



Australian Government
Australian Taxation Office

The Trustee for the Coronet Trust
Suite 4, 7 Parraween Street
CREMORNE NSW 2090

Attention: Wayne Jones

Reply to: PO Box 9977
MOONEE PONDS VIC
3039

Our reference: 1051832105639
Contact officer: Leanne Delves
Phone: (03) 9275 5274

19 May 2021

We are notifying you of your private ruling

Authorisation number: 1051832105639
Authorising officer: Ross Antoniadis

Dear Wayne,

On 23 November 2020, you applied for a private ruling relating to the participation of the Coronet Trust in the AgriWealth 2021 Softwood Timber Project No 1.

Please find:

- below your private ruling and the reasons for our decision
- attached a fact sheet giving information about private rulings including how to have the decision reviewed by objecting, and
- attached an edited version of your ruling that we will publish on our website.

You have:

- 60 days (longer in some cases) to object to the private ruling if you disagree with it and have not had an assessment for the relevant period, and
- 28 days to comment on the edited version.

More information is included in the *Private rulings* fact sheet.

Notice of private ruling

This ruling applies to:

Client name: The Trustee for the Coronet Trust
ABN: 67 738 805 802

This ruling applies to the beneficiaries of the trust and to the trustee and to any future trustees, for as long as the ruling remains current.

Question 1

Is the AgriWealth 2021 Softwood Timber Project No 1 (**the Project**) a 'forestry managed investment scheme' as defined in subsection 394-15(1) of the *Income Tax Assessment Act 1997 (ITAA 1997)*?

Answer

Yes.

Question 2

Will The Wildcatters Pty Ltd as trustee for the Coronet Trust (**Coronet**) be carrying on an enterprise for the purposes of subsection 9-20(1) of the *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)*, subject to the exclusions listed in subsection 9-20(2) of the GST Act?

Answer

Yes.

Question 3

Will Coronet be carrying on a business of primary production for income tax purposes if it stays in the Project until it is completed and does not obtain finance other than the finance arrangement offered by AgriWealth Capital Limited (**ACL**) in connection with the Project?

Answer

Yes.

Question 4

Has the Commissioner decided that on 30 June 2021 it will be reasonable to expect that the '70% DFE Rule' under section 394-35 of the ITAA 1997 will be satisfied by the Project?

Answer

Yes.

Question 5

Will Coronet be entitled to a deduction for the Establishment Services Fees paid to the Managers under section 394-10 of the ITAA 1997?

Answer

The Establishment Services Fees paid per Timberlot is \$34,540 and includes GST of \$3,140. Under section 394-40 of the ITAA 1997, the GST amount is not treated as a payment under the forestry managed investment scheme. Consequently, the amount of \$31,400 per Timberlot, which is the amount of the Establishment Services Fee exclusive of GST, is deductible under section 394-10 of the ITAA 1997.

Question 6

Will Coronet be entitled to a deduction under section 394-10 of the ITAA 1997 in the year of income during which insurance premiums, council rates and other statutory charges are paid out of the Sinking Fund?

Answer

Yes.

Question 7

Will deductions previously allowed to Coronet under subsection 394-10(1) of the ITAA 1997 be disallowed pursuant to paragraph 394-10(1)(f) and subsection 394-10(4) of the ITAA 1997 where the trees intended to be established in accordance with the Project have not all been established by 31 December 2022, or pursuant to subsection 394-10(5) of the ITAA 1997 where a CGT event happens to its forestry interest before or on 30 June 2025?

Answer

Yes.

Question 8

For each of the income years ended 30 June 2021 to 30 June 2047, will the Commissioner exercise the discretion in subsection 35-55(1) of the ITAA 1997 for Coronet where:

- (a) it carried its business of forestry during the income year;
- (b) the business activity carried on is not materially different to the relevant facts and circumstances described in this ruling; and
- (c) it has incurred a tax loss for the income year from carrying on that business activity?

Answer

No.

Question 9

Will sections 82KZL to 82KZMF of the *Income Tax Assessment Act 1936 (ITAA 1936)* apply to affect the timing of amounts deductible to Coronet under section 394-10 of the ITAA 1997?

Answer

No.

Question 10

Will the general anti-avoidance provisions in Part IVA of the ITAA 1936 apply to cancel a tax benefit obtained by Coronet in connection with the scheme (including the assumptions listed) as described in this ruling?

Answer

No.

This ruling applies for the following periods:

Income tax years ending 30 June 2021 to 30 June 2047

The scheme commenced on:

23 November 2020

Relevant facts and circumstances

This ruling is based on the facts stated in the description of the scheme that is set out below. If your circumstances are materially different from these facts, this ruling has no effect and you cannot rely on it. The fact sheet has more information about relying on your private ruling.

Coronet is a discretionary trust, an Australian resident for tax purposes and a wholesale client within the meaning of that term as defined in section 761G of the *Corporations Act 2001*.

The Project will be regulated by a number of Project Documents, draft versions of which were provided to the Commissioner on 23 November 2020. These are the:

- Information Memorandum for the Project;
- Application Form attached to the Information Memorandum for the Project;
- Forestry Management Agreement for the Project;
- Tree Constitution for the Project;
- Land Trust Constitution for the Project;
- Timberlot Agreement for the Project;
- One Year Interest Free ACL Loan Agreement for the Project;
- Forestry Management Contract for the Project with Bristlecone Forestry Operations Pty Limited (**Bristlecone**);
- Forestry Management Contract for the Project with Foraustr Consulting Services Pty Limited (**Foraustr**);

- AgriWealth 2021 Softwood Timber Project No 1 Sinking Fund Trust Deed (**the Sinking Fund Trust Deed**); and
- Definitions and Interpretations Deed for the Project¹.

Other relevant documents for the Project, also provided to the Commissioner in draft form on 23 November 2020, are the:

- Joint Venture Deed relating to the Project;
- AgriWealth 2021 Softwood Timber Project No 1 Rooding Harvest Haulage and Pruning Trust Deed (**the RHHP Trust Deed**);
- Loan Agreement between ACL and trustees for the AgriWealth 2021 Softwood Timber Project No 1 – Land Trust (**the Land Trust**);
- Independent Forester Report from Biovalue Pty Ltd;
- Projected cash flow model for Growers;
- Land Trust Unit Valuation; and
- Direct forestry expenditure calculations.

The Project will be an unregistered managed investment scheme under the *Corporations Act 2001*, the purpose of which will be to establish and tend *pinus radiata* trees for felling in Australia over a period of 26 years (subject to any decision to extend the term of the Project for up to five years) on land that will be acquired by the Managers on or before 30 September 2022 and will comply with the Project's Land Selection Protocols.

The offer, made through the Information Memorandum, will be for 1,000 hectares, equating to 2,000 Timberlots (subject to any final decision by the Managers to increase or decrease the size of the Project).

Participation in the Project will only be available to wholesale clients within the meaning of that term as defined in section 761G of the *Corporations Act 2001*. An entity that participates in the Project as a Grower will do so by acquiring a minimum of one Timberlot in the Project on or before 30 June 2021, each 0.5 hectares in size.

On or before 30 June 2021, Coronet will apply to participate in:

- the Project as a Grower by acquiring one or more Timberlots in the Project, and one or more Sinking Fund Units in the AgriWealth 2021 Softwood Timber Project No 1 Sinking Fund (**the Sinking Fund**); and
- the Land Trust as a Land Trust Unit Holder by acquiring one or more Land Trust Units in the Land Trust.

To do so, Coronet will complete the Application Form attached to the Information Memorandum and pay the Application Price in full.

By signing the Application Form, Coronet (and other Applicants) will grant a power of attorney authorising the Managers to execute the following documents on their behalf:

- Forestry Management Agreement;
- Timberlot Agreement;
- Sinking Fund Trust Deed;
- Land Trust Unit subscription;
- Definitions and Interpretations Deed for the Project; and

¹ The Definitions and Interpretations Deed sets out the meaning and interpretations of terms and expressions and miscellaneous clauses used throughout the Project Documents. All references to definitions in this ruling are a reference to definitions provided under this Deed unless otherwise stated.

- (if requested by Coronet in the Application Form) One Year Interest Free ACL Loan Agreement.

The Application Price, being the cost of one Timberlot, one Sinking Fund Unit and one Land Trust Unit payable on or before 30 June 2021, will be \$35,000, comprising of:

- Establishment Services Fees of \$34,540 (inclusive of GST);
- Sinking Fund Unit subscription of \$443 (exclusive of GST); and
- Land Trust Unit subscription of \$17 (exclusive of GST).

Tree Constitution

The Tree Constitution to be executed by the Managers will establish the Project and operate as a deed binding Coronet (and all other Growers) and the Managers.² Upon acceptance into the Project, Growers are bound by the Tree Constitution by virtue of their participation in the Project. The Tree Constitution sets out the terms and conditions under which the Managers agree to act in that capacity and thereby manage the Project.

Once the Managers accept an Application and each of the relevant Project Documents³ requiring execution on or by 30 June 2021 are executed, the Application Price (exclusive of GST) will be transferred out of the Managers' Application bank account (opened and operated pursuant to clause 4 of the Joint Venture Deed) to the Managers on their own behalf and in the proportions governed by the Joint Venture Deed, that is:

- the amount of \$19,500 per Timberlot will be transferred to AgriCapital Pty Limited (**AgriCapital**) in its capacity as trustee of the Softwood Timber Project No 1 Rooding Harvest Haulage and Pruning Trust (**the RHHP Trust**) to apply in payment of the Rooding Harvest and Haulage Costs and the Pruning Costs;⁴ and
- the amount of \$12,360 per Timberlot will be transferred to ACL to enable it to carry out and meet other obligations of the Managers under the Project⁵, including
 - the transfer of the portion of the Application Price attributable to the Sinking Fund Unit subscription into a separate bank account in the name of the Managers as trustee of the Sinking Fund;⁶ and
 - the transfer of the portion of the Application Price attributable to the Land Trust Unit subscription into a separate bank account in the name of the Managers as trustee of the Land Trust.⁷

The GST portion of the Establishment Services Fees received by the Managers (i.e. \$3,140 per Timberlot) will be retained in the Managers' Application bank account to remit to the ATO.⁸

In summary, the Tree Constitution also sets out provisions relating to:

- the nature of Growers' interests in the Project;⁹
- the obligation of Growers to pay other amounts under the Project Documents;¹⁰

² Clause 1.3 of the Tree Constitution.

³ Each of the Project Documents will be executed on or by 30 June 2021, except for the Timberlot Agreement which will be executed on or before 31 September 2022.

⁴ Clauses 3.4.2 of the Tree Constitution and 11(c) of the Joint Venture Deed.

⁵ Clauses 3.4.2 of the Tree Constitution and 11(d) of the Joint Venture Deed.

⁶ Clauses 3.4.2 of the Tree Constitution and 11(d) of the Joint Venture Deed.

⁷ Clause 11(d) of the Joint Venture Deed.

⁸ Clause 11(e) of the Joint Venture Deed.

⁹ Clause 1.2 of the Tree Constitution.

¹⁰ Clause 7 of the Tree Constitution.

- the duties, powers and obligations of the Managers;¹¹
- the Managers' entitlement to fees and expenses;¹²
- termination of the Project;¹³ and
- distribution of the Harvest Proceeds.¹⁴

Forestry Management Agreement

Under the Forestry Management Agreement, Coronet will engage the Managers as independent contractors to perform the Establishment Services on its Timberlot(s).¹⁵

The Establishment Services to be provided by the Managers¹⁶ are listed in Item A of Schedule 4 of the Definitions and Interpretations Deed. Services which are not provided by the Managers, but which may be able to be provided by separate agreement, are listed at Item B of Schedule 4 of the Definitions and Interpretations Deed.

'Establishment Services' is defined to include:

- site preparation, application of fertiliser, planting and replanting areas, to meet a minimum stocking rate of 850 stems per Plantable Hectare;
- managing and maintaining the Plantation;
- arranging for the Harvest of Plantation Produce at first and second Thinnings and Final Harvest;
- paying the Roding, Harvest and Haulage Costs and Pruning Costs; and
- Rehabilitation of the Plantation Land after Final Harvest.

Planting will be completed no later than 31 December 2022.

As part of the Establishment Services, Coronet will also engage the Managers to provide all Roding, Harvest, Haulage Services in respect of any Thinning and Final Harvest and Pruning Services.¹⁷ Roding, Harvest and Haulage Services are defined in the Definitions and Interpretation Deed to mean 'all services associated with road construction, road maintenance, harvest and haulage of Trees to mills and processing facilities for each Thinning and Final Harvest'.

In consideration of the Managers agreeing to carry out the Establishment Services, Coronet will agree to pay the Managers the Establishment Services Fees of \$34,540 per Timberlot by 30 June 2021.¹⁸ The Establishment Services Fees will be the only fee paid by Coronet to the Managers in return for the Establishment Services.

The Managers, as trustees, will establish, for and on behalf of Growers (as Sinking Fund Unit Holders), the Sinking Fund for the purpose of meeting the costs payable by the Growers over the term of the Project in relation to council rates and other applicable statutory charges associated with the Plantation Land.¹⁹ The Sinking Fund will also be used to pay the cost of insuring the Trees and arranging public liability cover during the first seven years of the Project.²⁰

¹¹ Clause 10 of the Tree Constitution.

¹² Clause 23 of the Tree Constitution.

¹³ Clauses 25 and 26 of the Tree Constitution.

¹⁴ Clause 26.5 of the Tree Constitution.

¹⁵ Clause 1.1 of the Forestry Management Agreement.

¹⁶ The respective responsibilities allocated to each Manager in connection with the Establishment Services is set out in clauses 11(a) and (b) of the Joint Venture Deed.

¹⁷ Clause 6.6.1 of the Forestry Management Agreement.

¹⁸ Clauses 8.1 and 8.5 of the Forestry Management Agreement.

¹⁹ Clause 8.13 of the Forestry Management Agreement.

²⁰ Clauses 10 of the Forestry Management Agreement and 5.11 and 5.12 of Annexure B of the Timberlot Agreement.

In addition to the \$443 payable upon Application (and comprised within the Application Price), Sinking Fund Unit subscription includes an additional payment of \$664.50 per Timberlot payable by Growers within 14 business days after receipt by the Managers of the Plantation Produce of the first Thinning of the Plantation. Coronet (and other Growers) will also agree to pay the Managers any additional amounts called upon by the Managers to cover any shortfall in the Sinking Fund.²¹

Any amount in the Sinking Fund after Final Harvest will be distributed by the Managers to a Grower by reference to the Grower's Proportion (i.e. the proportion of the area that all the Grower's Forestry Right Land bears to the area of the Plantation Land, expressed as a percentage).²²

Coronet will be entitled to all Carbon Sequestration Rights, Carbon Sequestration Benefits, Salinity Credits and Salinity Credit Benefits (if any) produced by or derived from its Forestry Rights and related Plantation Produce.²³

Coronet will own the Trees and Timber on the Planted Land and all of the Plantation Produce for that land.²⁴ Coronet will also be entitled to all proceeds from the sales of Plantation Produce gross of all costs of Harvest, transportation and other associated costs for a Thinning or Final Harvest.²⁵

In accordance with the Tree Constitution, Coronet will authorise the Managers to collect for distribution to Coronet the Harvest Proceeds from sale of the Plantation Produce to which Coronet is entitled.²⁶

The Managers will notify Coronet when the Planted Land is ready for any Thinning or Final Harvest and will act as agent for the Grower to market the Plantation Produce for sale and to consolidate and mix the Plantation Produce of its Timberlot(s) with that of other Growers to maximise its sale value.²⁷ After deducting certain amounts owed to the Managers (including Rehabilitation expenses and any other costs for which Coronet is or will be liable under the Forestry Management Agreement or Timberlot Agreement), Coronet will be entitled to a pro rata sum referable to its entitlement to the Plantation Produce.²⁸ This means that Coronet's share of the proceeds of sale will be calculated by reference to its Growers Proportion, and then adjusted for any Grower who has suffered a loss or destruction of Plantation Produce on their Timberlots.²⁹

The Managers will provide Coronet with a reconciliation of the amounts owed as soon as reasonably practicable after the sale of the Plantation Produce and distribute the proceeds of sale within 30 days after receiving the last receipt attributable to the relevant Harvest activity.³⁰

Forestry Management Contracts

The Managers will engage Bristlecone and/or Foraust, under separate Forestry Management Contracts, as independent contractors to the Managers to perform the Forestry Services as set out in Schedule 1 of the Forestry Management Contracts and as a disclosed agent of the Managers to perform the Agency Services listed in Schedule 3 of the Forestry Management Contracts in respect of the Project.³¹

The Forestry Services set out in Schedule 1 of the Forestry Management Contracts include:

²¹ Clause 8.16 of the Forestry Management Agreement.

²² Clause 8.20 of the Forestry Management Agreement.

²³ Clause 5.1 of the Forestry Management Agreement.

²⁴ Clause 6.1 of the Forestry Management Agreement.

²⁵ Clause 6.2 of the Forestry Management Agreement.

²⁶ Clause 6.3 of the Forestry Management Agreement.

²⁷ Clauses 6.4 and 6.7 of the Forestry Management Agreement.

²⁸ Clause 6.12 of the Forestry Management Agreement.

²⁹ Clause 9 of the Forestry Management Agreement.

³⁰ Clauses 6.13 and 6.14 of the Forestry Management Agreement.

³¹ Clauses 3.1 and 3.2 of the Forestry Management Contracts.

- Preparation Services and Planting Services to be conducted between 1 July 2021 and 31 December 2022;
- Ongoing forestry services to be performed after 31 December 2022 (including the harvesting of Timber and Plantation Produce at first Thinning, second Thinning and Final Harvest); and
- Ongoing forestry management and maintenance services to be performed at all times prior to Final Harvest.

In consideration for the Forestry Services and Agency Services, the Managers will pay Bristlecone and Forast a management fee.³²

Timberlot Agreement

Under the Timberlot Agreement, the Managers will grant Coronet a forestry right over the Forestry Right Land (Forestry Right (Timber)) and a Forestry Right (Carbon Sequestration).

The particulars of the Forestry Right (Timber) to be granted to Coronet are:

- the right to enter the Forestry Right Land;
- the right to establish, maintain and Harvest a crop of Trees on the Forestry Right Land;
- the right to construct and use such buildings, works and facilities as may be necessary or convenient to enable the Grower to establish, maintain and Harvest a crop of Trees on the Forestry Right Land; and
- the right to any Salinity Credits and any benefit to be derived from such Salinity Credits that may attach to the Forestry Right Land.³³

The particulars of the Forestry Right (Carbon Sequestration) to be granted to Coronet are:

- the right to obtain any Carbon Sequestration Benefits arising from its rights under the Timberlot Agreement; and
- all Carbon Sequestration Rights.³⁴

Coronet will punctually pay all rates, taxes and other charges levied on the Forestry Right Land and will be required to Rehabilitate the Forestry Right Land following the Final Harvest.³⁵

RHHP Trust

The RHHP Trust, to be established by the RHHP Trust Deed on or before 30 June 2021, will (in accordance with Recital A of the RHHP Trust Deed) be 'a charity with a purpose of advancing the safety of the Australian public by distributing its income to support community based fire and emergency services that protect the communities and environment in Australia from the impact of fire and emergencies', and for the benefit of the persons specified in the RHHP Trust Deed as beneficiaries.

Recital B of the RHHP Trust Deed provides that to satisfy its charitable purpose, the RHHP Trust will hold and invest its assets to enable it to earn a surplus after meeting its obligations to pay for Rooding Harvest Haulage Costs and Pruning Costs.

³² Clause 5.5 of the Forestry Management Contracts.

³³ Clause 1 of Annexure A of the Timberlot Agreement.

³⁴ Clause 2 of Annexure A of the Timberlot Agreement.

³⁵ Clauses 6.7 and 9 of Annexure B of the Timberlot Agreement.

Under the Joint Venture Deed, AgriCapital as trustee of the RHHP Trust will agree to pay for Rooding Harvest and Haulage Costs that apply to any Thinning and Final Harvest and the Pruning Costs as set out in the Forestry Management Agreement. The portion of the Application Price allocated to the RHHP Trust (i.e. \$19,500 per Timberlot) will be invested by the RHHP Trust to cover its obligations to pay these costs.

Beneficiaries of the RHHP Trust are:

- (a) Primary Beneficiaries comprised of:
 - i. Specified Beneficiaries under Schedule 1 Part A of the RHHP Trust Deed being:
 - 1. NSW Rural Fire Service established under the *Rural Fires Act 1997*;
 - 2. Country Fire Authority established under the *Country Fire Authority Act 1944*
 - ii. Any person being:
 - 1. any society, trust, charity, association or club or other organisation the funds of which, in the Trustee's opinion, are used totally or mainly for charitable, community, cultural or other benevolent purposes in or beyond Australia; or
 - 2. any school, body, institution, foundation or company created for educational purposes.
- (b) Default Beneficiaries under Schedule 1 Part B of the RHHP Trust Deed, being an entity to which Division 50 of the ITAA 1997 applies.

Ineligible Persons and any Grower (or any Related Entity³⁶) cannot be beneficiaries. Ineligible Persons means each person, or each person comprised within any class of persons, comprising:

- a. The Settlor (Eva Chan of Suite 4, 7 Parraween Street Cremorne NSW 2090)
- b. Wayne Curtis Jones (or any Related Entity);
- c. John Leslie Thompson (or any Related Entity);
- d. The Manager (or any Related Entity);
- e. Any person claiming under and by virtue of, or in right of, the Settlor;
- f. The Trustee or any former Trustee;
- g. Any person included as an Ineligible Person by decision of the Trustee under the decision powers provision;
- h. Any company or trustee of any trust in or under which any Ineligible Person has any interest, directly or indirectly, at any time during the continuation of that interest;
- i. Any entity to which section 50-1 of the ITAA 1997 does not apply; and
- j. A Grower.

The Trustee may, by decision, remove any persons as an Ineligible Person.

Clause 1.12 of the RHHP Trust Deed states the following in relation to benefit ineligibility:

- (a) **(Benefit exclusion):** The assets of the Trust Fund at any time shall be held by the Trustee and any vested interest of any Primary Beneficiary in those assets at any time shall be beneficially possessed by that Primary Beneficiary to the entire exclusion of, and exclusion of any benefit to, any Ineligible Person or Grower (or any Related Entity) or class of Ineligible Persons or class of Grower (or any Related Entity) as at that time, whether by trust or agreement or otherwise.
- (b) **(Payments):** The Trustee shall not at any time pay or advance any assets of the Trust Fund, whether by way of remuneration or in any other manner or circumstances of any nature or description, directly or indirectly, to or in favour of or for the benefit of any Ineligible Person or class of Ineligible Persons as at that time.

³⁶ Clause 1.2 of the RHHP Trust Deed defines "Related Entity" to have the same meaning as the term "connected entity" as defined in section 995-1 of the ITAA 1997.

- (c) (**Powers**): The Trustee shall not at any time exercise, or be capable of exercising, any power conferred upon the Trustee by this Deed or any law, directly or indirectly, or in any manner or circumstances of any nature or description, for the benefit of any Ineligible Person or class of Ineligible Persons as at that time.

The decision powers of the Trustee are stated in Clause 8.3 of the RHHP Trust Deed and includes (among other things):

- ...
- (e) (**distribution**): at any time prior to the Vesting Date by irrevocable deed:
- i. distribution of the Trust Fund to be held upon the trusts of any eligible trust decided by the Trustee;
 - ii. transfer to the trustees for the time being if that eligible trust the property comprised in that distribution; and
 - iii. by that transfer, exclusion of that property from the Trust Fund and vesting that property in that eligible trust to be governed by the proper law of that eligible trust, whether or not the same as the proper law applicable to the Trust;
- (f) (**ineligible variations**): at any time prior to the Vesting Date, inclusion or removal by express written decision of any person as an Ineligible Person or Grower (or any Related Entity) in or from any class of Ineligible Persons or Grower (or any Related Entity), except that this provision shall not apply to remove the Settlor or the Trustee as an Ineligible Person or Grower (or any Related Entity);
- ...

Any money remaining in the RHHP Trust at the vesting date will be distributed to the beneficiaries identified at Schedule 1 of the RHHP Trust Deed.

The RHHP Trust will not under any circumstances (directly or indirectly) loan any money to Coronet (or other Growers in the Project) from the funds contributed to AgriCapital as trustee of the RHHP Trust under the Project.

Land Trust

Via execution of the Land Trust Constitution the Managers, as trustees, will establish an unregistered managed investment scheme referred to as the Land Trust for the purpose of acquiring the Plantation Land from the Managers (with funds borrowed from ACL under the terms of a draft Loan Agreement provided to the Commissioner on 23 November 2020).

After Final Harvest the Land Trustees may sell or lease the Plantation Land and will pay the Managers for any amount outstanding for the Plantation Land, after the land is sold or leased and before any distribution to Land Trust Unit Holders. The balance of any proceeds from sale or lease of the Plantation Land will be distributed to Land Trust Unit Holders in accordance with the number of units they hold relative to the total number of units issued to all Land Trust Unit Holders.³⁷

ACL Loan Agreement

ACL will offer one finance facility to Approved Applicants to fund up to (but not exceeding) 100% of the Application Price in respect of each Timberlot, Sinking Fund Unit and Land Trust Unit applied for.

The finance facility to be offered by ACL under the ACL Loan Agreement will:

³⁷ Page 4 of Information Memorandum.

- have a term of one year, such that 100% of the Secured Money must be repaid by 30 June 2022;³⁸
- be interest free, subject to any Event of Default not happening;³⁹
- be full recourse, secured by the Grower's present and future right, title and interest in and to, and all entitlements and benefits arising from, the Project Documents;⁴⁰ and
- not include application fees.⁴¹

Any loan to Coronet (and other Growers) will be made from ACL's own cash resources or from ACL's credit facilities.

Coronet will not enter into a finance arrangement with ACL, or any of its related entities, unless it is consistent with the ACL Loan Agreement provided to the Commissioner on 23 November 2020.

This ruling will not apply if the finance facility to be offered by ACL under the ACL Loan Agreement has any of the following features:

- split loan features of a type referred to in Taxation Ruling TR 98/22;⁴²
- indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- additional benefits that are or will be granted to the Grower for the purpose of section 82KL of the ITAA 1936, or funding arrangements which transform the Project into a scheme to which Part IVA of the ITAA 1936 may apply;
- terms that are non-arm's length;
- repayments of the principle and payments of interest that 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;
- the lender does not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrower; or
- an entity associated with the Project, other than ACL, is involved or becomes involved in the provision of finance to the Growers for the Project.

Direct Forestry Expenditure of the Project

The information provided to the Commissioner by ACL on 23 November 2020 provides that:

- the net present value as at 30 June 2021 of direct forestry expenditure per Timberlot under the Project is projected to be \$35,269.17; and
- the net present value as at 30 June 2021 of payments that all participants in the Project have paid or will pay per Timberlot under the Project is projected to be \$32,438.34.

Cash flows to Coronet

Based on the forecasted cash flows prepared and provided by ACL to the Commissioner on 23 November 2020, Coronet is expected to receive (on a per Timberlot basis):

- \$3,392 in proceeds from the sale of the first Thinning;

³⁸ Clause 2.1 of the ACL Loan Agreement.

³⁹ Clauses 3.1 and 3.2 of the ACL Loan Agreement.

⁴⁰ Clause 5.1 of the ACL Loan Agreement and page 6 of the Information Memorandum.

⁴¹ Page 6 of the Information Memorandum.

⁴² *Income tax: the taxation consequences for taxpayers entering into certain linked or split loan facilities.*

- \$5,031 in proceeds from the sale of the second Thinning; and
- \$33,481 in proceeds from the Final Harvest.

The final distribution estimated to be made to the Land Trust Unit Holders upon completion of the Final Harvest and possible sale of the Plantation Land at market value, is \$2,141.90 per Land Unit.

Assumptions

1. At the time of entering the Project, Coronet has a reasonable expectation and genuine intention to earn a profit or gain from its participation in the Project.
2. Coronet will not enter into any finance arrangement directly or indirectly through associates or any related entities; with the Managers (separately or together), or any associates of the Managers or any related entities, other than the ACL Loan Agreement provided to the Commissioner on 23 November 2020.
3. Any principal borrowed under the ACL Loan Agreement will be repaid in full by Coronet within 12 months. Any funds used to repay any principal borrowed under the ACL Loan Agreement cannot be obtained from any further loans from the Managers or any associates of the Managers or any related entities.
4. No amendment of the RHHP Trust Deed shall be made which would allow loans or payments to be made by the Trustee of the RHHP Trust to Coronet.

Issues not considered under this Ruling

This ruling is limited to the questions that you have asked. The tax treatment in relation to the Managers, the RHHP Trust or the Land Trust have not been considered.

In particular, this ruling does not consider any questions relating to whether income tax is payable by the trustee of the RHHP Trust on all or part of the net income of the RHHP Trust.

Relevant legislative provisions

A New Tax System (Goods and Services Tax) Act 1999 section 9-20
A New Tax System (Goods and Services Tax) Act 1999 subsection 9-20(1)
A New Tax System (Goods and Services Tax) Act 1999 paragraph 9-20(1)(a)
A New Tax System (Goods and Services Tax) Act 1999 subsection 9-20(2)
A New Tax System (Goods and Services Tax) Act 1999 section 23-10
Corporations Act 2001
Corporations Act 2001 section 761G
Income Tax Assessment Act 1936 Subdivision H of Division 3 of Part III
Income Tax Assessment Act 1936 section 82KL
Income Tax Assessment Act 1936 section 82KZL
Income Tax Assessment Act 1936 section 82KZMF
Income Tax Assessment Act 1936 section 170
Income Tax Assessment Act 1936 Pt IVA
Income Tax Assessment Act 1936 subsection 177A(1)
Income Tax Assessment Act 1936 section 177C
Income Tax Assessment Act 1936 subsection 177D(1)
Income Tax Assessment Act 1997 section 8-1
Income Tax Assessment Act 1997 section 8-5
Income Tax Assessment Act 1997 section 8-10
Income Tax Assessment Act 1997 section 12-5
Income Tax Assessment Act 1997 Division 35
Income Tax Assessment Act 1997 section 35-10
Income Tax Assessment Act 1997 subsection 35-10(2)

Income Tax Assessment Act 1997 subsection 35-10(2C)
Income Tax Assessment Act 1997 subsection 35-10(2E)
Income Tax Assessment Act 1997 section 35-30
Income Tax Assessment Act 1997 section 35-35
Income Tax Assessment Act 1997 section 35-40
Income Tax Assessment Act 1997 section 35-45
Income Tax Assessment Act 1997 subsection 35-55(1)
Income Tax Assessment Act 1997 paragraph 35-55(1)(b)
Income Tax Assessment Act 1997 paragraph 35-55(1)(c)
Income Tax Assessment Act 1997 Division 50
Income Tax Assessment Act 1997 section 50-1
Income Tax Assessment Act 1997 Division 394
Income Tax Assessment Act 1997 section 394-10
Income Tax Assessment Act 1997 subsection 394-10(1)
Income Tax Assessment Act 1997 paragraph 394-10(1)(a)
Income Tax Assessment Act 1997 paragraph 394-10(1)(b)
Income Tax Assessment Act 1997 paragraph 394-10(1)(c)
Income Tax Assessment Act 1997 paragraph 394-10(1)(d)
Income Tax Assessment Act 1997 paragraph 394-10(1)(e)
Income Tax Assessment Act 1997 paragraph 394-10(1)(f)
Income Tax Assessment Act 1997 subsection 394-10(2)
Income Tax Assessment Act 1997 subsection 394-10(4)
Income Tax Assessment Act 1997 subsection 394-10(5)
Income Tax Assessment Act 1997 subsection 394-10(5A)
Income Tax Assessment Act 1997 subsection 394-10(6)
Income Tax Assessment Act 1997 subsection 394-15(1)
Income Tax Assessment Act 1997 subsection 394-15(2)
Income Tax Assessment Act 1997 subsection 394-15(3)
Income Tax Assessment Act 1997 subsection 394-15(5)
Income Tax Assessment Act 1997 section 394-20
Income Tax Assessment Act 1997 section 394-25
Income Tax Assessment Act 1997 section 394-35
Income Tax Assessment Act 1997 subsection 394-35(1)
Income Tax Assessment Act 1997 subsection 394-35(2)
Income Tax Assessment Act 1997 subsection 394-35(3)
Income Tax Assessment Act 1997 subsection 394-35(4)
Income Tax Assessment Act 1997 subsection 394-35(5)
Income Tax Assessment Act 1997 subsection 394-35(6)
Income Tax Assessment Act 1997 subsection 394-35(7)
Income Tax Assessment Act 1997 subsection 394-35(8)
Income Tax Assessment Act 1997 section 394-40
Income Tax Assessment Act 1997 paragraph 394-40(d)
Income Tax Assessment Act 1997 section 394-45
Income Tax Assessment Act 1997 section 995-1
Tax Administration Act 1953 section 394-10 of Schedule 1

For more information

If you have any questions, please phone **13 28 69** between 8.00am and 5.00pm, Monday to Friday, and ask for Leanne Delves on extension **55274**, or call direct on **(03) 927 55274**.

When you phone us, please have the reference number **1051832105639** ready so we can quickly access your details.

Yours sincerely

Tim Dyce
Deputy Commissioner of Taxation

Per
(Ross Antoniadis)

Reasons for Decision

These reasons for decision accompany the *Notice of private ruling* for The Trustee for the Coronet Trust.

While these reasons are not part of the private ruling, we provide them to help you to understand how we reached our decision.

Question 1

Summary

The Project is a forestry managed investment scheme as defined in subsection 394-15(1) of the ITAA 1997⁴³.

Detailed reasoning

Subsection 394-15(1) states that:

A *scheme is a **forestry managed investment scheme** if the purpose of the scheme is for establishing and tending trees for felling in Australia.

The Project will qualify as a 'forestry managed investment scheme' because its purpose is to establish and tend *pinus radiata* trees for felling in Australia.

In return for payment of the Establishment Services Fees required under the Forestry Management Agreement, Coronet will, pursuant to subsection 394-15(3), hold a 'forestry interest' in that forestry managed investment scheme (i.e. a right to benefits produced by the Project, including a right to share in the Harvest Proceeds).

As Coronet will obtain the forestry interest from the Managers, and the payment of the Establishment Services Fees by Coronet to obtain the forestry interest will result in the establishment of the Trees, Coronet will hold its forestry interest as an 'initial participant' in the Project pursuant to subsection 394-15(5).

Note: Land Trust Units in the Land Trust will not form part of the forestry managed investment scheme for the purposes of subsection 394-15(1) because the Land Trust Unit subscription costs to be incurred by Coronet will not be concerned with establishing and tending trees for felling in Australia.

Question 2

Summary

Coronet will be carrying on an enterprise for the purposes of subsection 9-20(1) of the GST Act, subject to the exclusions listed in subsection 9-20(2) of the GST Act.

Detailed reasoning

Section 23-10 of the GST Act provides that an entity may be registered for GST if it is carrying on an enterprise.

The term 'enterprise' is defined in section 9-20 of the GST Act and includes an activity, or series of activities, done in the form of a business (paragraph 9-20(1)(a) of the GST Act). The use of the phrase 'in the form of' has been interpreted to indicate a wider meaning than the word 'business' in isolation.

⁴³ All legislative references are to the ITAA 1997 unless otherwise stated.

However, subsection 9-20(2) of the GST Act provides that the term 'enterprise' does not include an activity, or series of activities, done by an individual or partnership without a reasonable expectation of profit or gain.

Miscellaneous Taxation Ruling MT 2006/1⁴⁴ sets out the Commissioner's views on when an entity is carrying on an enterprise for the purposes of section 9-20 of the GST Act.

Application of the principles set out in MT 2006/1 to the Project leads to the conclusion that Coronet will be carrying on an enterprise for the purpose of section 9-20 of the GST Act where there is a reasonable expectation of profit or gain from their participation in the Project.

Question 3

Summary

If Coronet stays in the Project until it is completed and does not obtain finance other than the finance arrangement offered by ACL under the ACL Loan Agreement referred to in this ruling, Coronet will be considered to be carrying on a business of primary production for income tax purposes.

Detailed reasoning

The general indicators used by the courts in determining whether an entity is carrying on a business are set out in Taxation Ruling TR 97/11.⁴⁵

In relation to a managed investment scheme similar to this Project, the Full Federal Court in *Hance v Commissioner of Taxation* [2008] FCAFC 196 at [90] applied these principles to conclude that the participants in that scheme were carrying on a business of producing almonds.

Application of these principles to the Project leads to the conclusion that Coronet will be carrying on a business of primary production involving forestry activities if it stays in the Project until its completion and does not obtain finance to fund the Application Price other than under the terms of the ACL Loan Agreement offered by ACL, as described in this ruling.

Question 4

Summary

It is reasonable to expect that the 70% DFE Rule under section 394-35 will be satisfied on 30 June 2021 by the Project.

Detailed reasoning

The threshold test for Growers in the Project to be entitled to deductions under subsection 394-10(1) is the 70% DFE rule in paragraph 394-10(1)(c). Under that rule it must be reasonable to expect that on 30 June 2021 the amount of 'direct forestry expenditure' (as defined in section 394-45) under the scheme will be no less than 70% of the amount of payments under the scheme (subsection 394-35(1)).⁴⁶

Subsection 394-35(2) provides that the amount of direct forestry expenditure under the scheme is the amount of the net present value (on 30 June 2021) of all direct forestry expenditure under the

⁴⁴ *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number.*

⁴⁵ *Income Tax: am I carrying on a business of primary production?*

⁴⁶ Section 394-40 outlines the payments that are not included as payments under a forestry managed investment scheme.

scheme that the Managers, as the 'forestry managers'⁴⁷ of the Project, has paid or will pay under the scheme.

Subsection 394-35(3) states that the 'amount of payments under the scheme' is the amount of the net present value (on 30 June 2021) of all amounts that all current and future participants in the scheme have paid or will pay under the scheme.

The amounts referred to in subsection 394-35(2) and (3) are determined as at 30 June 2021 taking into account:

- the timing requirements in subsections 394-35(4) and 394-35(5);
- any amounts that can reasonably be expected to be recouped (subsection 394-35(6));
- the discount rate in subsection 394-35(7); and
- the market value rule in subsection 394-35(8) for the purposes of subsection 394-35(2).

Based on the information provided by ACL on 23 November 2020, the Commissioner has determined that the Project will satisfy the 70% DFE rule on 30 June 2021.

Question 5

Summary

Coronet will be entitled to a deduction for the GST exclusive portion (i.e. \$31,400 per Timberlot) of the Establishment Services Fees paid to the Managers under section 394-10.

Detailed reasoning

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

Subsection 394-10(1) provides:

You can deduct an amount if:

- (a) you hold a *forestry interest in a *forestry managed investment scheme; and
- (b) you pay the amount under the scheme; and
- (c) the scheme satisfies the *70% DFE rule (see section 394-35) on 30 June in the income year in which a *participant in the scheme first pays an amount under the scheme; and
- (d) you do not have day to day control over the operation of the scheme (whether or not you have the right to be consulted or give directions); and
- (e) at least one of these conditions is satisfied:
 - (i) there is more than one participant in the scheme;
 - (ii) the *forestry manager of the scheme, or an *associate of the forestry manager, manages, arranges or promotes similar schemes; and
- (f) the condition in subsection (4) is satisfied.

The requirements of paragraphs 394-10(1)(a) and (b) will be met as Coronet will hold a forestry interest in the Project⁴⁸ and will pay an amount under the Project. As outlined at question 4 paragraph 394-10(1)(c) is met. The requirement of paragraph 394-10(1)(d) will be met as it is clear from the Project Documents that Growers in the Project (including Coronet) will not have day-to-day control over the operation of the Project. The requirement of paragraph 394-10(1)(e) relating to

⁴⁷ Defined in subsection 394-15(2).

⁴⁸ Confirmed at question 1 of this ruling.

the number of Growers in the scheme and the Managers' role in other managed investment schemes will also be met.

To meet the requirement of paragraph 394-10(1)(f), all of the Trees intended to be established under the Project must be established within 18 months of the end of the income year in which an amount is first paid under the Project by a participant in the Project (i.e. within 18 months of 30 June 2021), per the condition in subsection 394-10(4). As part of the Establishment Services required to be delivered by the Managers in accordance with the terms of the Forestry Management Agreement, all the Trees required to be established under the Project will be planted on the Plantation Land at the average rate of 850 Trees per hectare by 31 December 2022.

Accordingly, subject to the qualifications addressed in question 7 of this ruling, the Establishment Services Fees (exclusive of GST) to be paid by Coronet to the Managers in relation to its forestry interests will satisfy all of the requirements of subsection 394-10(1). This amount (excluding the GST component⁴⁹) will be an allowable deduction in the income year in which it is paid (subsection 394-10(2) and section 394-20).⁵⁰

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

Question 6

Summary

Coronet will be entitled to a deduction under section 394-10 in the year of income during which insurance premiums, council rates and other statutory charges are paid out of the Sinking Fund.

Detailed reasoning

Subject to the qualifications addressed in question 7 of this ruling, insurance premiums, council rates and other statutory charges to be paid out of the Sinking Fund will similarly satisfy all the requirements of subsection 394-10(1).

A deduction for these amounts will not be available to Coronet until the Manager pays for them from the Sinking Fund (subsection 394-10(2) and section 394-20). The Managers will advise Coronet of the amounts paid from the Sinking Fund and its Grower's Proportion in relation to those amounts.

Question 7

Summary

Deductions previously allowed to Coronet under subsection 394-10(1) will be disallowed pursuant to paragraph 394-10(1)(f) and subsection 394-10(4) where the trees intended to be established in accordance with the Project have not all been established by 31 December 2022, or pursuant to subsection 394-10(5) where a CGT event happens to its forestry interest on or before 30 June 2025.

Detailed reasoning

Two situations may lead to a disallowance of deductions previously allowed to Coronet under subsection 394-10(1).

⁴⁹ Coronet cannot treat the GST component of the Establishment Services Fees as a payment under a forestry managed investment scheme, per paragraph 394-40(d).

⁵⁰ This requires cash to flow from Coronet, or from ACL on Coronet's behalf, to the Managers' bank account in the year in which the deduction is claimed.

The first of these situations will occur if the Managers fail to establish the Trees on the Plantation Land within 18 months of 30 June 2021 (as required by paragraph 394-10(1)(f) and subsection 394-10(4)). Where this occurs the Managers are required to notify the Commissioner within three months of the end of the 18 month period (section 394-10 of Schedule 1 to the *Taxation Administration Act 1953*).

The second situation where Coronet may have deductions disallowed is where a CGT event happens to its forestry interest within four years after 30 June of the income year in which it first paid an amount under the scheme, i.e. on or before 30 June 2025 (see subsection 394-10(5)).

For the purposes of giving effect to subsection 394-10(5), the Commissioner is able to amend the assessment of Coronet within two years after the relevant CGT event. The Commissioner's power to amend in these circumstances applies despite section 170 of the ITAA 1936 (subsection 394-10(6)).

Where a CGT event happens to the forestry interest of Coronet within four years after 30 June 2021, the market value of the forestry interest at the time of the CGT event, or any decrease in the market value of the forestry interest as a result of the CGT event, is still included in the assessable income of Coronet by section 394-25. The amount must be included in assessable income even where an amendment has disallowed, or may disallow, the deductions previously allowed under section 394-10.

However, subsection 394-10(5) will have no application where the CGT event happens because of circumstances outside Coronet's control and Coronet could not reasonably have foreseen the CGT event happening when they acquired the forestry interest (subsection 394-10(5A)).

Question 8

Summary

The Commissioner will not exercise the discretion in subsection 35-55(1) for Coronet.

Detailed reasoning

Based on information provided by ACL to the Commissioner on 23 November 2020, a Grower who is an individual and is accepted into the Project in the year ended 30 June 2021 and who carries on a business of forestry (alone or in partnership), is expected to incur losses from their participation in the Project which will be subject to Division 35. These losses will be subject to the loss deferral rule in section 35-10 unless an exception applies or, for each income year in which losses are incurred, the Commissioner exercises the discretion in subsection 35-55(1) on 30 June of that specific income year.

Where a Grower with income for Division 35 purposes of less than \$250,000 (that is, a Grower who satisfies the income requirement in subsection 35-10(2E)) incurs a loss in an income year ended 30 June 2021 to 30 June 2047 from carrying on their business activity in a way that is not materially different to the relevant facts and circumstances described in this ruling, the Commissioner will exercise the discretion for that year under paragraph 35-55(1)(b) on the basis that:

- it is because of its nature that the business activity of the Grower will not satisfy one of the four tests set out in section 35-30, 35-35, 35-40 or 35-45; and
- there is an objective expectation that within a period that is commercially viable for the forestry industry, the Grower's business activity will satisfy one of those tests or produce assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsections 35-10(2) and 35-10(2C)).

Where a Grower with income for Division 35 purposes of \$250,000 or more (that is, a Grower who does not satisfy the income requirement in subsection 35-10(2E)) incurs a loss in an income year ended 30 June 2021 to 30 June 2047 from carrying on their business activity in a way that is not materially different to the relevant facts and circumstances described in this ruling, the Commissioner will exercise the discretion for that year under paragraph 35-55(1)(c) on the basis that:

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

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

- taxable income for that year (ignoring any loss arising from participation in the Project or any other business activity, and ignoring any assessable FHSS released amount for that year);
- reportable fringe benefits total for that year;
- reportable superannuation contributions for that year; and
- total net investment losses for that year.

In each year in which the Commissioner's discretion is exercised in relation to the business carried on by a Grower, the Grower, who would otherwise be required to defer any loss arising from their participation in the Project under section 35-10 until a later income year, is able to offset that loss against their other assessable income.

As Division 35 cannot apply to Growers that do not carry on a business other than as individuals (alone or in partnership), the Commissioner will not exercise the discretion in subsection 35-55(1) for Coronet (a trust). Losses incurred by Coronet will therefore be subject to the loss deferral rule in section 35-10 and Coronet will not be able to offset the losses from the Project against other assessable income.

Question 9

Summary

Sections 82KZL to 82KZMF of the ITAA 1936 will not apply to affect the timing of amounts deductible to Coronet under section 394-10.

Detailed reasoning

The prepayment provisions contained Subdivision H of Division 3 of Part III of the ITAA 1936 affect the timing of deductions for certain prepaid expenditure. These provisions apply to certain expenditure incurred under an agreement in return for the doing of a thing under the agreement that will not be wholly done within the same year of income as the year in which the expenditure is incurred.

Subdivision H of Division 3 of Part III of the ITAA 1936 does not apply to affect the timing of deductions available under section 394-10, and therefore will not apply to affect the timing of amounts deductible to Coronet under section 394-10 in relation to the Project.

Question 10

Summary

The general anti-avoidance provisions under Part IVA of the ITAA36 will not apply to cancel any tax benefit obtained by Coronet in connection with its investment in the scheme (including the assumptions listed) described in this ruling.

Detailed reasoning

For Part IVA of the ITAA 1936 to apply, there must be a scheme (subsection 177A(1) of the ITAA 1936), a tax benefit (section 177C of the ITAA 1936) and a dominant purpose of entering into the scheme to obtain a tax benefit (subsection 177D(1) of the ITAA 1936).

Provided that the scheme (including the assumptions listed) entered into and carried out is as described in this ruling, it is accepted that Part IVA of the ITAA 1936 will not apply to cancel any tax benefit obtained by Coronet in connection with its investment in that scheme.