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Private and confidential
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Our ref 26436830_1.docx

19 May 2016

Dear Sirs

Taxation Report - AgriWealth 2016 Softwood Timber Project

We have been requested to provide an opinion to be included in the Information Memorandum ("IM") for the AgriWealth 2016 Softwood Timber Project ("Project").

The IM provides an opportunity for investors ("Growers") to invest in timber plantations to produce crops of radiata pine trees for harvesting and sale. Investors ("Unit Holders") may also subscribe for units in a land trust that, will own the land on which the trees are to be grown for the purposes of the Project.

Our opinion provides a general overview of the income tax and goods and services tax ("GST") issues for Growers and Unit Holders participating in the Project based on legislation and established interpretation of legislation as at the date of this letter.

1 Disclaimers

This opinion has been prepared for inclusion in the IM to investors and should be read in conjunction with the remainder of the IM. In providing our views, we have relied upon facts as set out in the IM that have not been independently verified by KPMG.

This opinion only provides a general overview of the income tax and GST consequences for Growers and Unit Holders in the Project who are Australian residents for taxation purposes. All Growers and Unit Holders should consult their own taxation adviser about their own specific taxation circumstances.

Our income tax and GST opinion is based on current taxation law as at the date of this letter and is subject to any changes in Australian tax law. We note that the tax law is frequently being changed, both prospectively and retrospectively. A number of key tax reform measures have been implemented, a number of other key reforms have been deferred and the status of some key reforms remains unclear at this stage.

Unless special arrangements are made, this opinion will not be updated to take account of subsequent changes to the tax legislation, case law, rulings and determinations issued by the Australian Commissioner of Taxation or other practices of taxation authorities. It is the responsibility of the

Growers and Unit Holders to take further advice, if they are to rely on our opinion at a later date.

We are, of course, unable to give any guarantee that our interpretation will ultimately be sustained in the event of challenge by the Australian Commissioner of Taxation.

Product Ruling PR 2016/5 "*Income tax: AgriWealth 2016 Softwood Timber Project*" ("Product Ruling") has been issued by the Australian Taxation Office ("ATO"). This advice should be read in conjunction with the Product Ruling. We recommend that investors closely review the Product Ruling and obtain professional confirmation that the terms of the Product Ruling are consistent with this letter. To the extent to which the Product Ruling is inconsistent with our advice in this letter, investors should only rely upon the Product Ruling.

These comments are made specifically in response to the request for advice on behalf of AgriWealth Capital Limited. Accordingly, neither the firm nor any member or employee of the firm undertakes responsibility in any way whatsoever to any person or company other than AgriWealth Capital Limited for any errors or omissions in the opinion given, however caused.

KPMG is not licensed to provide financial product advice under the Corporations Act and taxation is only one of the matters that must be considered when making a decision on a financial product. You should consider taking advice from an Australian Financial Services Licence holder before making any decision on a financial product.

2 Summary

The ATO has issued Product Ruling PR 2016/5 *"Income tax*: *AgriWealth 2016 Softwood Timber Project"* which details the income tax treatment for Growers of expenses incurred on the Project.

Taxation implications for Growers

On the basis that Growers enter arrangements in accordance with the IM, and that the Project is carried out in accordance with the description as set out in paragraphs 53-109 of the Product Ruling, the Product Ruling confirms:

- The Project is a "forestry managed investment scheme" as defined in subsection 394-15(1) of the *Income Tax Assessment Act 1997* ("the 1997 Act");
- Growers who enter into the Project will be carrying on an enterprise for GST purposes;
- Growers who stay in the Project until it is completed and who:
    - do not obtain finance to enter the Project; or
    - enter into the finance arrangement with AgriWealth Capital Limited as described at paragraphs 102 to 109 of the Product Ruling

  will be considered to be carrying on a business of primary production for income tax purposes;

- The Commissioner has decided that on 30 June 2016 it will be reasonable to expect that the "70% DFE rule" will be satisfied which is the threshold test for the Growers to be entitled to deductions under subsection 394-10 (1) of the 1997 Act. This rule as outlined under subsection 394-35 of the 1997 Act specifies that on 30 June 2016, the amount of direct forestry expenditure ("DFE") under the scheme will be not less than 70% of the amount of payments under the Scheme. Direct Forestry Expenditure as outlined under subsection 394-45 relates to amounts paid under the scheme that are attributable to the costs of establishing, tending, felling and harvesting of trees and notional amounts that reflect the market value of goods, services, or the use of land provided by the Manager for these services.
- The Product Ruling will only apply if the Manager establishes all of the trees that were intended to be established under the Project before 31 December 2017;
- A Grower can claim a tax deduction for the Establishment Services Fee, insurance and council rates and other applicable statutory charges under sections 8-5 and 394-10 of Division 394 in the year the amount is paid, or is paid on behalf of a Grower by a lending institution, being the year ending 30 June 2016 (in respect of the Establishment Services Fee) and when an amount is paid out of the Sinking Fund. We note that amounts paid out of the Sinking Fund are for the purposes of meeting the costs of certain insurance and council rates and other applicable statutory charges associated with the Plantation Land;
- The deductibility of the Establishment Services Fee and amounts paid out of the Sinking Fund are subject to a requirement that a capital gains tax ("CGT") event does not happen in relation to a Grower's forestry interest before 1 July 2020, namely a Grower must not dispose of their forestry interest prior to the expiry of a 4 year period which ends on 1 July 2020;
- Rebates, Referral Fees or similar payments from the Manager, Distributor, or any other entity, made to an entitled Grower shall be considered an assessable recoupment under subsection 20-20(2) of the 1997 Act and be included in the Grower's assessable income in the year they receive it or are entitled to receive it;
- Interest arising from the Sinking Fund should be included in the assessable income of the Grower pursuant to section 6-5 as it is a distribution of ordinary income as a result of a Grower holding an interest in the Project;
- The Project is within the scope of the non-commercial loss rules activities (Division 35) which can operate to defer the recoupment of losses;
- The Commissioner of Taxation has stated that he will exercise the discretion in section 35-55(1) for the years of income from 2015-16 to 2041-42 where the following conditions are satisfied for the year concerned:
    - a Grower carries on their business of afforestation during the year of income;
    - the business activity that is carried on is not materially different to the scheme described in the Product Ruling; and

  - a Grower has incurred a taxation loss for the income year from carrying on that business activity.

- Anti-avoidance rules in section 82KL, sections 82KZL to 82KZMF and Part IVA of the *Income Tax Assessment Act 1936* ("the 1936 Act") will not apply;
- However, where the amount received under the Put Options when added with the tax savings and any other additional benefit exceed the amount of the Establishment Services Fees then section 82KL will deny the deduction for the Establishment Services Fees. For a taxpayer paying tax at the top marginal rate of 49% this would only arise where the exercise price paid under the Put Options exceeded $14,535 per forestry interest;
- Growers will be able to rely upon the Product Ruling in respect of their Establishment Services Fee deductions and the ATO will not apply Part IVA of the 1936 Act to deny such deductions by reason of a Grower acquiring units in the Land Trust.

The Product Ruling also rules on some issues specific to GST. For Growers registered for GST, the amount of the tax deduction would need to be adjusted as relevant for GST (e.g. for input tax credits claimed on creditable acquisitions). Further, the Commissioner has ruled that Growers who enter into the arrangement described in the Product Ruling will be "carrying on an enterprise" for the purposes of subsection 9-20(2) of the *A New Tax (Goods and Services Tax) Act 1999*.

If the Project's arrangements do not fall within the terms of the Product Ruling or if the conditions set out in the Product Ruling are not met, then the deductibility of expenses may be deferred or denied. The Product Ruling does not apply to Growers outlined in paragraph 8 of the Product Ruling such as Growers who enter into finance arrangements to fund their investment in the Project with the Manager or its related entities that differ from the terms and conditions of the Loan offered with the Product or with finance arrangements that have features identified in paragraph 105 of the Product Ruling.

Other expenses incurred in relation to the Project not provided for in the IM may be deductible, for example interest expenses on loans. Growers should seek confirmation from their tax advisor as to the eligibility and timing for such deductions as they are not covered by the Product Ruling and will depend on Grower's individual circumstances.

The issuance of the Product Ruling by the ATO gives certainty as to the tax consequences of investing in the Project as the ATO is bound by its rulings provided the arrangement is carried out in the manner described in the Product Ruling. However, the Product Ruling only addresses the income tax and GST implications of investing in the Project. Investors should seek independent advice from their tax advisor on the Stamp Duty implications (if any) of investing in the Project and on the reinvestment of any tax deduction or cash flow generated, including reinvestment by the reduction of non-deductible debt such as a credit card, car loan or home loan debt.

Taxation Implications in respect of the Put Option for the Project

- The Project is a "Forestry managed investment scheme" as defined in subsection 394-15(1) of the 1997 Act. The Put Option, the associated Put Option Fee and associated units in the associated Land Trust do not form part of the Forestry managed investment scheme to which Division 394 applies. However, the Product Ruling issued by the ATO is wider in application to the Project than the rules under Division 394. As such, the Put Option, the associated Put Option Fee and associated units in the associated Land Trust are all part of the scheme to which the Product Ruling applies.
- A Grower will pay an amount of $11.00 (GST inclusive) in consideration for the grant of the Put Option from the Manager. A Put Option Fee is capital in nature and not deductible. The amount payable for the grant of a Put Option will represent the first element of the cost base of a Put Option for CGT purposes.
- A Put Option can be exercised between 1 July 2020 and 1 July 2023. Upon exercise of a Put Option a Grower can sell 100% of their forestry interests to the Manager for cash consideration equal to the market value of the forestry interests at the time of exercise.
- After exercise of a Put Option a Grower will retain none of their 'forestry interests' and a Unit Holder will retain 100% of their Land Trust Units. The 'forestry interests' are represented by the trees, carbon rights and salinity rights that arise under the Project. Accordingly, the amount which will be assessable to the Grower on the exercise of the Put Option is based on the market value of what is transferred pursuant to the Put Option.
- Exercise of a Put Option will not occur within 4 years after the end of the income year in which a Grower first pays an amount under the Project. Accordingly, exercise of the Put Option will not deny a tax deduction for the Establishment Services Fee.
- Exercise of a Put Option will represent a 'CGT Event' that happens in relation to a 'forestry interest' other than a CGT Event that happens in respect of a thinning.
- The consideration to be received by a Grower on exercise of a Put Option is only included in a Grower's assessable income to the extent that the amount represents the market value of the Grower's forestry interest as a result of the CGT Event.
- The exercise of a Put Option will be ignored for CGT purposes.

Taxation implications in respect of the Land Trust

- The Product Ruling does not rule on issues specific to the Land Trust Unit Holders in the Land Trust. A Unit Holder will pay an amount of $17.00 in consideration for the grant of each Land Trust Unit. Each Land Trust Unit will represent a CGT asset of a Unit Holder. The amount paid for the subscription for a Land Trust Unit will represent the first element of the cost base of the Land Trust Unit for CGT purposes. Further, any interest incurred in borrowing money to purchase a Land Trust Unit is not likely to be deductible.
- A Land Trust Unit will entitle a Unit Holder to receive a proportionate share of the Distributable Income from the Land Trust. The Distributable Income will be equal to Net

Accounting Income unless the Trustee determines it to be equal to the Net Taxable Income for a particular year. A Unit Holder will be taxable on their share of the net income of the Land Trust as determined pursuant to Section 95(1). Whether such income will be taxed as either income or capital gains depends on the nature of the underlying transaction that gives rise to the receipt.

- Where the Trustee sells the Plantation Land after final harvest a Unit Holder will receive their proportionate share of the net land sale proceeds. This amount will be equal to the sale proceeds from sale of the Plantation Land less costs associated with purchase, sale and ownership of the land.
- On the assumption that the Plantation Land is used solely for the purposes of the Project, and is sold after harvest and on an unimproved basis (i.e. no development activity), the receipt by a Unit Holder of the net land sale proceeds should be on capital account and thus, a capital gain to a Unit Holder.
- On redemption of the Units, the Unit Holders will realise a capital loss to the extent that the consideration received is less than the CGT cost base of the Units. This capital loss can be offset against the above capital gain provided that the redemption of the Units occurs in the same income year as the contract for the sale of the Plantation Land by a Trustee is entered into.
- Where the Unit Holder is an Australian resident for tax purposes and an individual or trust, the Unit Holder will only be required to include 50 per cent of any net land sale proceeds (after reduction of any other capital losses realised by the Unit Holder in that year or carried forward from prior income years) in their assessable income pursuant to the discount capital gains provisions contained in the 1997 Act. Where the Unit Holder is a complying superannuation fund, 66.66% of any net sale proceeds less applicable losses, will be required to be included in its assessable income.

Please refer to Appendix 1 for further taxation commentary in relation to the Project.

Yours faithfully

KPMG

KPMG

Enclosures:
Appendix 1 - The AgriWealth 2016 Softwood Timber Project ("the Project")

Appendix 1 – The AgriWealth 2016 Softwood Timber Project ("the Project")

1.1 Analysis of the taxation implications

1.1.1 Deductibility of expenditure

The expenditure incurred by Growers in relation to the Project should generally be deductible under section 8-1 and 394-10 of the *Income Tax Assessment Act 1997* (the "1997 Act"). The following expenditure should be deductible: Establishment Services Fee, amounts paid out of the Sinking Fund and harvesting fees (costs of felling, harvesting, sale and land rehabilitation in excess of the amounts paid by the Manager).

Whilst the Manager Loan complies with the ATO policy requirements in respect of issuing the Product Ruling, we understand that Growers may enter loan agreements to invest in the Project that are more suited to their individual requirements and available loan security. The interest expense on such other finance facilities where taken out to fund a Grower's investment in the Project would generally be deductible, subject to the terms of the particular finance facility. We note for completeness, if Growers wish to arrange their own finance, they should consider entering a new loan agreement solely for the purposes of investing in the Project. In this regard the ATO has issued Taxation Rulings TR 1998/22 and TR 2000/2 regarding the deductibility of interest on certain linked or split loan facilities and line of credit and redraw facilities.

Deductions should be allowable when incurred and as Growers will be carrying on a business through their participation in the Project, the Small Business Entity rules (previously referred to as "STS" rules) may be applicable. Prepayment rules may apply to deny or defer the deductibility of expenditure (as discussed at 1.2 below).

The impact of GST is discussed at 1.5 below.

Where the Product Ruling applies, the deductions should not be deferred or denied under the non-commercial loss rules where the Commissioner of Taxation exercises his discretion under section 35-55(1) of the 1997 Act (see 1.3 below).

1.2 Limits on deductibility of prepaid expenditure

Section 82KL of the *Income Tax Assessment Act 1936* (the "1936 Act") denies immediate deductions for certain expenditure incurred in the context of a tax avoidance agreement, where a substantial portion of the expenditure is effectively recouped by a taxpayer obtaining an "additional benefit" as a result of the expenditure. A deduction is denied where the value of the additional benefit, when added to the tax savings resulting from the deduction, is equal to or greater than the amount of the expenditure. Due to the commercial nature of the Project and the Agreements we consider no relevant additional benefit should be obtained by Growers and therefore section 82KL should not apply. The Product Ruling confirms section 82KL does not apply to deny the Project deductions unless the sum of exercise price paid under the Put Options when added with the tax savings and any other additional benefits obtained by a taxpayer exceed the amount of the Establishment Services Fees. For a taxpayer paying tax at the top marginal tax rate of 49% this would only occur if the exercise price exceeded $14,535 per forestry interest.

1.2.1 Prepaid expenditure

General sections 82KZMD and 82KZMF of the 1936 Act seek to defer the deductibility of prepaid expenditure over the period to which the payment relates. However, where the prepayment is less than $1,000 or is incurred by an individual taxpayer and relates to a period of less than 12 months, the expenditure may nevertheless be deductible immediately. Growers should seek confirmation from their tax advisor as to the eligibility and timing for such deductions as this will depend on Grower's individual circumstances.

Notwithstanding the above, certain prepaid expenditure invested by way of a 'forestry managed investment scheme' is excluded under subsection 394-10(7) of the 1997 Act from the general rules.

We consider the Establishment Services Fee, insurance premiums and council rates and other applicable statutory charges paid out of the Sinking Fund should satisfy subsection 394-10(7). The Product Ruling confirms this treatment.

1.2.2 General anti-avoidance provisions (Part IVA of the 1936 Act)

Part IVA of the 1936 Act operates to disallow deductions otherwise allowable under the 1936 or 1997 Acts where a scheme is entered into or carried out with the sole or dominant purpose of obtaining a tax benefit.

The overall commercial objectives and substance of the Project as set out in the Agreements and the IM provide objective evidence as to the commercial nature of the Project. There are no features of the Project, for instance, the fees being excessive, uncommercial and predominantly financed by a non-recourse loan that would suggest that the Project is so tax driven and designed to produce a tax deduction of a certain magnitude so as to attract the operation of Part IVA.

On the basis that a Grower enters into the Project for the dominant commercial purpose of deriving a profit and the silvicultural activities are carried out to their conclusion in accordance with the IM, we believe that Part IVA should not apply to the Project. The Product Ruling confirms Part IVA will not be applied to those deductions confirmed to be available by the Product Ruling.

1.3 Non-commercial loss provisions

The non-commercial loss rules contained in Division 35 of the 1997 Act apply from the 2000/2001 income year, to defer deductibility of losses incurred by individuals from certain business activities. Where the Growers in the Project are not individuals (i.e. companies or trusts) these rules will not apply.

The Product Ruling confirms that the Commissioner of Taxation will exercise his discretion in section 35-55(1) for the years of income from 2015-16 to 2041-42 where the following conditions are satisfied for the year concerned:

- a Grower carries on their business of afforestation during the year of income;

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

1.4 'CGT event' for Growers who are initial participants

An initial participant is a person who acquires their Timberlot interests under the Project from the Manager pursuant to an application made under the IM.

1.4.1 'CGT event' within first 4 years of the Project

A Grower who is an initial participant in the Project will be denied a tax deduction for the Establishment Services Fee amount and amounts paid out of the Sinking Fund for a Timberlot if a 'CGT event' happens in relation to the Grower's Timberlot interests within 4 years of 30 June 2016. Where a 'CGT event' happens within the 4 year period the Commissioner may amend the Grower's assessment within 2 years after the end of the income year in which the 'CGT event' happens.

A Grower whose deduction for the Establishment Services Fee or amounts paid out of the Sinking Fund are disallowed is also required to include in their assessable income either the market value of the interest at the time of the 'CGT event', or the decrease in the market value of the interest as a result of the 'CGT event'.

1.4.2 Assessable income resulting from a 'CGT event' for a Grower who is an initial participant

Section 6-10 of the 1997 Act includes in assessable income amounts that do not constitute ordinary income. These amounts, called statutory income, include amounts that are included in the assessable income of a Grower by section 394-25(2) of the 1997 Act.

Section 394-25(2)

Where a 'CGT event' (other than for a 'CGT event' in respect of a thinning) happens to an interest held by a Grower who is an initial participant in the Project, section 394-25(2) includes an amount in the assessable income of the Grower if:

- the Grower can deduct or has deducted the fees for the Establishment Services and/or amounts paid out of the Sinking Fund; or
- the Grower would have obtained a tax deduction for the Establishment Services Fee and/or amounts paid out of the Sinking Fund if the CGT event did not occur within the 4 year period.

Market value rule applies to 'CGT events'

If, as a result of the 'CGT event' the Grower no longer holds the Timberlot interest, then the market value of the Timberlot interest at the time of the event is included in the assessable income of the Grower.

A market value rule applies rather than the amount of money actually received from the CGT event. The market value amount included in the assessable income of a Grower is the value of the Timberlot interest just before the 'CGT event'. The market value and the actual amount of money received may not be the same.

This assessment rule will apply where the Timberlot interest is sold, is extinguished, or ceases, and will include 'CGT events' such as a full or partial sale of the Timberlot interest or from a full or partial clear-fell harvest of the trees grown under the Project.

Otherwise not assessable

Other than the amount included in the Grower's assessable income pursuant to section 394-25(2) (being the market value), no further amount should be included in the Grower's assessable income, whether pursuant to the capital gains tax rules or otherwise.

1.4.3 Amounts received by initial participants where the Project's trees are thinned

Thinning amounts received by a Grower who is an initial participant in the Project do not arise as a result of a 'CGT event'. The receipt of an amount arising from a thinning of the Project's trees is a distribution that arises as an incident of the Grower holding an interest in the Project. It is an item of ordinary income and is assessable in the year in which it is derived.

1.4.4 Application Price Rebate

The ATO has stated in its Product Ruling that where a Distributor rebates an amount to the Grower such as Referral Fees, that amount will be assessable to the Grower under subsection 20-20(2) and included in the Grower's assessable income in the year of receipt or the year the Grower is entitled to the receipt. This will also be the case where the Grower directs that the rebate be made to another entity.

1.5 Goods and services tax ("GST")

1.5.1 GST registration

The Product Ruling states that a Grower in the Project will be 'carrying on an enterprise' for GST purposes.

If a Grower is carrying on an enterprise and its annual turnover meets the registration turnover threshold (currently $75,000 per annum) the Grower is required to be registered for GST. If a

Grower is carrying on an enterprise and its annual turnover is less than the registration turnover threshold it may choose to be registered for GST. If a Grower is not carrying on an enterprise it is not entitled to be registered for GST and will not be able to claim input tax credits.

To determine annual turnover it is necessary to look at the current annual turnover (briefly, the value of all taxable and GST-free supplies made or likely to be made for consideration in connection with the enterprise for the 12 months ending at the end of the month the calculation is made) and the projected annual turnover (the value of such supplies made during the current month and likely to be made over the next 11 months).

It is anticipated that Growers will not initially be required to register for GST until harvesting commences. Nevertheless, Growers may voluntarily register (where they carry on an enterprise) and should do so as early as possible if they wish to claim input tax credits, as soon as possible, for the costs and expenses incurred by them or on their behalf in relation to the Project (i.e. Growers should elect registration with effect from the date of entering into the Project). In choosing the tax period (monthly, quarterly or annually) for which they wish to be registered, the Grower should take into account how frequently expenses are incurred. Depending on a Grower's circumstance, it may be possible to vary the tax period from monthly to annually e.g. following recovery of input tax credits in connection with the Establishment Services Fees.

We note the Australian Business Register website www.abr.gov.au enables on-line registration for GST purposes when applying for an Australian Business Number ("ABN"). If a Grower already has an ABN they may complete the *Add a new business account* form to register for GST, which can be accessed from the ATO's website www.ato.gov.au.

Our commentary below assumes that the Grower is registered or required to be registered for GST and is accounting on an accruals basis. As an alternative, a Grower may choose to account on a cash basis if, amongst other things, the Grower's annual turnover does not exceed $2 million (or such higher amount as the regulations specify) or the Commissioner permits the Grower to account on a cash basis. If the Grower accounts on a cash basis, the Grower's liability to GST on a taxable supply is attributable to the tax period when and to the extent that consideration is received for the taxable supply. Similarly, the Grower will be entitled to an input tax credit for the tax period when and to the extent that the Grower provides the consideration for the taxable supply (subject to holding a tax invoice).

1.5.2 Liability to GST

On the basis that a Grower is registered or required to be registered, the sale of timber by the Grower will be a taxable supply unless it is a GST-free supply. The supply will be a GST-free supply if the Grower exports the timber from Australia, provided the supply meets certain conditions.

If the supply is a taxable supply, the Grower will be required to pay GST in respect of such sales calculated at the prevailing rate of GST of the value of the supply. At the current rate of GST, that is either $1/11^{th}$ of the GST inclusive consideration or 10% of the GST exclusive consideration. If the Grower is accounting on an accruals basis, the Grower's liability to GST arises in respect of the tax period in which any of the consideration is received or an invoice is

issued in relation to the supply (whether by the Manager of the Project or the Grower), whichever is earlier.

Funds borrowed by the Grower in relation to this arrangement will be an input taxed financial supply, and thus, no GST will be payable.

1.5.3 Entitlement to input tax credits

A Grower will be entitled to input tax credits for the acquisitions made by the Grower in carrying on an enterprise of silviculture and tree growing provided the Grower is registered for GST (or required to be registered but note that the requirement to register may only occur towards the end of the Project whereas some expenses will be incurred early). These expenses may include the Establishment Services Fee and harvesting fees (costs of felling, harvesting, sale and land rehabilitation in excess of the amounts paid by the Manager).

If a Grower is accounting on an accruals basis, the Grower's entitlement to an input tax credit arises in the tax period in which the Grower provides any of the consideration for the acquisition or an invoice is issued in relation to the acquisition, whichever is earlier. However, the Grower must hold a tax invoice in respect of an acquisition at the time it lodges its Business Activity Statement ("BAS") which includes the claim for an input tax credit in relation to that acquisition. The requirements for a tax invoice are set out in the GST Act and regulations. Where the Grower has no liability for GST (that is, prior to harvesting) and the BAS of the Grower states only input tax credit entitlements (that is, the net amount is a negative figure) the Grower will be entitled to a credit on their Running Balance Account which may lead to a cash refund from the ATO.

In relation to the funds borrowed by the Grower, the Grower will be entitled to full input tax credits for the GST component of its expenses incurred in relation to the borrowing as the borrowing relates to the Grower making taxable or GST-free supplies (section 11-15(5) the GST Act). Again, the Grower must hold a tax invoice for the acquisition at the time they lodge their BAS claiming an input tax credit in relation to the acquisition. Input tax credits cannot be claimed in relation to payments of interest and repayments of principal as no GST applies to such payments.

The Grower will also subscribe for a Sinking Fund Unit. Where these amounts are to be paid into the Sinking Fund to meet costs such as council rates and other applicable statutory charges, there will be no entitlement to an input tax credit (council rates and many statutory charges are not subject to GST).

To the extent that any statutory charge is subject to GST, (for example, insurance premiums), no entitlement to an input tax credit arises in relation to such cost until the cost is paid from the Sinking Fund.

Put Options[1] and Land Trust Units

The grant of a Put Option by Manager will be a taxable supply by the Manager and subject to GST as it relates to the rights and benefits of the Grower to trees, harvest proceeds, carbon sequestration rights and benefits and salinity credits and salinity credit benefits and each forestry right interest (unless the supply is GST-free).

If sale of a Put Option is made to a non-resident who is not in Australia in relation to the supply when the thing supplied is done, the sale may be GST-free in which case no GST is payable on the supply but the Grower may be entitled to full input tax credits for acquisitions made in relation to the sale.

On exercise of a Put Option in the Project, a Grower will sell 100% of the above rights to the Manager. Such a sale will be a taxable supply subject to GST and the Manager is required to gross up the Sale Consideration payable to the Grower for GST.

The following comments only apply to Unit Holders that are registered for GST and where the acquisition and disposal of the Land Trust Units is part of the enterprise in relation to which they are registered for GST.

The acquisition or disposal of the Land Trust Units by a Unit Holder will be input taxed financial supplies (unless the supplies are GST-free) by the Unit Holder upon which no GST will be payable. If the Unit Holder exceeds the financial acquisitions threshold (refer below), it will not be entitled to input tax credits for the costs and expenses in relation to the acquisition or disposal of the Land Trust Units.

Funds borrowed by a Unit Holder that are used for the acquisition of Land Trust Units relate to input taxed supplies. Subject to the financial acquisitions threshold, a Unit Holder will not be entitled to input tax credits for costs and expenses in relation to such borrowings.

The financial acquisitions threshold is a *de minimis* test. Briefly, under this test a registered entity can claim input tax credits for acquisitions that relate to making financial supplies if the total amount of such credits does not exceed either or both of the following levels:

- $150,000; or
- 10% of the total input tax credits of the entity.

The test requires the entity to consider its position in a particular month taking account of past acquisitions during the previous 11 months and future acquisitions for that month and the next 11 months. If either or both the above levels are met for either of these periods, the entity will be denied input tax credits.

1.5.4 GST & Income tax treatment

For Growers registered for GST, broadly:

[1] Please note that the Put Option Property is defined in the IM as a Timberlot and the Grower is the only entity that owns the Put Option Property

- GST payable by the Grower is excluded when determining assessable income under Division 17 of the 1997 Act; and
- Input tax credits are excluded when determining allowable deductions under Division 27 of the 1997 Act.

No adjustment is required for Growers who are not registered (nor required to be registered) for GST.

1.6 The Product Ruling

The ATO has issued the Product Ruling confirming that many of the tax benefits set out in the IM and described in this letter are available to Growers, provided the arrangement is carried out in the manner described.

A Product Ruling applies to all persons within the specified class who enter into the specified arrangement (i.e. the Project) during the term of the Ruling. Thus, a Product Ruling continues to apply to those persons, even following its withdrawal, for arrangements entered into 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.

A Product Ruling provides certainty to potential investors by confirming that the tax benefits set out in the Ruling part of the Product Ruling are available, provided that the arrangements are carried out in accordance with the information provided by the applicant and described in the Arrangement part of the Product Ruling. If the arrangement described in the Product Ruling is materially different from the arrangement that is actually carried out, investors lose the protection of the Product Ruling.

1.7 Put Options – taxation implications

A Grower will pay an amount of $11.00 (GST inclusive) in consideration for the grant of a Put Option from the Manager. A Put Option Fee is capital in nature and not deductible. The amount payable for the grant of the Put Option will represent the first element of the cost base of the Put Option for CGT purposes.

A Put Option can be exercised between 1 July 2020 and 1 July 2023. Upon exercise of a Put Option a Grower will sell 100% for a cash consideration equal to the market value as at the time of exercise of their trees and carbon and salinity benefits to the Manager.

After exercise of a Put Option, a Grower will retain none of their 'forestry interests' and a Unit Holder will retain 100% of their Land Trust Units. The 'forestry interests' are represented by the trees, carbon and salinity benefits that arise under the Project.

Exercise of a Put Option will not occur within 4 years after the end of the income year in which a Grower first pays an amount under the Project. Accordingly, exercise of a Put Option will not deny a tax deduction for the Establishment Services Fee or amounts paid from the Sinking Fund.

Exercise of a Put Option will represent a 'CGT Event' that happens in relation to the 'forestry interest' other than a CGT Event that happens in respect of thinning.

A Grower will not continue to hold their 'forestry interest' after exercise of a Put Option. Accordingly, a Grower will need to include in their assessable income the market value of their forestry interest as a result of the CGT Event.

The amount received by a Grower on exercise of the Put Option is only included in a Grower's assessable income to the extent that the amount represents the market value of the Grower's forestry interest as a result of the CGT Event. Accordingly, the amount which is assessable to the Grower on the exercise of the Put Option is based on the market value of what is transferred rather than the actual cash received pursuant to the Put Option. Any actual cash an investor receives on exercise of the Put Option is exempt from tax under subsection 394-25(3).

The exercise of a Put Option will result in the disposal of the Grower's contractual rights under the Put Option Deed. However, any capital gain or loss realised in respect of this disposal is disregarded under subsection 134-1(4).

1.8 Land Trust – taxation implications

Each Land Trust Unit will represent a CGT asset for CGT purposes. The amount of $17.00 paid by a Unit Holder for subscription of the Land Trust Units will form part of the first element of the cost base of the Land Trust Units for CGT purposes.

The Land Trust Unit will entitle a Unit Holder to receive a proportionate share of the Distributable Income from the Land Trust. The Distributable Income will be equal to Net Accounting Income unless the Trustee determines it to be equal to the Net Taxable Income for a particular year. A Unit Holder will be taxable on their share of the net income of the Land Trust as determined pursuant to Section 95(1). Whether such income will be taxed as either income or capital gains depends on the nature of the underlying transaction that gives rise to the receipt.

Where the Trustee sells the Plantation Land after final harvest a Unit Holder will receive their proportionate share of the net land sale proceeds. This amount will be equal to the sale proceeds from sale of the Plantation Land less costs associated with purchase, sale and ownership of the land.

On the assumption that the Plantation Land is used solely for the purposes of the Project and is sold after harvest and on an unimproved basis (i.e. no development activity), the receipt by a Unit Holder of the net land sale proceeds, which effectively represents the increase in the unimproved value of the Plantation Land during the term of the Project, should be on capital account and thus, a capital gain to the Unit Holder.

Redemption of the Units will represent a CGT event. The Unit Holders will realise a capital loss to the extent that the consideration received is less than the CGT cost base of the Units. This capital loss can be offset against the above capital gain provided that the redemption of the Units occurs in the same income year as the contract for the sale of the Plantation Land by a Trustee is entered into.

On the assumption that the activities of the Trustee of the Land Trust will be limited to the Purpose outlined in clause 8.5 of the IM, they should not be a trading trust for Division 6C purposes. As such, the Trustee will not be taxable on the net income of the Trust to which Australian resident Unit Holders are beneficially entitled.

1.9 Interest Expense

Interest expenses incurred by a Grower in obtaining finance to fund an investment in the Project (other than acquisition of a Put Option or Land Trust Units) should be deductible to the Grower in the period in which it is incurred (assuming there is no element of prepayment, see section 1.2.1 above) to the extent that the Grower has acquired the investment with the intention to generate assessable income from the investment, excluding capital gains. However, this will be subject to the terms of the particular finance facility obtained by the Grower.