each processed tonne of 'Grapes Attributable to the Grower's Allotment'. Grapes subject to the processing fee represent those grapes not sold under the Grape Sale Agreements. These grapes will be processed by BVL into wine on behalf of the Growers.

33. The Grower must also pay the Responsible Entity a marketing fee calculated as 10% of the gross income earned from the sale of 'Grapes Attributable to the Grower's Allotment and the Processed Products Attributable to the Grower'. The Responsible Entity is also entitled to be paid by the Grower an incentive fee calculated in accordance with formulas set out in clause 6.7 of the Management Agreement.

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

35. The Grower may terminate the Management Agreement in certain instances, including where the Responsible Entity defaults in the performance of its duties.

36. All costs and expenses incurred by the Responsible Entity in carrying out its duties are to be borne by it and the Grower has no obligation to make any payment in addition to the fees prescribed by the various agreements.

Allotment Agreement

37. Each Grower enters into an Allotment Agreement with BVL in its capacity as Land Owner and Responsible Entity for the Tanunda Hill Vineyard Property Trust, for a period of 15 years ended 30 June 2018. In return for payment of the certain fees set out in the Agreement and included below in paragraph 44, Tanunda Hill Property Trust agrees to grant the Grower licences to:

- (a) use and occupy the Grower's Allotment for the purpose only of developing, planting, growing, maintaining and harvesting vines;
- (b) draw water supplied by the land owner to the extent necessary and for the purpose of irrigating the Allotment and Vines;

- (c) use the trellising to be installed on the Grower's Allotment which the Grower is authorised to use for the purpose of performing the duties in subparagraph 36(a) above; and
- (d) use in common with all other Growers the viticultural infrastructure on the Land required for the Project.

38. The Land Owner must establish water pipeline infrastructure during Year 1 of the Agreement, as defined in paragraph 25, for the purpose of servicing the Allotment and then maintain that infrastructure, as required, for the term of the Agreement. The land owner acknowledges and agrees that the Grower is entitled to install, or cause to be installed, at no cost to the Land Owner, an Allotment Irrigation System on the Grower's Allotment.

Contract for the Establishment & Maintenance of a Vineyard

39. Pursuant to its right to delegate any functions required of it, BVL has contracted with AVM to undertake the obligations under the Management Agreement to establish the Vineyard and undertake all necessary viticulture work in future years. A Contract for the Establishment and Maintenance of a Vineyard exists between BVL and AVM detailing those services to be undertaken by AVM in each year.

40. AVM is to commence the Vineyard Establishment Services for the Allotments allocated by Blaxland to Growers on or before 20 June 2003 in the period from the commencement date of the Agreement to 30 June 2003. For Growers accepted into the Project on or after 1 July 2003 and on or before 30 November 2003 AVM will commence the Vineyard Establishment Services after 1 July 2003 and complete those services by 31 December 2003. AVM will:

- (a) complete a detailed soil analysis to the satisfaction of Blaxland;
- (b) complete an electro-magnetic soil survey and establish GPS points;
- (c) finalise and mark out the vineyard layout;
- (d) remove internal fencing and remnant vegetation on the vineyard land;
- (e) eradicate weeds, pests and vermin from the vineyard;
- (f) prepare the vineyard;
- (g) establish a cover-crop on the vineyard;
- (h) provide supervision and management of these duties;

- (i) supervise the growing of the rootlings set aside for the Growers in various nurseries;
- (j) develop the management plan for the vineyard in conjunction with the various grape purchasers;
- (k) establish an Allotment Irrigation System on each vineyard Allotment; and
- (l) commence the establishment of a trellis system on the Vineyard which the parties acknowledge and agree is done for and on behalf of Blaxland in its capacity as Responsible Entity of the trust (being the owner of the vineyard Land).

41. AVM is required to provide maintenance of the vineyard and other necessary operations over the life of the Project. AVM is also required to harvest the grapes on behalf of the Growers.

Draft Contract for the Sale and Purchase of Wine Grapes

42. Pursuant to a draft Grape Sales Agreement with Orlando Wyndham Group Pty Ltd, the contracted grape buyer shall purchase, in each Vintage Year, 87% of the grapes grown on the property.

43. The proceeds of the sale are to be paid to the Responsible Entity as agent for each Grower. Clause 6 of the draft Grape Sale Agreement sets out the payment schedule.

Fees - Year 1 to 4 payments

44. The fees payable by a Grower in the Project in the first four years for one Allotment are:

	Year 1 On Applicati on	Year 1 June 20	Year 2 July 31	Year 3 July 31	Year 4 July 31
Management Agreement costs					
Installation of irrigation	-	935	935	935	-
Landcare operation	1,135	-	-	-	-
Pre-planting activities	275	-	550	-	-
Primary Services		3,685	-	-	-
Supply and planting of	-	-	825	-	-

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rootlings					
Administration costs	385	-	397	408	421
Ongoing management fees	-		7,233	5,137	4,620
Power supply	-	-	303	-	-
Dams	-	-	523	165	-
Road construction	-	-	-	-	495
Allotment Agreement Costs					
Water infrastructure	-	300	300	300	300
Water licence	-	-	255	255	255
Land and trellising licence	-	627	1,386	1,396	693
Total	1,795	5,547	12,707	8,596	6,784

45. The fee for the Primary Services is for work to be done by 30 June 2003, for those Growers accepted into the Project on or before 20 June 2003. Acceptance of Applications received between 20 June 2003 and 30 June 2003 will be deferred until 1 July 2003. Growers accepted into the project on or before 20 June 2003 may pay the fees for Years 2, 3 and 4 by instalment in the amounts of, and by the dates shown in the table below in paragraph 47. Growers who elect to pay by instalment also pay an instalment service fee that is included in the 'Total' figure in the table below.

46. For those Growers accepted into the Project on or after 1 July 2003 but on or before 30 November 2003, the fees payable for Year 1 and 50% of those for Year 2 are payable on application. The balance, 50% of the Year 2 fees, is payable on or before 31 March 2004. Growers accepted into the Project on or after 1 July 2003 but on or before 30 November 2003 may elect to pay the fees for Years 3 and 4 by instalment in the amounts of, and by the dates shown in the table below. Growers who elect to pay by instalment also pay an instalment service fee that is included in the 'Total' figure in the table below.

47.

Year	First Instalment by 31 July	Second Instalment by 31 Oct	Third Instalment by 31 Jan	Fourth Instalment by 30 Apr	Total
2	\$4,500	\$2,862	\$2,862	\$2,862	\$13,086
3	\$2,214	\$2,214	\$2,214	\$2,214	\$8,856
4	\$1,747	\$1,747	\$1,747	\$1,747	\$6,988

Finance

48. Growers can fund their investment in the Project themselves, or borrow from an independent lender. Neither the Responsible Entity nor its associates will offer finance to Growers nor will the Responsible Entity or its associates introduce Growers to a 'preferred lender'.

49. 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' are or will be granted to the borrowers for the purpose of section 82KL or the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;
- the loan or rate of interest is non-arm's length;
- repayments of the principal and payments of interest are linked to the derivation of income from the Project;
- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender, or any associate of the lender;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- entities associated with the Project, are involved, or become involved, in the provision of finance to Growers for the Project.

Ruling

Application of this Ruling

50. This Ruling applies only to Growers who are accepted to participate in the Project on or before 30 November 2003 and who have executed a Management Agreement and an Allotment Agreement before that date. The Grower's participation in the Project must constitute the carrying on of a business of primary production.

51. This Ruling does not apply to Growers who elect, under clause 5 of the Management Agreement, to carry out their own maintenance and/or take the 'Grapes Attributable to the Grower's Allotment' or who are otherwise excluded from the Ruling by paragraph 7 and 8 of this Product Ruling.

Minimum subscription

52. A Grower is not eligible to claim any tax deductions until the Grower's application to enter the Project is accepted and the Project has commenced. Under the terms of the Product Disclosure Statement, a Grower's application will not be accepted and the Project will not proceed until the minimum subscription of 25 Interests is achieved.

The Simplified Tax System ('STS')

Division 328

53. For a Grower participating in the Project, the recognition of income and the timing of tax deductions, including those related to capital allowances, is different depending on whether the Grower is an 'STS taxpayer'. To be an 'STS taxpayer' a Grower:

- must be eligible to be an 'STS taxpayer'; and
- must have elected to be an 'STS taxpayer'.

Qualification

54. This Product Ruling assumes that a Grower who is an 'STS taxpayer' is so for the income year in which their participation in the Project commences. A Grower may become an 'STS taxpayer' at a later point in time. Also, a Grower who is an 'STS taxpayer' may choose to stop being an 'STS taxpayer', or may cease to be eligible to be an 'STS taxpayer', during the term of the Project. These are contingencies relating to the circumstances of individual Growers that cannot be accommodated in this Ruling. Such Growers can ask for a private ruling on how the taxation legislation applies to them.

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

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

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

Trading Stock***Section 70-35***

57. A Grower who is not an ‘STS taxpayer’ may, in some years, hold grape juice or wine in bulk that will constitute trading stock on hand. Where, in an income year, the value of trading stock on hand at the *end* of an income year exceeds the value of trading stock on hand at the *start* of an income year a Grower must include the amount of that excess in assessable income.

58. Alternatively, where the value of trading stock on hand at the *start* of an income year exceeds the value of trading stock on hand at the *end* of an income year, a Grower may claim the amount of that excess as an allowable deduction.

Deductions for fees payable for the Primary Services, ongoing management, administration, water pipeline infrastructure, the licence for the land and trellising, and the water licence.***Section 8-1***

59. A Grower who is accepted into the Project **on or before 20 June 2003** and who is not an ‘STS taxpayer’ may claim, on a per Allotment basis, tax deductions for the following revenue expenses:

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Fee Type	ITAA 1997 Section	Year 1 30 June 2003	Year 2 30 June 2004	Year 3 30 June 2005	Year 4 30 June 2006
Primary Services	8-1	\$3,685 – See Notes (i) and (ii) (below)			
Ongoing management	8-1		\$7,233 – See Notes (i) & (ii) (below)	\$5,137 – See Notes (i) & (ii) (below)	\$4,620 – See Notes (i) & (ii) (below)
Land and trellis licence	8-1	\$627 – See Notes (i) & (ii) (below)	\$1,386 – See Notes (i) & (ii) (below)	\$1,396 – See Notes (i) & (ii) (below)	\$693 – See Notes (i) & (ii) (below)
Water licence	8-1		\$255 – See Notes (i) & (ii) (below)	\$255 – See Notes (i) & (ii) (below)	\$255 – See Notes (i) & (ii) (below)
Water pipeline Infrastructure	8-1	\$300 - See Notes (i) & (ii) (below)	\$300 - See Notes (i) & (ii) (below)	\$300 - See Notes (i) & (ii) (below)	\$300 - See Notes (i) & (ii) (below)
Administration	8-1	\$385 - See Notes (i) & (ii) (below)	\$397 - See Notes (i) & (ii) (below)	\$408 - See Notes (i) & (ii) (below)	\$421 - See Notes (i) & (ii) (below)

60. A Grower who is accepted into the Project **on or after 1 July 2003 and on or before 30 November 2003** and who is not an 'STS taxpayer' may claim, on a per Allotment basis, tax deductions for the following revenue expenses:

Fee Type	ITAA 1997 Section	Year 1 30 June 2004	Year 2 30 June 2005	Year 3 30 June 2006
Primary Services	8-1	\$3,685 – See Notes (i) and (ii) (below)		
Ongoing management	8-1	\$7,233 – See Notes (i) & (ii) (below)	\$5,137 – See Notes (i) & (ii) (below)	\$4,620 – See Notes (i) & (ii) (below)

Land and trellis licence	8-1	\$2,013 – See Notes (i) & (ii) (below)	\$1,396 – See Notes (i) & (ii) (below)	\$693 – See Notes (i) & (ii) (below)
Water licence	8-1	\$255 – See Notes (i) & (ii) (below)	\$255 – See Notes (i) & (ii) (below)	\$255 – See Notes (i) & (ii) (below)
Water pipeline Infrastructure	8-1	\$600 - See Notes (i) & (ii) (below)	\$300 - See Notes (i) & (ii) (below)	\$300 - See Notes (i) & (ii) (below)
Administration	8-1	\$782 - See Notes (i) & (ii) (below)	\$408 - See Notes (i) & (ii) (below)	\$421 - See Notes (i) & (ii) (below)

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 (e.g. input tax credits): Division 27. See example at paragraph 143.
- (ii) The fees for the Primary Services, ongoing management and administration shown in the Management Agreement and the water licence, fee for water pipeline infrastructure and the licence for land and trellising as required by the Allotment Agreement are deductible in full in the year that they are incurred. However, if a Grower chooses to prepay fees for the doing of a thing (e.g. the provision of management services or the licensing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA 1936 may apply to apportion those fees. In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 115 unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000.

Deductions for capital expenditure***Division 40***

61. A Grower who is accepted into the Project **on or before 20 June 2003** and who is not an 'STS taxpayer' will also be entitled to

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tax deductions relating to water facilities (e.g. irrigation, dams), a 'landcare operation' and grapevines. All deductions shown in the following Table are determined under Division 40.

Fee type	ITAA 1997 section	Year 1 30 June 2003	Year 2 30 June 2004	Year 3 30 June 2005	Year 4 30 June 2006
Dams	40-515		\$230 - see Notes (iii) & (iv) below	\$229 - see Notes (iii) & (iv) below	\$229 - see Notes (iii) & (iv) below
Irrigation costs	40-515	\$935 - see Notes (iii) & (iv) below	\$935 - see Notes (iii) & (iv) below	\$935 - see Notes (iii) & (iv) below	
Landcare operations	40-630	\$1,135 - see Notes (iii) & (v) below			
Establishm't of horticultural plants (grapevines)	40-515	Nil - see Notes (iii) & (vi) below	Nil - see Notes (iii) & (vi) below	Nil - see Notes (iii) & (vi) below	\$214-see Notes (iii) & (vi) below

62. A Grower who is accepted into the Project **on or after 1 July 2003 and on or before 30 November 2003** and who is not an 'STS taxpayer' will also be entitled to tax deductions relating to water facilities (e.g. irrigation, dams), a 'landcare operation' and grapevines. All per Allotment deductions shown in the following Table are determined under Division 40.

Fee type	ITAA 1997 section	Year 1 30 June 2004	Year 2 30 June 2005	Year 3 30 June 2006
Dams	40-515	\$230 - see Notes (iii) & (iv) below	\$229 - see Notes (iii) & (iv) below	\$229 - see Notes (iii) & (iv) below
Irrigation costs	40-515	\$935 - see Notes (iii) & (iv) below	\$935 - see Notes (iii) & (iv) below	\$935 - see Notes (iii) & (iv) below
Landcare	40-630	\$1,135 -		

operations		see Notes (iii) & (v) below		
Establishm't of horticultural plants (grapevines)	40-515	Nil - see Notes (iii) & (vi) below	Nil - see Notes (iii) & (vi) below	\$214-see Notes (iii) & (vi) below

Notes:

- (iii) If the Grower is registered or required to be registered for GST, amounts of capital expenditure would need to be adjusted as relevant for GST (e.g. input tax credits): Division 27. See example at paragraph 143;
- (iv) Any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. A deduction is available under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one third of the capital expenditure incurred by each Grower on the installation of the 'water facility' in the year in which it is incurred and one third in each of the next 2 years of income (section 40-540);
- (v) Any capital expenditure incurred for a 'landcare operation' (as defined in section 40-635) is fully deductible in the year it is incurred under Subdivision 40-G, section 40-630; and
- (vi) As grapevines are affixed to land which the Grower does not own they are not owned by the Grower, the conditions in subsection 40-525(3) cannot be met, and the grapevines are not eligible for the 4-year write-off under section 40-550. However, grapevines are a 'horticultural plant' as defined in subsection 40-525(2). As Growers hold the land under a licence, one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. The deduction for the grapevines is determined using the formula in section 40-545 and is based on the capital expenditure incurred by the Grower that is attributable to their establishment. If the grapevines have an 'effective life' of greater than 13 but fewer than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 13%. The

deduction is allowable when the grapevines enter their first commercial season (section 40-530, item 2). The Responsible Entity as Project Manager will inform Growers of when the grapevines enter their first commercial season. (The amount shown for the income year ended 30 June 2006 has been calculated on the assumption that this will be the first commercial season).

Tax outcomes for Growers who are ‘STS taxpayers’

Assessable Income

Section 6-5 and section 328-105

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

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

Trading Stock

Section 328-285

65. A Grower who is an ‘STS taxpayer’ may, in some years, hold grape juice or wine in bulk that will constitute trading stock on hand. Where, for such a Grower, for an income year, the difference between the value of all their trading stock at the start and a reasonable estimate of it at the end, is less than \$5,000, they do not have to account for that difference under the ordinary trading stock rules in Division 70 (subsection 328-285(1)).

66. Alternatively, a Grower who is an ‘STS taxpayer’ may instead choose to account for trading stock in an income year under the provisions of Division 70 (subsection 328-285(2)).

Deductions for fees payable for the Primary Services, ongoing management, administration, water pipeline infrastructure, the licence for the land and trellising, and the water licence.

Section 8-1 and section 328-105

67. A Grower who is accepted into the Project **on or before 20 June 2003** and who is an ‘STS taxpayer’ may claim, on a per Allotment basis, tax deductions for the following revenue expenses:

Fee Type	ITAA 1997 Sections	Year 1 30 June 2003	Year 2 30 June 2004	Year 3 30 June 2005	Year 4 30 June 2006
Primary Services	8-1 & 328-105	\$3,685 – See Notes (vii), (viii) & (ix) below			
Ongoing management	8-1 & 328-105		\$7,233 – See Notes (vii), (viii) & (ix) (below)	\$5,137 – See Notes (vii), (viii) & (ix) (below)	\$4,620 – See Notes (vii), (viii) & (ix) (below)
Land and trellis licence	8-1 & 328-105	\$627 – See Notes (vii), (viii) & (ix) (below)	\$1,386 – See Notes (vii), (viii) & (ix) (below)	\$1,396 – See Notes (vii), (viii) & (ix) (below)	\$693 – See Notes (vii), (viii) & (ix) (below)
Water licence	8-1 & 328-105		\$255 – See Notes (vii), (viii) & (ix) (below)	\$255 – See Notes (vii), (viii) & (ix) (below)	\$255 – See Notes (vii), (viii) & (ix) (below)
Water pipeline infrastructure	8-1 & 328-105	\$300 - See Notes (vii), (viii) & (ix) (below)	\$300 - See Notes (vii), (viii) & (ix) (below)	\$300 - See Notes (vii), (viii) & (ix) (below)	\$300 - See Notes (vii), (viii) & (ix) (below)
Administration	8-1 & 328-105	\$385 - See Notes (vii), (viii) & (ix) (below)	\$397 - See Notes (vii), (viii) & (ix) (below)	\$408 - See Notes (vii), (viii) & (ix) (below)	\$421 - See Notes (vii), (viii) & (ix) (below)

68. A Grower who is accepted into the Project **on or after 1 July 2003 and on or before 30 November 2003** and who is an ‘STS taxpayer’ may claim, on a per Allotment basis, tax deductions for the following revenue expenses:

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Fee Type	ITAA 1997 Sections	Year 1 30 June 2004	Year 2 30 June 2005	Year 3 30 June 2006
Primary Services	8-1 & 328-105	\$3,685 – See Notes (vii), (viii) & (ix) below		
Ongoing management	8-1 & 328-105	\$7,233 – See Notes (vii), (viii) & (ix) (below)	\$5,137 – See Notes (vii), (viii) & (ix) (below)	\$4,620 – See Notes (vii), (viii) & (ix) (below)
Land and trellis licence	8-1 & 328-105	\$2,013 – See Notes (vii), (viii) & (ix) (below)	\$1,396 – See Notes (vii), (viii) & (ix) (below)	\$693 – See Notes (vii), (viii) & (ix) (below)
Water licence	8-1 & 328-105	\$255 – See Notes (vii), (viii) & (ix) (below)	\$255 – See Notes (vii), (viii) & (ix) (below)	\$255 – See Notes (vii), (viii) & (ix) (below)
Water pipeline infrastructure	8-1 & 328-105	\$600 - See Notes (vii), (viii) & (ix) (below)	\$300 - See Notes (vii), (viii) & (ix) (below)	\$300 - See Notes (vii), (viii) & (ix) (below)
Administration	8-1 & 328-105	\$782 - See Notes (vii), (viii) & (ix) (below)	\$408 - See Notes (vii), (viii) & (ix) (below)	\$421 - See Notes (vii), (viii) & (ix) (below)

Notes:

- (vii) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g. input tax credits): Division 27. See example at paragraph 143;
- (viii) If, for any reason, an amount shown in the Table above is not fully paid in the year in which it is incurred by a Grower who is an 'STS taxpayer' then the amount is only deductible to the extent to which it has been paid, or has been paid for the Grower. Any amount or part of an amount shown in the Table above which is not paid in the year in which it is incurred will be deductible in the year in which it is actually paid; and

- (ix) Where a Grower who is an 'STS taxpayer', pays the fees for the Primary Services, ongoing management and administration shown in the Management Agreement and the water licence, fee for water pipeline infrastructure and the licence for land and trellising as required by the Allotment Agreement in the relevant income years shown in the Allotment and Management Agreements, those fees are deductible in full in the year that they are paid. However, if a Grower chooses to prepay fees for the doing of a thing (e.g. the provision of management services or the licensing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA may apply to apportion those fees (see paragraphs 109 to 123). In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 115, unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules, and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000.

Deductions for capital expenditure

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

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

70. The deductions shown in the following Table assume, for representative purposes only, that a Grower has either chosen to or can only claim deductions for expenditure on water facilities or a 'landcare operation' under Subdivisions 40-F or 40-G and not under Division 328.

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

72. A Grower who is accepted into the Project **on or before 20 June 2003** and who is an 'STS taxpayer' may claim, on a per Allotment basis, the following expenses for capital expenditure.

Fee type	ITAA 1997 section	Year 1 30 June 2003	Year 2 30 June 2004	Year 3 30 June 2005	Year 4 30 June 2006
Dams	40-515		\$230 - See Notes (x) & (xi) below	\$229 - See Notes (x) & (xi) below	\$229 - See Notes (x) & (xi) below
Irrigation Costs	40-515	\$935 - See Notes (x) & (xi) below	\$935 - See Notes (x) & (xi) below	\$935 - See Notes (x) & (xi) below	
Landcare operations	40-630	\$1,135 - See Notes (x) & (xii) below			
Establishm't of horticultural plants (grapevines)	40-515	Nil - See Notes (x) & (xiii) below	Nil - See Notes (x) & (xiii) below	Nil - See Notes (x) & (xiii) below	\$214 - See Notes (x) & (xiii) below

73. A Grower who is accepted into the Project **on or after 1 July 2003 and on or before 30 November 2003** and who is an 'STS taxpayer' may claim, on a per Allotment basis, the following expenses for capital expenditure.

Fee type	ITAA 1997 section	Year 1 30 June 2004	Year 2 30 June 2005	Year 3 30 June 2006
Dams	40-515	\$230 - See Notes (x) & (xi) below	\$229 - See Notes (x) & (xi) below	\$229 - See Notes (x) & (xi) below
Irrigation Costs	40-515	\$935 - See Notes (x) & (xi) below	\$935 - See Notes (x) & (xi) below	\$935 - See Notes (x) & (xi) below
Landcare operations	40-630	\$1,135 - See Notes (x) & (xii) below		
Establishm't of horticultural plants (grapevines)	40-515	Nil - See Notes (x) & (xiii) below	Nil - See Notes (x) & (xiii) below	\$214 - See Notes (x) & (xiii) below

Notes:

- (x) If the Grower is registered or required to be registered for GST, amounts of capital expenditure would need to be adjusted as relevant for GST (e.g. input tax credits): Division 27. See example at paragraph 143.
- (xi) Any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. If the expenditure is on a 'depreciating asset' (the underlying asset), the Grower may choose to claim a deduction under either Division 328 or Subdivision 40-F. For the purposes of Division 328, each Grower's interest in the underlying asset is itself deemed to be a 'depreciating asset'. If the 'cost' apportionable to that deemed 'depreciating asset' is less than \$1000, the deemed asset is treated as a 'low-cost asset' and that amount is deductible in full when the underlying asset is first used or 'held' ready for use. This is so provided the Grower is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income. If the deemed asset is not treated as a 'low-cost asset', the tax deduction allowable in either the year ended 30 June 2003 or 30 June 2004, as the case may be, is determined by multiplying its 'cost' by half the relevant STS pool rate.

At the end of the year, it is allocated to the relevant STS pool and in subsequent years the full pool rate will apply. If the expenditure is not on a 'depreciating asset', or if they choose to use Subdivision 40-F, Growers must claim deductions under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one third of the capital expenditure incurred by each Grower on the installation of the 'water facility' in the year in which it is incurred and one third in each of the next 2 years of income (section 40-540).

- (xii) Any capital expenditure incurred for a 'landcare operation' (as defined in section 40-635) is fully deductible in the year it is incurred under Subdivision 40-G, section 40-630. If the expenditure is on a 'depreciating asset' (the underlying asset), the Grower may choose to claim a deduction under either Division 328 or Subdivision 40-G (although expenditure on some items of plant can only be deducted under Division 328). For the purposes of Division 328, each Grower's interest in the underlying asset is itself deemed to be a 'depreciating asset'. If the 'cost' apportionable to that deemed 'depreciating asset' is less than \$1000, the deemed asset is treated as a 'low-cost asset' and that amount is deductible in full when the underlying asset is first used or 'held' ready for use. This is so provided the Grower is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income. If the deemed asset is not treated as a 'low-cost asset', the tax deduction allowable is determined by multiplying its 'cost' by half the relevant STS pool rate. At the end of the year, it is allocated to the relevant STS pool and in subsequent years, the full pool rate will apply. If the expenditure is not on a 'depreciating asset', the expenditure is fully deductible under Subdivision 40-G.
- (xiii) As grapevines are affixed to land which the Grower does not own they are not owned by the Grower, the conditions in subsection 40-525(3) cannot be met, and the grapevines are not eligible for the 4-year write-off under section 40-550. However, grapevines are a 'horticultural plant' as defined in subsection 40-525(2). As Growers hold the land under a licence, one of the conditions in subsection 40-525(2) is met and a

deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. The deduction for the grapevines is determined using the formula in section 40-545 and is based on the capital expenditure incurred by the Grower that is attributable to their establishment. If the grapevines have an 'effective life' of greater than 13 but fewer than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 13%. The deduction is allowable when the grapevines enter their first commercial season (section 40-530(2)). The Project Manager will inform Growers of when the grapevines enter their first commercial season. (The amount shown for the income year ended 30 June 2006 has been calculated on the assumption that this will be the first commercial season.)

Tax outcomes that apply to all Growers

Interest deductibility

74. The deductibility or otherwise of interest incurred by Growers who finance their participation in the Project through a loan facility with a bank or other financier is outside the scope of this Ruling. However all Growers who borrow funds in order to participate in the Project, should read the discussion of the prepayment rules in paragraphs 109 to 123 (below) as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the prepayment is required under the relevant loan agreement or is at the Grower's choice.

Expenditure on roads and electricity connection

75. Under the terms of the Management Agreement a Grower incurs, on a per Allotment basis, the amounts of \$495 for construction of internal roads and \$303 for electricity connection.

76. The amount incurred for construction of internal roads is of a capital nature and does not constitute an allowable deduction under any provision of the ITAA.

77. For the amount incurred for the connection of electricity to be deductible under Subdivision 40-G, a Grower must hold an interest in land or be a sharefarmer (section 40-645 of the ITAA 1997). In this Project each Grower holds only a licence over the land. Therefore, the expenditure incurred fails to meet the requirements of section 40-645 and cannot be claimed as a deduction by a Grower who is accepted into the Project.

Units in the Property Trust

78. The units in the Tanunda Hill Vineyard Property Trust are CGT assets (section 108-5 of the ITAA 1997) and the amounts totalling \$8,100 payable by an investor over four years are outgoings of capital and are not allowable deductions.

79. The amounts paid for each unit will represent the first element of the cost base of the unit (subsection 110-25(2) of the ITAA 1997). Any disposal of the units by a Grower will be a CGT event and may give rise to a capital gain or loss.

80. Distributions by the Tanunda Hill Vineyard Property Trust are included in the assessable income of a Grower who is a unitholder, in accordance with Division 6 of the ITAA 1936.

Deferral of losses from non-commercial business activities

Division 35

Section 35-55 – Commissioner’s discretion

81. For a Grower who:

- is an individual;
- makes no elections under clause 5 of the Management Agreement;
- enters the Project on or before 20 June 2003; or, alternatively, and
- on or after 1 July 2003 and on or before 30 November 2003;

the rule in section 35-10 may apply to the business activity comprised by their involvement in this Project.

82. Under paragraph 35-55(1)(b) the Commissioner will decide for the income years ending **30 June 2003 to 30 June 2006** that the rule in section 35-10 does not apply to this activity provided that the Project is carried out in the manner described in this Ruling.

83. This exercise of the discretion in subsection 35-55(1) will not be required where, for any year in question:

- the ‘exception’ in subsection 35-10(4) applies (see paragraph 130 in the Explanations part of this ruling, below); or
- a Grower’s business activity satisfies one of the tests in sections 35-30, 35-35, 35-40 or 35-45; or

- a Grower's business activity produces assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsection 35-10(2)).

84. Where, the 'exception' in subsection 35-10(4) applies, the Grower's business activity satisfies one of the tests, or the discretion in subsection 35-55(1) is exercised, section 35-10 will not apply. This means that a Grower will not be required to defer any excess of deductions attributable to their business activity in excess of any assessable income from that activity, i.e. any 'loss' from that activity, to a later year. Instead, this 'loss' can be offset against other assessable income for the year in which it arises.

85. Growers are reminded of the important statement made on Page 1 of this Product Ruling. Therefore, Growers should not see the Commissioner's decision to exercise the discretion in paragraph 35-55(1) as an indication that the Tax Office sanctions or guarantees the Project or the product to be commercially viable. An assessment of the Project or the product from this perspective has not been made

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

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

- expenditure by a Grower does not fall within the scope of sections 82KZME-82KZMF (but see paragraphs 109 to 120);
- section 82KL does not apply to deny the deductions otherwise allowable; and
- the relevant provisions in Part IVA will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

Explanations

Is the Grower carrying on a business?

87. For the amounts set out in the Tables above to constitute allowable deductions the Grower's viticulture activities as a participant in the Tanunda Hill Vineyard Project Stage II must amount to the carrying on of a business of primary production. These viticulture activities will fall within the definitions of 'horticulture' and 'commercial horticulture' in section 40-535 of the ITAA 1997.

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88. For schemes such as that of the Tanunda Hill Vineyard Project Stage II, *Taxation Ruling* TR 2000/8 sets out in paragraph 89 the circumstances in which the Grower's activities can constitute the carrying on of a business. As *Taxation Ruling* TR 2000/8 sets out, these circumstances have been established in court decisions such as *FCT v Lau* 84 ATC 4929.

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

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

90. In this Project, each Grower enters into a Management Agreement and an Allotment Agreement.

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

92. Under the Management Agreement the Responsible Entity is engaged by the Grower to establish and maintain the Grower's identifiable Allotment during the term of the Project. The Responsible Entity has provided evidence that it holds the appropriate professional skills and credentials to provide the management services to establish and maintain the Allotment on the Grower's behalf.

93. In establishing the Allotment, the Grower engages the Responsible Entity to purchase and install water facilities (e.g. irrigation), to carry out 'landcare operation' and to acquire and plant vine seedlings/rootlings on the Grower's Allotment. During the term of the Project, these assets will be used wholly to carry out the Grower's viticulture activities. The Responsible Entity is also engaged

to harvest and sell, on the Grower's behalf, the grapes grown on the Grower's Allotment.

94. The general indicators of a business, as used by the Courts, are described in *Taxation Ruling* TR 97/11. Positive findings can be made from the Project's description for all the indicators.

95. The activities that will be regularly carried out during the term of the Project demonstrate a significant commercial purpose. Based on reasonable projections, a Grower in the Project will derive assessable income from the sale of its grapes that will return a before-tax profit, i.e. a profit in cash terms that does not depend in its calculation on the fees in question being allowed as a deduction.

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

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

98. The Grower's degree of control over the Responsible Entity as evidenced by the Management Agreement, and supplemented by the *Corporations Act 2001*, is sufficient. During the term of the Project, the Responsible Entity will provide the Grower with regular progress reports on the Grower's Allotment and the activities carried out on the Grower's behalf. Growers are able to terminate arrangements with the Responsible Entity in certain instances, such as cases of default or neglect.

99. The viticulture activities, and hence the fees associated with their procurement, are consistent with an intention to commence regular activities that have an 'air of permanence' about them. For the purposes of the arrangement described in this Ruling, the Growers' viticulture activities in the Tanunda Hill Vineyard Project Stage II will constitute the carrying on of a business.

The Simplified Tax System

Division 328

100. Subdivision 328-F sets out the eligibility requirements that a Grower must satisfy in order to enter the STS and Subdivision 328-G sets out the rules for entering and leaving the STS.

101. The question of whether a Grower is eligible to be an ‘STS taxpayer’ is outside the scope of this Product Ruling. Therefore, any Grower who relies on those parts of this Ruling that refer to the STS will be assumed to have correctly determined whether or not they are eligible to be an ‘STS taxpayer’.

Deductibility of fees payable for the Primary Services, ongoing management, administration, water pipeline infrastructure, the licence for the land and trellising, and the water licence.

Section 8-1

102. Consideration of whether the fees payable for the initial Primary Services, ongoing management, administration, water pipeline infrastructure, the licence for the land and trellising, and the water licence are deductible under section 8-1 begins with the first limb of the section. This view proceeds on the following basis:

- the outgoing in question must have a sufficient connection with the operations or activities that directly gain or produce the taxpayer’s assessable income;
- the outgoings are not deductible under the second limb if they are incurred when the business has not commenced; and
- where all that happens in a year of income is that a taxpayer is contractually committed to a venture that may not turn out to be a business, there can be doubt about whether the relevant business has commenced, and hence, whether the second limb applies. However, that does not preclude the application of the first limb in determining whether the outgoing in question has a sufficient connection with activities to produce assessable income.

103. The fees payable for the Primary Services, ongoing management, administration, water pipeline infrastructure, the licence for the land and trellising, and the water licence associated with the viticulture activities will relate to the gaining of income from the Grower’s business of viticulture (see above), and hence have a sufficient connection to the operations by which income (from the regular sale of grapes and grape produce) is to be gained from this business. They will thus be deductible under the first limb of section 8-1. Further, no ‘non-income producing’ purpose in incurring the fees is identifiable from the arrangement. The fees appear to be reasonable. There is no capital component in the fees for the Primary Services, ongoing management, administration, water pipeline infrastructure, the licence for the land and trellising, and the water licence. The tests

of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

Possible application of prepayment provisions

104. Under the Management Agreement and the Allotment Agreement none of the fees deductible under section 8-1 are for things to be done beyond 30 June in the year in which the relevant amounts are incurred. In these circumstances, the prepayment provisions in sections 82KZME and 82KZMF have no application to these fees.

105. However, where a Grower chooses to prepay these fees for a period beyond the income year in which the expenditure is incurred, the prepayment provisions (see paragraphs 109 to 123) will apply to determine the amount and timing of the deductions regardless of whether the Grower is an 'STS taxpayer' or not. These provisions apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes 'STS taxpayers' from the operation of section 82KZMF. This is subject to the 'excluded expenditure' exception. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000.

Timing of deductions

106. In the absence of any application of the prepayment provisions, the timing of deductions for the fees payable for the Primary Services, ongoing management, administration, water pipeline infrastructure, the licence for the land and trellising, and the water licence will depend upon whether a Grower is an 'STS taxpayer' or is not an 'STS taxpayer'.

107. If the Grower is not an 'STS taxpayer', the fees payable for the Primary Services, ongoing management, administration, water pipeline infrastructure, the licence for the land and trellising, and the water licence are deductible in the year in which they are incurred.

108. If the Grower is an 'STS taxpayer' fees payable for the Primary Services, ongoing management, administration, water pipeline infrastructure, the licence for the land and trellising, and the water licence are deductible in the income year in which they are paid, or are paid for the Grower (paragraph 328-105(1)(b)). If any amount that is properly incurred in an income year remains unpaid at the end of that income year, the unpaid amount is deductible in the income year in which it is actually paid or is paid for the Grower.

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

109. The prepayment provisions contained in Subdivision H of Division 3 of Part III of the ITAA 1936 affect the timing of deductions for certain prepaid expenditure. These provisions apply to certain expenditure incurred under an agreement in return for the doing of a thing under the agreement (e.g. the performance of management services or the licensing 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.

110. For this Project only section 82KZL (an interpretative provision) and sections 82KZME and 82KZMF are relevant. Where the requirements of sections 82KZME and 82KZMF are met, taxpayers determine deductions for prepaid expenditure under section 82KZMF using the formula in subsection 82KZMF(1). These provisions also apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes 'STS taxpayers' from the operation of section 82KZMF.

Sections 82KZME and 82KZMF

111. Where the requirements of subsections 82KZME(2) and (3) are met, the formula in subsection 82KZMF(1) (see below) will apply to apportion expenditure that is otherwise deductible under section 8-1 of the ITAA 1997. The requirements of subsection 82KZME(2) will be met if expenditure is incurred by a taxpayer in return for the doing of a thing that is not to be wholly done within the year the expenditure is made. The year in which such expenditure is incurred is called the 'expenditure year' (subsection 82KZME(1)).

112. The requirements of subsection 82KZME(3) will be met where the agreement (or arrangement) has the following characteristics:

- the taxpayer's allowable deductions under the agreement for the 'expenditure year' exceed any assessable income attributable to the agreement for that year; and
- the taxpayer does not have effective day to day control over the operation of the agreement. That is, the significant aspects of the arrangement are managed by someone other than the taxpayer; and
- either :

- (a) there is more than one participant in the agreement in the same capacity as the taxpayer; or
- (b) the person who promotes, arranges or manages the agreement (or an associate of that person) promotes similar agreements for other taxpayers.

113. For the purpose of these provisions, the agreement includes all activities that relate to the agreement (subsection 82KZME(4)). This has particular relevance for a Grower in this Project who, in order to participate in the Project may borrow funds from a financier. Although undertaken with an unrelated party, that financing would be an element of the arrangement. The funds borrowed and the interest deduction are directly related to the activities under the arrangement. If a Grower prepays interest under such financing arrangements, the deductions allowable will be subject to apportionment under section 82KZMF.

114. There are a number of exceptions to these rules, but for Growers participating in this Project, only the 'excluded expenditure' exception in subsection 82KZME(7) is relevant. 'Excluded expenditure' is defined in subsection 82KZL(1). However, for the purposes of Growers in this Project, 'excluded expenditure' is prepaid expenditure incurred under the arrangement that is less than \$1,000. Such expenditure is immediately deductible.

115. Where the requirements of section 82KZME are met, section 82KZMF applies to apportion relevant prepaid expenditure. Section 82KZMF uses the formula below, to apportion prepaid expenditure and allow a deduction over the period that the benefits are provided.

Number of days of eligible service

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

116. In the formula 'eligible service period' (defined in subsection 82KZL(1)) means, the period during which the thing under the agreement is to be done. The eligible service period begins on the day on which the thing under the agreement commences to be done or on the day on which the expenditure is incurred, whichever is the later, and ends on the last day on which the thing under the agreement ceases to be done, up to a maximum of 10 years.

Application of the prepayment provisions to this Project

117. In this Project, for a Grower who enters the project prior to 20 June 2003, an initial fee for the Primary Services of \$3,685, a fee for administration services of \$385, an initial licence fee for the land and trellising of \$627 and an initial fee for the water pipeline infrastructure of \$300 per Allotment will be incurred on execution of the Management Agreement and the Allotment Agreement. Growers who are accepted to participate in the Project on or after 1 July 2003 incur the same fees but in different amounts. Each of these fees is charged for providing services or licensing land or assets to a Grower until 30 June of the year of execution of the Agreements. Under the Agreements, further annual expenditure is required each year during the term of the Project for the provision of management services and land until 30 June in those years.

118. In particular, the initial fee for the Primary Services is expressly stated to be for a number of specified services. No explicit conclusion can be drawn from the description of the arrangement that the initial fee for the Primary Services or any of the fees payable in Year 1 have been inflated to result in reduced fees being payable for management fees in subsequent years.

119. There is also no evidence that might suggest the management services covered by the fee could not be provided within the relevant expenditure year. Thus, for the purposes of this Ruling, it can be accepted that no part of the initial fee for the Primary Services, the management fees, and other fees payable in subsequent years under the Management Agreement, are for the Responsible Entity doing 'things' that are not to be wholly done within the expenditure year. Under the Allotment Agreement, licence fees are payable annually in advance for the use of the land, trellising and water during the expenditure year.

120. On this basis, provided a Grower incurs expenditure as required under the Project agreements, as set out in paragraph 44, then the basic precondition in subsection 82KZME(2) is not satisfied and, in these circumstances, section 82KZMF will have no application.

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

121. Although not required under either the Management Agreement or the Allotment Agreement a Grower participating in the Project may **choose** to prepay fees for a period beyond the 'expenditure year'. Where this occurs, contrary to the conclusion reached in paragraph 120 above, section 82KZMF will apply to apportion the expenditure and allow a deduction over the period in which the prepaid benefits are provided.

122. For these Growers, the amount and timing of deductions for any relevant fees prepaid under the Management agreement or the Allotment Agreement will depend upon when the respective amounts are incurred and what the 'eligible service period' is in relation to these amounts.

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

Expenditure of a capital nature

Division 40 and Division 328

124. 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 water facilities, a 'landcare operation', and the establishment of the grapevines is of a capital nature. This expenditure falls for consideration under Division 40 or Division 328 of the ITAA 1997.

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

126. The tax treatment of capital expenditure has been dealt with in a representative way above in the Tables and the accompanying paragraphs and Notes.

Deferral of losses from non-commercial business activities

Division 35

127. Division 35 applies to losses from certain business activities for the income year ended 30 June 2001 and subsequent years. Under the rule in subsection 35-10(2) a deduction for a loss made by an individual (including an individual in a general law partnership) from certain business activities will not be taken into account in an income year unless:

- the exception in subsection 35-10(4) applies;
- one of four tests in sections 35-30, 35-35, 35-40 or 35-45 is met; or
- if one of the tests is not satisfied, the Commissioner exercises the discretion in section 35-55.

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128. Generally, a loss in this context is, for the income year in question, the excess of an individual taxpayer's allowable deductions attributable to the business activity over that taxpayer's assessable income from the business activity.

129. Losses that cannot be taken into account in a particular year of income, because of subsection 35-10(2), can be applied to the extent of future profits from the business activity, or are deferred until one of the tests is passed, the discretion is exercised, or the exception applies.

130. For the purposes of applying Division 35, subsection 35-10(3) allows taxpayers to group business activities 'of a similar kind'. Under subsection 35-10(4), there is an 'exception' to the general rule in subsection 35-10(2) where the loss is from a primary production business activity and the individual taxpayer has other assessable income for the income year from sources not related to that activity, of less than \$40,000 (excluding any net capital gain). As both subsections relate to the individual circumstances of Growers who participate in the Project they are beyond the scope of this Product Ruling and are not considered further.

131. In broad terms, the tests require:

- (a) at least \$20,000 of assessable income in that year from the business activity (section 35-30);
- (b) the business activity results in a taxation profit in 3 of the past 5 income years (including the current year)(section 35-35);
- (c) at least \$500,000 of real property, or an interest in real property, (excluding any private dwelling) is used on a continuing basis in carrying on the business activity in that year (section 35-40); or
- (d) at least \$100,000 of certain other assets (excluding cars, motor cycles and similar vehicles) are used on a continuing basis in carrying on the business activity in that year (section 35-45).

132. A Grower who participates in the Project will be carrying on a business activity that is subject to these provisions. Information provided with the application for this Product Ruling indicates that a Grower who acquires the minimum allocation of one Interest in the Project is unlikely to have their activity pass one of the tests until the income year ended 30 June 2009. Growers who acquire more than one Interest in the Project may however, find that their activity meets one of the tests in an earlier income year.

133. Therefore, prior to this time, unless the Commissioner exercises an arm of the discretion under paragraphs 35-55(1)(a) or (b), the rule in subsection 35-10(2) will apply to defer to a future income year any loss that arises from the Grower's participation in the Project.

134. The first arm of the discretion in paragraph 35-55(1)(a) relates to 'special circumstances' applicable to the business activity, and has no relevance for the purposes of this Product Ruling. However, the second arm of the discretion in paragraph 35-55(1)(b) may be exercised by the Commissioner where the business activity has started to be carried on and for that, or those income years;

- because of its nature, the business activity has not satisfied, or will not satisfy one of the tests set out in Division 35; and
- there is an expectation that the business activity of an individual taxpayer will either pass one of the tests or produce a taxation profit within a period that is commercially viable for the industry concerned.

135. Information provided with this Product Ruling indicates that a Grower who acquires the minimum investment of one Interest in the Project is expected to be carrying on a business activity that will pass one of the tests in the income year ended 30 June 2009, or will first produce a taxation profit for the income year ended 30 June 2007.

136. The Commissioner will decide for such a Grower that it would be reasonable to exercise the second arm of the discretion for all income years up to, and including the income year ended 30 June 2006.

137. This Product Ruling is issued on a prospective basis (i.e. before an individual Grower's business activity starts to be carried on). The Project, however, may fail to be carried on during the income years specified above (see paragraph 13), in the manner described in the Arrangement (see paragraphs 14 to 49). If so, this Ruling, and specifically the decision in relation to paragraph 35-55(1), that it would be unreasonable that the loss deferral rule in subsection 35-10(2) not apply, may be affected, because the Ruling no longer applies (see paragraph 9). Growers may need to apply for private rulings on how paragraph 35-55(1) will apply in such changed circumstances.

138. In deciding that the second arm of the discretion in paragraph 35-55(1)(b) will be exercised on this conditional basis, the Commissioner has relied upon:

- the report of the independent viticultural expert provided with the application by the Responsible Entity;

- the draft grape sale contract with Orlando Wyndam Group Pty Ltd for the sale of the grapes setting out prices that realistically reflect the existing market and/or the projected market in the geographical region where the grapes are grown;
- independent, objective, and generally available information relating to the viticulture industry which substantially supports cash flow projections and other claims, including prices and costs, in the Product Ruling application submitted by the Responsible Entity.

Losses and Outgoings incurred under Certain Tax Avoidance Schemes

Section 82KL - recouped expenditure

139. The operation of section 82KL depends, among other things, on the identification of a certain quantum of 'additional benefits(s)'. Insufficient 'additional benefits' will be provided to trigger the application of section 82KL. It will not apply to deny the deduction otherwise allowable under section 8-1.

Schemes to Reduce Income Tax

Part IVA - general tax avoidance provisions

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

141. The Tanunda Hill Vineyard Project Stage II will be a 'scheme'. A Grower will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 59 to 73 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.

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

information available, that participants will enter into the scheme for the dominant purpose of obtaining a tax benefit.

Example

Entitlement to GST input tax credits

143. Susan, who is a sole trader and registered for GST, contracts with a manager to manage her viticulture business. Her manager is registered for GST and charges her a management fee payable every six months in advance. On 1 December 2001 Susan receives a valid tax invoice from her manager requesting payment of a management fee in advance, and also requesting payment for an improvement in the connection of electricity for her vineyard that she contracted him to carry out. The tax invoice includes the following details:

Management fee for period 1/1/2002 to 30/6/2002	\$4,400*
Carrying out of upgrade of power for your vineyard as quoted	<u>\$2,200*</u>
Total due and payable by 1 January 2002 (includes GST of \$600)	<u>\$6,600</u>

*Taxable supply

Susan pays the invoice by the due date and calculates her input tax credit on the management fee (to be claimed through her Business Activity Statement) as:

$$\frac{1}{11} \times \$4,400 = \$400.$$

Hence her outgoing for the management fee is effectively \$4,400 *less* \$400, or \$4,000.

Similarly, Susan calculates her input tax credit on the connection of electricity as:

$$\frac{1}{11} \times \$2,200 = \$200.$$

Hence her outgoing for the power upgrade is effectively \$2,200 *less* \$200, or \$2,000.

In preparing her income tax return for the year ended 30 June 2002, Susan is aware that the management fee is deductible in the year incurred. She calculates her management fee deduction as \$4000 (not \$4400).

Susan is aware that the electricity upgrade is deductible 10% per year over a 10-year period. She calculates her deduction for the power upgrade as \$200 (one tenth of \$2000 only, not one tenth of \$2200).

Detailed contents list

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Related Rulings/Determinations:

TR 97/11; TR 97/16; PR 1999/95;
TR 92/1; TR 92/20; TD 93/34;
TR 98/22; TR 2000/8; IT 360

Subject References:

- carrying on a business
- commencement of business
- horticulture
- irrigation expenses
- management fees expenses
- primary production
- primary production expenses
- primary production income
- producing assessable income
- product rulings
- public rulings
- schemes and shams
- tax administration
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters

Legislative References:

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- ITAA 1997 6-5
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- ITAA 1997 Div 27
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