

25 July 2019

The Directors  
Rural Funds Management Limited  
Level 2, 2 King Street  
DEAKIN ACT 2600

Dear Directors

Tax summary – proposed merger

The following tax summary has been prepared at the request of the directors of Rural Funds Management Limited (RFM).

RFM is the responsible entity for each of RFM Almond Fund 2006 (AF06), RFM Almond Fund 2007 (AF07) and RFM Almond Fund 2008 (AF08) (collectively, the Schemes).

This summary has been prepared for inclusion in the product disclosure statement (PDS) to be issued by RFM on or about 25 July 2019 in respect of a proposed merger (Merger) of the Schemes into one entity, AF06 which, once merged, will be renamed the RFM Almond Fund (RAF).

### Scope

- 1 The following is a general summary of the potential Australian income tax and goods and services tax (GST) consequences for the participants in the Schemes who participate in the Merger. It should be used as a guide only and does not constitute professional legal or taxation advice as individual circumstances may differ.
- 2 The information contained in this summary is based on the *Income Tax Assessment Act 1936* (Cth) (ITAA36), *Income Tax Assessment Act 1997* (Cth) (ITAA97), *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (GST Act), the interpretation of the Australian Taxation Office (ATO) and the courts as at the date of the PDS. The application of relevant stamp duties legislation to the Merger is specifically excluded from this summary. However, as noted in Section 8.7 of the PDS to the extent that any duty is payable on the Merger, RFM will be responsible for payment.
- 3 This summary is given on the basis that, consistent with the information contained in Figure 3 of Section 1.3 of the PDS, the only asset that is being disposed of by participants with a positive value is their trading stock of harvested almonds.
- 4 Taxation laws can change at any time, which may have adverse consequences for participants. All participants must obtain their own taxation and financial advice that is relevant to their particular circumstances.

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- 5 It is not intended to be an authoritative or complete statement of the law applicable to the particular circumstances of every participant.
- 6 This summary only considers the Australian taxation position. Participants who are resident of, or subject to taxation in, other jurisdictions must obtain independent professional advice on the taxation consequences of the Merger in that particular jurisdiction.
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#### Background

- 9 This summary adopts and relies upon the background to the Merger outlined in Section 1.2 of the PDS.
- 10 Specifically, under the terms of the Schemes that were established in 2006, 2007 and 2008, the participants in the Schemes (Growers) entered into an arrangement with the relevant responsible entity (currently RFM), which entitled the Growers to carry on the business of commercial growing, cultivation and harvesting of almonds for sale.
- 11 Annually, the Growers are required to pay management fees, licence fees and operating costs to RFM (Fees).

#### Proposed Merger

- 12 As outlined in Section 1.3 of the PDS, it is proposed that the Schemes be merged into AF06 to form one entity, the RAF. The RAF will be a unit trust.
- 13 If it is approved, the Merger will require:
  - (a) Growers in AF06 to convert their Lots into units (Units);
  - (b) Growers in AF07 and AF08 to exchange their Lots for Units in RAF;
  - (c) Growers in all three Schemes to transfer their interest in unsold, harvested almonds to RAF; and
  - (d) RAF to assume specific debts owing by Growers to RFM for Fees.

#### Income tax and capital gains tax consequences for Growers of the Merger

- 14 The Merger will result in:
  - (a) Growers in AF06 cancelling or converting their rights and interests in the Lots; and
  - (b) Growers in AF07 and AF08 disposing of their rights and interest in the Lots under the existing Schemes; and
  - (c) Growers disposing of harvested but as yet unsold almonds, in return for:
    - (i) Units in RAF; and

- (ii) RAF assuming responsibility for payment of debts owing by Growers to RFM for Fees. (Growers' Debts).

*Capital gains tax (CGT)*

- 15 There are separate capital gains taxing events occurring for each Grower, namely:
  - (a) the disposal or cancellation of any residual assets or other rights under the Schemes, particularly contractual rights; and
  - (b) a disposal of the harvested almonds.
- 16 Any capital gain or capital loss arising in respect of the disposal of the harvested almonds will be disregarded and instead taxed under the trading stock rules, discussed further below.
- 17 The conversion of the AF06 Lots into Units in RAF will result in a cancellation of the Grower's interest in AF06. The cancellation of a CGT asset is a CGT event. When AF07 and AF08 Growers dispose of the Lots to RAF, a CGT event will occur.
- 18 The amount of the capital proceeds from a CGT event is generally the sum of the money received or receivable and the market value, worked out as at the time of the event, of any other property received or receivable as a result of the CGT event happening.
- 19 However, where a payment is received in connection with a transaction that relates to one CGT event and something else, the capital proceeds from the CGT event are so much of the payment as is reasonably attributable to the CGT event.
- 20 In the present circumstances, the consideration that the Growers will receive is the Units and RAF assuming the Growers' Debts.
- 21 RFM considers and we have assumed, as set out in Figure 5, Section 1.3 of the PDS, the market value of the Lots as at the date of the Merger (excluding the value of harvested almonds) is nil.
- 22 As a result, it is reasonable to attribute none of the consideration received by the Growers as capital proceeds for the disposal or cancellation of their interests in AF06, AF07 or AF08. Instead, the consideration will be attributed to the value of the harvested almonds.
- 23 There are no CGT consequences arising from a particular CGT event if neither a capital gain nor a capital loss arise.
- 24 For those Growers with a reduced cost base, a capital loss may arise. However, costs for which deductions have already been claimed cannot be included in a Grower's reduced cost base calculation.
- 25 For Growers that acquired their interests upon establishment of the Schemes, in accordance with the position set out in the Commissioner's Product Rulings applicable at the time (originally Product Rulings PR 2006/24, PR2006/25, PR 2007/34 and PR 2007/102), all acquisition costs were generally deductible as and when incurred with the implication that they would not form the part of the reduced cost base. In the absence of such a cost base, no capital loss will arise.

*Income tax – trading stock provisions*

- 26 The sale of the harvested almonds into RAF will be a disposal of trading stock. This will be a disposal under the Merger and therefore outside the ordinary course of the Growers' businesses.
- 27 The Growers will be required to account for the market value of the harvested almonds (as at the date of disposal) as assessable income. Growers that account for trading stock for taxation purposes will no longer hold trading stock.

- 28 The value of their trading stock held will decline by the opening balance of their stock, and should have a deduction of that decline in the current tax year. Where growers do not have an opening tax value for trading stock, including because they were eligible to apply the 'simplified taxation system' of Division 328 of the ITAA 97, and the estimated change in the tax value of stock has been less than \$5000 for each prior year, no additional deductions or taxation adjustments are required.
- 29 Per Figure 11 of the PDS, RFM has determined that they expect the value of harvested almonds of Growers will be:
- (a) for Growers participating in AF06 - \$4,165 per Lot;
  - (b) for Grower's participating in AF07 - \$4,122 per Lot; and
  - (c) for Grower's participating in AF08 - \$3,864 per Lot.
- 30 The income derived by Growers from the sale of harvested almonds should be regarded as from the Growers' business activity. Growers who are individuals or partnerships with deferred losses under the 'non-commercial business activity' rules in Division 35 ITAA97 may be entitled to deduct those deferred amounts against the income from the disposal of the harvested almonds, subject to satisfaction of the particular requirements applicable to individual Growers.
- 31 Application of those rules to individual Growers' is dependent on their individual tax profile in the current and prior years and thus outside the scope of this summary. Growers should obtain their own advice in order to determine whether they are applicable to their circumstances.

#### Taxation of RAF

- 32 It is expected that RAF will be a public trading trust for income tax purposes as defined in Division 6C ITAA36. Public trading trusts are taxed as companies and any tax paid by the trustee gives rise to franking credits that can be distributed to unitholders under the imputation system.
- 33 This means that RAF:
- (a) will pay income tax on any profit derived during the income year at the corporate income tax rate; and
  - (b) distributions of profit to unitholders may be taxed to unitholders as if they were a dividend(which may be franked).
- 34 Any deemed dividends and franking credits received from RAF should be included in the assessable income of the unitholder. Where the unitholder is a resident individual or complying superannuation fund, and has excess franking credits available for the income year, those excess franking credits may be refunded to the unitholder.
- 35 Corporate unitholders are not eligible to receive a refund of excess franking credits, however they may be entitled to convert any excess into a loss that may be used to offset income earned in future years (subject to satisfaction of the loss utilisation rules).
- 36 It is noted that unitholders are generally required to have held their units 'at risk' for 45 days in order to be eligible for the franking benefits outlined above. Advice relevant to individual unitholders' circumstances must be obtained to determine eligibility.

#### Taxation on future disposal of Units in RAF

- 37 The cost base of the Units received by the Growers will be the value of the harvested almonds and residual value of the rights and interests in AF06, AF07 and AF08, less the value of the liabilities or obligations assumed by RAF.

- 38 If a Grower sells or transfers their units in RAF after the Merger, this will constitute a disposal for capital gains tax purposes. Where a Grower holds their units on capital account, any capital gain or loss arising on a disposal will be subject to the CGT rules.
- 39 Each Grower should calculate their capital gain or loss according to their own particular facts and circumstances. Proceeds on disposal may include a component of taxable income/net taxable income.
- 40 In calculating the taxable amount of a capital gain, a discount of 50% for Australian resident individuals and trusts (conditions apply) or 33.33% for complying Australian superannuation funds may be allowed, where the units in RAF have been held for 12 months or more. No CGT discount is available for corporate Growers.
- 41 Any capital loss arising from the disposal of the Units may be used to offset other capital gains the Grower may have derived. Net capital losses may be carried forward to offset against capital gains of subsequent years but may not be offset against a Grower's ordinary income.

Goods and Services Tax (GST)

- 42 This section of the tax summary is only applicable to those Growers registered or required to be registered for GST, for example, as a result in participating in the Schemes or the Merger.

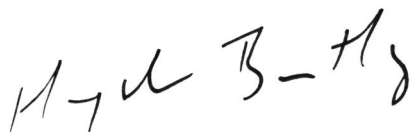
*Supply of Almonds to RAF*

- 43 Growers will make a supply of raw harvested almonds to RAF.
- 44 A supply of food is GST free. The sale of harvested raw almonds will be GST-free as they are food for human consumption that are not otherwise specified as being subject to GST in the GST Act.
- 45 On our understanding of the circumstances of the sale of the raw almonds into RAF, none of the taxable categories under the GST Act will apply.
- 46 Therefore no GST will be payable by the Growers on the supply of the raw almonds.
- 47 For the reasons outlined in paragraphs 21 and 22, it is reasonable to attribute none of the consideration received as relating to the disposal or cancellation of the balances of Growers interests in AF06, AF07 or AF08. Instead, the consideration should be solely attributed to the value of the harvested almonds.

*GST on costs*

- 48 If a Grower has separately incurred their own advisory or other costs in respect of entering into the Merger, they should also seek advice on their ability to claim GST input tax credits on any GST component on those costs.

Yours sincerely



Hayden Bentley  
Legal Practitioner Director