



Draft Taxation Determination

Income tax: does a change of Responsible Entity of a registered agricultural managed investment scheme affect the tax outcomes for participants if the arrangement continues to be implemented in accordance with the relevant product ruling?

❶ This publication provides you with the following level of protection:

This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way in which a relevant taxation provision applies, or would apply to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

You can rely on this publication (excluding appendices) to provide you with protection from interest and penalties in the following way. If a statement turns out to be incorrect and you underpay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the underpayment provided you reasonably relied on the publication in good faith. However, even if you don't have to pay a penalty or interest, you will have to pay the correct amount of tax provided the time limits under the law allow it.

Ruling

1. No. Where the managed investment scheme (MIS) continues to be carried out in accordance with the terms of the relevant product ruling, including under the management of an administrator, receiver or new Responsible Entity (RE), the ruling will continue to apply. That is, the Commissioner continues to be bound by the ruling and a participant will continue to be able to rely on the ruling (section 357-60 of Schedule 1 of the *Taxation Administration Act 1953*).
2. However, where any change results in there being a material difference in the implementation of the scheme, the participant will not be able to rely on the product ruling for the scheme.

TD 2009/D9

Example

3. *Tane invested in a MIS in 2007, and claimed deductions according to the terms of the relevant product ruling. In 2009, due to the insolvency of the former RE, a new RE was appointed on terms which included a variation to the on going charges to be levied on investors under the management agreement. After reconsidering the application of section 8-1 and Division 35 of the Income Tax Assessment Act 1997, the Commissioner concluded that the change did not constitute a material difference, and issued an Addendum to the original product ruling in confirmation. Accordingly, Tane can continue to claim deductions for ongoing charges, in accordance with the Addendum.*

Class of persons

4. This draft Determination applies to participants in schemes that are either subject to a current product ruling, or were subject to a product ruling which has been withdrawn with effect from immediately before any material difference occurred.

Date of effect

5. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 to 77 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

30 September 2009

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's preliminary view has been reached. It does not form part of the proposed binding public ruling.*

Explanation

6. The appointment of a new RE, an administrator or receiver does not, of itself, result in the implementation of a scheme in a materially different way to that described in the product ruling. However, if the appointment of the new RE also results in a change in the activities/work conducted under the various agreements that make up the MIS, then the appointment of the new RE may result in there being a material difference to the scheme ruled on in the relevant product ruling.

7. A difference is material if it results in a tax outcome different to that set out in the product ruling (see paragraph 19 of PR 2007/71).

8. Where there is a material difference in the scheme, the product ruling will be withdrawn. The consequences of a product ruling being withdrawn will depend on the circumstances under which the material difference arises and the time when it occurred. This will be explained in any notice of withdrawal. Where the difference is not material, an Addendum to the Product ruling will be issued to confirm the situation.

9. Where a withdrawal occurs, the ruling may be taken to have never applied because the relevant arrangement never came into existence. Where the withdrawal is such that the ruling is taken to never have applied, entities participating in the scheme are not able to rely on the ruling.

10. Alternatively, where the arrangement commences but subsequently materially changes from the ruled scheme, the withdrawal may take effect from immediately before the time the material difference occurred. This may enable participants to be able to rely on the ruling in relation to deductions already incurred and claimed.

Appendix 2 – Your comments

11. You are invited to comment on this draft Determination. Please forward your comments to the contact officer by the due date.

12. A compendium of comments is also prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- publish on the Tax Office website at www.ato.gov.au.

Please advise if you do not want your comments included in the edited version of the compendium.

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; PR 2007/71; TD 2009/D10;
TD 2009/D11

Subject references:

- advance expenditure
- advance expenses and payments
- afforestation
- afforestation expenses
- binding public rulings
- eligible service period

- forest operations
- forestry
- managed investment scheme
- prepayments
- primary production
- product rulings
- public rulings
- responsible entity

Legislative references:

- ITAA 1997 8-1
- ITAA 1997 Div 35
- TAA 1953 Sch 1 357-60

ATO references

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ATOlaw topic: Income Tax ~~ Administration ~~ public rulings
Income Tax ~~ Deductions ~~ prepayments
Income Tax ~~ Deductions ~~ primary production expenses
Income Tax ~~ Tax integrity measures ~~ schemes