



Product Ruling

Income tax: AgriWealth 2012 Softwood Timber Project

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

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant 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.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

No guarantee of commercial success

The Commissioner **does not** sanction or guarantee this product. Further, the Commissioner gives no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. The Commissioner recommends a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out in the **Ruling** part of this document are available, **provided that** the scheme is carried out in accordance with the information we have been given, and have described below in the **Scheme** part of this document. If the scheme is not carried out as described, participants lose the protection of this Product Ruling.

Terms of use of this Product Ruling

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

What this Ruling is about

1. This Product Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified in the Ruling section (below) apply to the defined class of entities who take part in the scheme to which this Ruling relates. In this Product Ruling this scheme is referred to as the scheme, the AgriWealth 2012 Softwood Timber Project, or simply as 'the Project'. This Product Ruling does not rule on the tax consequences of investing in the Land Trust described in the Information Memorandum issued for the scheme to which this Ruling relates.
2. All legislative references in this Product Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated. Where used in this Product Ruling, the word 'associate' has the meaning given in section 318 of the *Income Tax Assessment Act 1936* (ITAA 1936). In this Product Ruling, terms defined in the Project agreements have been capitalised.

Class of entities

3. This part of the Product Ruling specifies which entities:
 - are subject to the taxation obligations; and
 - can rely on the taxation benefits;set out in the Ruling section of this Product Ruling.
4. The members of the class of entities who are subject to those taxation obligations and who can rely on those taxation benefits are referred to in this Product Ruling as Growers.
5. Growers are those entities that:
 - meet the definition of 'initial participant' in subsection 394-15(5); and
 - are accepted to take part in the scheme specified below on or after the date this Product Ruling is made.
6. A Grower will have executed the relevant Project Agreements set out in paragraph 43 of this Ruling on or before 30 June 2012, except the Timberlot Agreement which must be executed on or before 30 September 2013, and will hold a 'forestry interest' in the Project. In this Ruling, each of these Growers will be wholesale clients for the purpose of the *Corporations Act 2001*.
7. The class of entities who can rely on this Product Ruling does **not** include:
 - Entities who are accepted into this Project before the date of this Ruling or after 30 June 2012;

- Entities who participate in the scheme through offers made other than through the Information Memorandum, or who enter into an undisclosed arrangement with the promoter or a promoter associate, or an independent adviser that is interdependent with scheme obligations and/or scheme benefits (which may include tax benefits or harvest returns) in any way;
- Entities whose Application Price, including all loan monies, is not paid in full to AgriWealth Capital Limited by 30 June 2012, either by the Grower, and/or on the Grower's behalf by a lending institution; or
- Entities who enter into finance arrangements with AgriWealth Capital Limited other than those finance arrangements described at paragraphs 89 to 98 of this Ruling.

Superannuation Industry (Supervision) Act 1993

8. This Product Ruling does not address the provisions of the *Superannuation Industry (Supervision) Act 1993* (SISA 1993). The Commissioner gives no assurance that the product is an appropriate investment for a superannuation fund. The trustees of superannuation funds are advised that no consideration has been given in this Product Ruling as to whether investment in this product may contravene the provisions of SISA 1993.

Qualifications

9. The class of entities defined in this Product Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 43 to 98 of this Ruling.

10. If the scheme actually carried out is materially different from the scheme that is described in this Product Ruling, then:

- this Product Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Product Ruling may be withdrawn or modified.

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Date of effect

12. This Product Ruling applies prospectively from 9 May 2012, the date it is published. It therefore applies only to the specified class of entities that enter into the scheme from 9 May 2012 until 30 June 2012 being the closing date for entry into the scheme. This Product Ruling provides advice on the availability of tax benefits to the specified class of entities for all income years up to the income year in which the scheme is terminated in accordance with the Constitution.

13. However the Product Ruling only applies to the extent that there is no change in the scheme or in the entity's involvement in the scheme.

Changes in the law

14. Although this Product Ruling deals with the income tax laws enacted at the time it was issued, later amendments may impact on this Product Ruling. Any such changes will take precedence over the application of this Product Ruling and, to that extent, this Product Ruling will have no effect.

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

Note to promoters and advisers

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

Goods and services tax

17. All amounts and percentages referred to in this Product Ruling exclude the Goods and Services Tax (GST), unless otherwise specified. The transactions in respect of this scheme may, where appropriate, have GST implications.

Ruling

Structure of the Project

18. The AgriWealth 2012 Softwood Timber Project is a 'forestry managed investment scheme' as defined in subsection 394-15(1). Its purpose is the establishment and tending of Radiata pine trees for felling in Australia. However, the Put Option, the associated Put Option Fee and investment in Units in the associated Land Trust do not form part of the scheme to which subsection 394-15(1) applies.

19. Subject to the stated qualifications, this part of the Product Ruling sets out in detail the taxation obligations and benefits for an 'initial participant'¹ in the defined class of entities (see paragraphs 3 to 7 of this Ruling) who is accepted to participate in the 'forestry managed investment scheme' described at paragraphs 43 to 98 of this Ruling on or after 9 May 2012 and on or before 30 June 2012.

20. An entity that takes part in the Project as a 'subsequent participant'² is not covered by this Product Ruling but may request a private ruling on their participation in the Project. A 'subsequent participant' is an entity that does not meet the definition of 'initial participant' in subsection 394-15(5).

Carrying on a business

21. A Grower (as described in paragraphs 3 to 7 of this Ruling) in the Project is not considered to be carrying on a business of primary production for income tax purposes.

¹ See subsection 394-15(5).

² See section 394-30.

The '70% DFE rule' and the establishment of the trees***Section 394-35 and subsection 394-10(4)***

22. The taxation obligations and benefits set out below have been determined using the information provided to the Commissioner by AgriWealth Capital Limited (the Manager). The Commissioner has decided that on 30 June 2012 it will be reasonable to expect that the '70% DFE rule'³ will be satisfied. The Australian Taxation Office (ATO) may undertake review activities during the term of the Project to verify the information relied on for the purposes of the '70% DFE rule'.

23. The Ruling will only apply if the Manager establishes all of the trees that were intended to be established under the Project within 18 months of the end of the income year in which the first 'participant' in the Project is accepted.⁴ For this Project the trees must be established by 31 December 2013.

24. In the context of this Project, the trees will be established when they are planted on the land acquired for the purposes of the Project at the average rate of 850 stems per hectare. The Manager is required by section 394-10 of Schedule 1 of the *Taxation Administration Act 1953* (TAA) to notify the ATO if the trees are not established by 31 December 2013.

Allowable deductions***Sections 8-5, 394-10 and 394-20***

25. A Grower in the Project can claim deductions for the amount shown in the Table below that is paid to the Manager (sections 8-5 and 394-10).

26. The deductibility of this amount remains subject to:

- all the trees in the project being established by 31 December 2013 (see paragraph 112); and
- the requirement that a CGT event⁵ does not happen in relation to the Grower's 'forestry interest' before 1 July 2016 (see paragraphs 30 to 33 of this Ruling).

27. The amount is deductible in the income year in which it is paid, or is paid on behalf of the Grower (subsection 394-10(2) and section 394-20). This requires cash to flow from the Grower, or from another entity on the Grower's behalf, to the Manager's bank account in the year in which the deduction is claimed. Any form of payment that does not involve the movement of cash into the Manager's bank account will not qualify for a deduction under subsection 394-10(2).

³ The '70% DFE rule' is set out in section 394-35.

⁴ See subsection 394-10(4).

⁵ Defined in section 995-1.

28. Where a Grower does not fully pay an amount, or it is not fully paid on their behalf in an income year, it is deductible only to the extent to which it has been paid. Any unpaid amount is then deductible in the year or years in which it is actually paid.

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

Fee	Amount	Year deductible
Establishment Services Fee	\$30,100	30 June 2012
Council rates and other applicable statutory charges	Determined annually	When paid out of the Sinking Fund

Note: A deduction will not be available to Growers until the Manager pays for the council rates and other applicable statutory charges from the Sinking Fund. The Manager will advise Growers of the amount paid from the fund and the Grower's Proportion.

'CGT event' within 4 years for Growers who are 'initial participants'

Subsections 394-10(5), 394-10(5A) and 394-10(6)

30. Deductions for the Establishment Services Fee are not allowable where a 'CGT event' happens in relation to the 'forestry interest' of a Grower before 1 July 2016 (subsection 394-10 (5)).

31. Where deductions for these amounts have already been claimed by a Grower, the Commissioner may amend their assessment at any time within two years of the 'CGT event' happening (subsection 394-10(6) of the ITAA 1997). The Commissioner's power to amend in these circumstances applies despite section 170 of the ITAA 1936.

32. Growers whose deductions are disallowed because of subsection 394-10(5) are still required to include in assessable income the market value of the 'forestry interest' at the time of the 'CGT event' or the decrease in the market value of the 'forestry interest' as a result of the 'CGT event'.

33. However, deductions will not be affected where the 'CGT event' happens because of circumstances outside the Grower's control and the Grower could not reasonably have foreseen the 'CGT event' happening when they acquired the 'forestry interest' (subsection 394-10(5A)).

Put Option Fee

34. The Put Option Fee is capital in nature and not deductible under section 8-1 or section 394-10. The Put Option Fee forms part of the first element of the cost base for CGT purposes (subsection 110-25(2)). The Put Option Fee does not form part of the 'forestry managed investment scheme' for the purposes of subsection 394-15(1).

Assessable Recoupment

Section 20-20

35. Where a Grower is entitled to and receives a rebate, Referral Fee or similar payment from the Manager, Distributor, or any other entity, or directs the payment of such an amount to be made to another entity, this amount will be an assessable recoupment under subsection 20-20(2) and be included in a Grower's assessable income in the year they receive it.

Assessable income, 'CGT events' and the 'forestry interests' of Growers who are 'initial participants'

Sections 6-10, 17-5 and 394-25

36. Where a 'CGT event' (other than a 'CGT event' in respect of a thinning⁶ – see paragraph 40 of this Ruling) happens to a 'forestry interest' held by a Grower in this Project the market value of the 'forestry interest', or the decrease in the market value of the 'forestry interest', is included in the assessable income of the Grower (sections 6-10 and 394-25).

37. The relevant amount is included in the Grower's assessable income in the income year in which the 'CGT event' happens (subsection 394-25(2)).

38. 'CGT events' for these purposes include those relating to:

- a **clear-fell harvest of all or part of the trees** grown under the Project;
- the **sale, or any other disposal** of all or part of the 'forestry interest' held by the Grower; or
- any other 'CGT event' that results in a reduction of the market value of the 'forestry interest' held by the Grower.

⁶ A thinning of the trees includes a selective harvest of immature trees to facilitate better outcomes at harvest. A thinning differs from a clear fell of a percentage of mature trees which may occur over two or more income years.

Exercise of Put Option by the Grower

39. The exercise of the 100% Put Option is a 'CGT event' that will constitute the sale of the Grower's 'forestry interest' to the Manager. The Put Option grants the Grower an option to require the Manager to purchase the whole of the Put Option Property from the Grower for the Sale Consideration. The Manager will pay the market value of the Put Option Property ('forestry interest') at the time the Put Option is exercised, up to a maximum of \$14,000 per 'forestry interest'. If the Grower exercises the Put Option the Grower will include the market value of their 'forestry interest' paid by the Manager in their assessable income, including where the 'forestry interest' has a market value in excess of \$14,000 (section 6-10 and section 394-25).

Amounts received by Growers for Thinning the Project Trees, Carbon Sequestration Rights and Salinity Credits, Insurance proceeds and Sinking Fund interest**Section 6-5**

40. The trees grown in this Project will be thinned twice during the term of the Project, at around age 12 and 20 years. An amount received by a Grower in respect of a thinning of the trees is not received as a result of a 'CGT event' and is not otherwise assessable under Division 394. The amount is a distribution of ordinary income that arises as an incident of a Grower holding a 'forestry interest' in the Project. Growers should include the amounts received for thinning the trees in their assessable income in the income year in which the amounts are derived (section 6-5).

41. An amount received by a Grower in respect of sales of Carbon Sequestration Rights and Salinity Credits, insurance proceeds or interest from the Sinking Fund also constitutes a distribution of ordinary income that arises as an incident of the Grower holding an interest in the Project. Growers should include such amounts received in their assessable income in the income year in which those amounts are derived (section 6-5).

Non-commercial losses and anti-avoidance provisions***Division 35 of the ITAA 1997 and 82KL and Part IVA of the ITAA 1936***

42. Where a Grower is accepted to participate in the Project set out at paragraphs 43 to 98 of this Ruling, the following provisions of the ITAA 1936 or the ITAA 1997 have application as indicated:

- losses arising from participation in the Project are not within the scope of Division 35 of the ITAA 1997;
- section 82KL of the ITAA 1936 does not apply to deny the deductions otherwise allowable; and

- the relevant provisions in Part IVA of the ITAA 1936 will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

Scheme

43. The scheme that is the subject of this Ruling is specified below. This scheme incorporates the following:

- Application for a Product Ruling as constituted by documents provided on:
 - 6 July 2011 and 30 August 2011 and additional correspondence and emails dated 11 July 2011, 13 July 2011, 14 July 2011, 26 July 2011, 1 August 2011, 15 August 2011, 16 August 2011, 18 August 2011, 30 August 2011, 16 September 2011, 28 September 2011, 18 October 2011, 19 October 2011, 20 October 2011, 21 October 2011, 28 October 2011, 31 October 2011, 2 November 2011, 18 November 2011, 9 December 2011
 - Revised Documents received on 12 December 2011 and 14 December 2011, and additional correspondence and emails dated 22 December 2011, 31 December 2011, 13 January 2012, 16 January 2012, 13 February 2012, 15 February 2012, 16 February 2012 and 2 March 2012,
 - Revised Documents received on 27 February 2012 and emails dated 28 February 2012, 29 February 2012 and 2 March 2012; and
 - Revised Documents received on 4 March 2012, 8 March 2012, 4 April and 15 April 2012 and emails dated 22 March 2012, 28 March 2012, 30 March 2012, and 3 April 2012.
- Information Memorandum of the AgriWealth 2012 Softwood Timber Project, received on 4 April 2012;
- Tree Constitution of the AgriWealth 2012 Softwood Timber Project, received on 15 April 2012;
- **Forestry Management Agreement** of the AgriWealth 2012 Softwood Timber Project between AgriWealth Capital Limited (Manager) (ACL) and the Grower, received on 27 February 2012;

- AgriWealth Management Agreement of the AgriWealth 2012 Softwood Timber Project between the Manager and AgriWealth Pty Limited (AgriWealth), received on 27 February 2012;
- Forestry Management Contract of the AgriWealth 2012 Softwood Timber Project between AgriWealth and the Independent Forestry Contractors received on 27 February 2012;
- **Timberlot Agreement** of the AgriWealth 2012 Softwood Timber Project between the Grantor, the Manager and the Grower, received on 27 February 2012;
- **Put Option Deed** of the AgriWealth 2012 Softwood Timber Project between the Manager and the Grower, received on 27 February 2012;
- **Guarantee (in relation to Put Option Deed)** of the AgriWealth 2012 Softwood Timber Project between AgriWealth and the Grower, received on 27 February 2012;
- Roding Harvest and Haulage Trust of the AgriWealth 2012 Softwood Timber Project between the Settlor and the Trustee, received on 27 February 2012;
- **Deed of Novation** of the AgriWealth 2012 Softwood Timber Project between AgriWealth and the Trustee of the Roding Harvest and Haulage Trust and Growers (Continuing parties), received on 4 March 2012;
- Distribution Agreement in relation to the AgriWealth 2012 Softwood Timber Project between the Manager and the Distributor, received on 6 July 2011;
- Land Trust Constitution of the Agriwealth 2012 Softwood Timber Project between the Trustee and Agriwealth Pty Limited (Agriwealth), received on 27 February 2012;
- **Loan Agreement** in relation to the AgriWealth 2012 Softwood Timber Project between the Manager, the Grower and the Guarantor, received on 27 February 2012; and
- Deed of Definitions and Interpretations of the AgriWealth 2012 Softwood Timber Project, received on 4 April 2012.

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

44. All Australian Securities and Investments Commission (ASIC) requirements are, or will be, complied with for the term of the agreements.

45. In accordance with the above documents, a Grower who participates in the scheme must be a wholesale client. **This Ruling does not apply** unless the Grower is a wholesale client as defined in section 761G of the *Corporations Act*. The meaning of wholesale client is explained in the Information Memorandum for this Project.

46. The documents highlighted are those that a Grower may enter into. For the purposes of describing the scheme to which this Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower, or any associate of a Grower, will be a party to, which are a part of the scheme. The effect of these agreements is summarised as follows.

Overview

47. The main features of the AgriWealth 2012 Softwood Timber Project are as follows:

Location	Tumut/Tumbarumba/Hume and Oberon/Bathurst/Braidwood regions of NSW and nearby Victorian regions.
Species of trees to be planted under the scheme	Radiata pine (<i>pinus radiata</i>)
Term of the Project	26 years
Date all trees are due to be planted on scheme land	31 December 2013
Number of trees per hectare	Minimum of 850
Number of hectares offered for cultivation	Initially, up to 1,000, subject to the Manager deciding to either increase or decrease the Project size
Size of each 'forestry interest'	0.5 hectares
Minimum allocation of 'forestry interests' per Grower	One
Initial cost	\$30,100 Establishment Services Fee \$92 Sinking Fund and further amounts at thinning
Other costs	• Roading, Harvest and Haulage fees in excess of the Roading, Harvest and Haulage Contribution Payments made by the Manager at the time of Thinnings and Final Harvest; • Insurance after the initial 4 years of the Project; and • Rehabilitation costs in excess of those included at A-20 Schedule 4 of Definitions and Interpretation Deeds

48. The Project will be an unregistered managed investment scheme under the Corporations Act. AgriWealth Capital Limited will be the Manager for the Project.

49. The Project will involve the establishment and tending of *pinus radiata* trees for felling in Australia over a 26 year period. However, the Project can be extended up to 31 years.

50. An offer to participate in the Project will be made through an Information Memorandum (IM). The offer under the IM is initially for up to 1,000 hectares, which corresponds to 2,000 Timberlots. However, the Manager may increase or decrease the size of the Project. **The IM for the Project also contains an offer to invest in Units in a Land Trust. This Ruling does not address the tax consequences of an investment in the Land Trust.**

51. An entity that participates in the Project as a Grower will do so by acquiring a Timberlot in the Project on or before 30 September 2013, which will consist of a minimum of one Timberlot of 0.5 hectares in size.

52. To participate in the Project as a Grower each applicant must complete the 2012 Application Form and pay the Application Price in full. Under the Constitution, the Manager is appointed as agent, attorney and/or trustee in relation to the Project. Upon acceptance of an Application, the Manager will be authorised to execute a Timberlot Agreement, Put Option Deed, Put Option Deed Guarantee, Deed of Novation and Forestry Management Agreement on behalf of the Grower.

53. For the purposes of this Ruling, Applicants who are accepted to participate in the Project and who execute the Put Option Deed, Put Option Deed Guarantee, Deed of Novation and Forestry Management Agreement on or before 30 June 2012 and the Timberlot Agreement on or before 30 September 2013 will become Growers in the Project.

54. The Manager currently owns cleared land which is available for the Project. Additional land may be required for the Project which must be acquired by the Manager by 30 September 2013. The Project Land will be divided into 0.5 hectare lots and licensed to the Growers accepted in the Project via the Timberlot Agreements.

Tree Constitution

55. The Constitution establishes the Project and operates as a deed binding all Growers and the Manager (clause 1.3). The Constitution sets out the terms and conditions under which the Manager agrees to act in that capacity and thereby manage the Project. Upon acceptance into the Project, Growers are bound by the Constitution by virtue of their participation in the Project.

56. In order to acquire an interest in the Project, an entity must make an application for Timberlots on the form attached to the Information Memorandum (clause 2.1). Among other things, the application is to be signed by or on behalf of the Applicant, lodged at the registered office of the Manager and accompanied by payment of the full amount of the Application Price in a form acceptable to the Manager (clause 2.2).

57. Until the Grower's Application is accepted, the Manager holds the Application Price in the Application bank account in its own name. (clause 3.4).

58. Once the Manager has accepted the Application and each of the Project Documents have been executed the Application Price will then be held by the Manager on its own behalf (clauses 3.4.2 and 4.2). The Sinking Fund Payments will be transferred into a separate bank account in the name of the Manager who will act for and on behalf of the Growers (clauses 3.4.2 and 4.2).

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

- the nature of Grower's interests in the Project (clause 1.2);
- other amounts payable by Growers under the Agreements (clause 7);
- the keeping of an up-to-date register of all deposits (clause 9) and an up-to-date register of all Growers (clause 17);
- the powers, duties and obligations of the Manager (clause 10);
- change of Manager (clause 13);
- the Manager's entitlement to fees and expenses (clause 23);
- termination of the Project (clauses 25 and 26); and
- distribution of the Harvest Proceeds (clause 26.5).

Forestry Management Agreement

60. Under the Forestry Management Agreement the Grower engages the Manager as an independent contractor to perform the Establishment Services (clause 1.1) and acknowledges that this engagement is not exclusive to the Project (clause 1.2).

61. The Establishment Services to be provided by the Manager (clause 4) are listed in Item A of Schedule 4 of the Deed of Definitions and Interpretations. Services which are not provided by the Manager, but which may be able to be provided by separate agreement, are listed at Item B of Schedule 4. The Manager intends to sub-contract the Establishment Services to AgriWealth.

62. The Establishment Services include:

- site preparation, application of fertiliser, planting, and replanting areas to meet a minimum stocking rate of 850 stems per hectare;
- managing and maintaining the Plantation;
- arranging for the harvesting of Plantation Produce at First and Second Thinnings and Final Harvest;
- contributing to the harvest, road construction and maintenance costs, harvesting expenses and haulage expenses up to the Roding, Harvest and Haulage Contribution Payments; and
- rehabilitation of the Plantation Land after Final Harvest.

63. In consideration of the Manager agreeing to carry out the Establishment Services, the Grower agrees to pay the Manager the Establishment Services Fees set out in Part 1 of the Definitions and Interpretation Deed (clause 8.1) plus the Sinking Fund Payments set out in Part 1 of the Definitions and Interpretation Deed (clause 8.14). The Establishment Services Fees will be the only fees paid by the Grower to the Manager in return for the Establishment Services (clause 8.2). The Sinking Fund Payments will be for the purposes of meeting the costs of the Manager acting as agent for the Grower in relation to council rates and other applicable statutory charges in relation to the Forestry Right Land of the Grower (clause 8.13).

64. The Grower is entitled to all Carbon Sequestration Rights, Carbon Sequestration Benefits, Salinity Credits and Salinity Credit Benefits produced by or derived from their Forestry Rights and related Plantation Produce. These Rights and Benefits are calculated by reference to the size of the Grower's Forestry Right Land compared with the overall size of the Plantation Land of all Growers (clause 5).

65. The Grower will own the Trees and Timber on the Planted Land and all of the Plantation Produce for that land (clause 6.1). The Grower will also be entitled to all proceeds from the sales of Plantation Produce net of all costs of harvest, transportation and other associated costs where those costs exceed the amounts of the Roding, Harvest and Haulage Contribution Payments for a Thinning or Final Harvest (clause 6.2).

66. The Manager will notify the Grower when the Planted Land is ready for any Thinning or Final Harvests (clause 6.4) and will act as agent for the Grower to market the Plantation Produce (clause 6.7). After deducting certain amounts owed to the Manager the Grower will be entitled to a pro rata sum referable to the Grower's entitlement to the Plantation Produce (clause 6.12). The Manager will provide the Grower with a reconciliation of the amounts owed as soon as reasonably practical after the sale of the Plantation Produce (clause 6.13) and distribute the proceeds of sale within 30 days after receiving the last receipt attributable to the relevant harvest activity (clause 6.14).

AgriWealth Management Agreement

67. Under this Agreement the Manager engages AgriWealth in a non-exclusive arrangement as an independent contractor to provide the Forestry Services to the Manager for the purposes of establishing and managing the Growers' plantations (clause 1.1).

68. AgriWealth intends to sub-contract the Forestry Services to Independent Contractors (recital E).

69. AgriWealth will have the right to carry out on behalf of and in the name of the Manager and the Growers all functions which the Manager and the Growers are entitled or obliged to perform or carry out in the exercise of its or their rights or obligations under the Timberlot Agreement and Forestry Management Agreement against the Manager granting the relevant Forestry Right (clause 2.4).

Forestry Management Contract

70. In respect of each Plantation AgriWealth will engage Independent Contractors in a non-exclusive arrangement to perform the Forestry Services as described in Schedule 1 and as a disclosed agent to perform the Agency Services in Schedule 3 (clauses 3.1 and 3.2).

71. The Contract commences on the date the Contract is executed and will terminate upon completion of all Forestry Services and final settlement of accounts between the Parties after Final Harvest of all Plantations, unless terminated earlier as provided in the Contract. However, the Contract should not continue after 30 June 2045 (clause 4.1).

72. The Contract shall apply only to the Plantation Establishment and Management Plan agreed by AgriWealth and the Independent Contractors for the Plantations intended to be established during the calendar year of 2013 (clause 4.2).

Timberlot Agreement

73. Under the Timberlot Agreement the Manager grants the Grower an interest in and a forestry right over the Forestry Right Land.

74. The Grower must punctually pay all rates, taxes and other charges levied on the Forestry Right Land (clause 6.7).

75. Under the Forestry Right (Timber) and Forestry Right (Carbon Sequestration) the Grower is granted:

- (a) the right to enter the Forestry Right Land;
- (b) the right to establish, maintain and Harvest a crop of Trees on the Forestry Right Land;
- (c) 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
- (d) the right to any Salinity Credits and Carbon Sequestration Rights and any benefit to be derived from such Salinity Credits and Carbon Rights that may attach to the Forestry Right Land.

76. The Forestry Right shall commence on the date of execution of the Timberlot Agreement and continue for a term of 31 years.

Put Option Deed and Put Option Deed Guarantee

77. Growers will be granted a Put Option by the Manager in respect of their Timberlot(s) (the Put Option Property). Growers must pay \$10 per Timberlot to the Manager on or before 30 June 2012 as consideration for this right. The Put Option (if exercised) will require the Manager to purchase the Put Option Property for the Sale Consideration being the market value of the Put Option Property at the time of exercise of the option by the Grower. Put Option Deed can be exercised per Timberlot by the Grower during the period commencing on 1 July 2016 and ending on 16 July 2016. Clause 4.1 of the Put Option Deed allows the Manager to set off any amount payable and not paid by the Grower to the Manager against the Sale Consideration. The Manager has secured a Guarantee from AgriWealth in respect of the consideration payable by the Manager should the Put Option be exercised by a Grower. The maximum aggregate amount payable under this Put Option Guarantee is the Grower's Limit. The Grower's Limit is the lesser of the Sale Consideration or \$14,000 per Timberlot.

Deed of Novation and Roding Harvest and Haulage Trust

78. Under the Deed of Novation AgriWealth will novate an amount of not less than \$9,773.58 to the Trustee of the AgriWealth 2012 Softwood Timber Roding Harvest and Haulage Trust by 30 November 2012. The Trustee agrees to apply the amount on behalf of Growers to pay for Roding Harvest and Haulage contributions that apply to any thinning and final harvest as set out in the Forestry Management Agreement (clause 6.6.11).

79. In accordance with the Deed of Novation the Grower agrees that AgriWealth is no longer obligated to meet the Roding Harvest and Haulage contributions and is replaced by the Trustee of the AgriWealth 2012 Softwood Timber Roding Harvest and Haulage Trust to fulfil all obligations of clause 6.6 of the Forestry Management Agreement.

80. The AgriWealth 2012 Softwood Timber Roding Harvest and Haulage Trust has a vesting date of 30 June 2090 or a date specified by the Trustee under the vesting substitution provisions. Any money remaining in the Trust at the vesting date will be distributed to the beneficiaries as identified at Schedule 1 of the Trust Deed.

Pooling of Timber and Entitlement to Net Proceeds

81. The Forestry Management Agreement sets out provisions relating to the Grower's entitlement to Harvest Proceeds.

82. In accordance with the Constitution, the Grower authorises the Manager to collect for distribution to the Grower the Harvest Proceeds from sale of the Plantation Produce to which the Grower is entitled.

83. The Harvest Proceeds to which the Grower is entitled will be calculated by reference to the size of the Grower's Forestry Right Land compared with the overall size of the Plantation Land of all Growers after deducting the Manager's reasonable estimate of all moneys owing by the Grower to the Manager or AgriWealth, including Rehabilitation expenses (in excess of those included at Item A-20 of Schedule 4 of the Deed of Definitions and Interpretations) and any other costs for which the Grower is or will be liable in terms of the Forestry Management Agreement or the Timberlot Agreement. These costs will be calculated pro rata by reference to the size of the Grower's Forestry Right Land compared with the overall size of the Plantation Land of all Growers.

Fees

Establishment Services Fee

84. Under the terms of the Forestry Management Agreement, the Establishment Services Fee is \$30,100 per Timberlot and is payable by Growers when the Application Form is lodged.

Sinking Fund Payments

85. Under the terms of the Forestry Management Agreement, the Sinking Fund Payment is \$92 per Timberlot and is payable by Growers when the Application Form is lodged. Additional Sinking Fund Payments will be called upon by the Manager to cover council rates and other applicable charges to cover any shortfall in the Sinking Fund.

Put Option Fee

86. Under the terms of the Put Option Deed, the Put Option Fee is \$10 per Timberlot and is payable by Growers when the Application Form is lodged.

Roading, harvest and haulage fees

87. Growers will be required to pay any roading, harvest and haulage fees in relation to their Forestry Right Land, that are in excess of the Roding, Harvest and Haulage Contribution Payments paid out of the AgriWealth 2012 Softwood Timber Roding Harvest and Haulage Trust.

Rehabilitation Costs

88. Growers will be required to pay Rehabilitation Costs in excess of those included at Item A-20 of Schedule 4 of the Deed of Definitions and Interpretations.

Finance

89. To finance all or part of the cost of their Timberlot a Grower can enter into a finance arrangement with the Manager or, alternatively, borrow from an independent lender external to the Project.

90. Only the finance arrangement set out below is covered by this Product Ruling. A Grower cannot rely on this Product Ruling if they enter into any finance arrangement with the Manager that materially differs from that set out in the documentation provided with the application for this Product Ruling (see paragraph 7). A Grower who incurs interest as the result of an Event of Default under the 1 year loan agreement may request a private ruling on the deductibility of interest incurred. A Grower who enters into a finance arrangement with an independent lender external to the Project may request a private ruling on the deductibility or otherwise of interest incurred.

91. A Grower cannot rely on any part of this Ruling if the Application Price is not paid in full on or before 30 June 2012 by the Grower or, on the Grower's behalf, by another entity. Payment in this context is explained in paragraph 27 of this Ruling.

Finance offered by the Manager

92. A Grower who is an individual (not a corporate or trustee entity) can finance the cost of their Application Price by borrowing that amount from the Manager.

93. Subject to the Manager accepting the Grower's application, the Grower will be bound by the terms and conditions of the Loan Agreement and the Information Memorandum.

94. There is one finance option offered by the Manager to Growers to finance their interests in the Project.

95. As security for the due and punctual payment of all moneys owed to the Manager under the Loan Agreement, Growers will charge to the Manager all of the Grower's interests in the Project. The charge will include the Put Option Sale Consideration.

96. Loans made to Growers by the Manager will be made from the Manager's own cash resources or from the Manager's credit facilities. The Manager will not use funds it receives from Growers entering the Project that it has previously lent to Growers to fund loans for other Growers to enter the Project.

Loan Option

97. One year loan with terms and conditions as follows:

- applies to up to 100% of the Application Price;
- the loan is full recourse;
- the loan is interest free;
- repay 100% of the Secured Money on or before 30 June 2013;
- if an Event of Default occurs, interest at the Specified Interest Rate will be accrued;
- no loan application fee applies; and
- Growers may pay or prepay all or part of the Secured Money at any time before 30 June 2013.

Other qualifications relating to finance

98. This Ruling does not apply if the finance arrangement entered into by the Grower includes or has any of the following features:

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' are or will be granted to the borrowers for the purpose of section 82KL of the ITAA 1936 or the funding arrangements transform the Project into a 'scheme' to which Part IVA of the ITAA 1936 may apply;
- the loan or rate of interest is non-arm's length;
- repayments of the principal and payments of interest are linked to the derivation of income from the Project;
- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender or any associate of the lender;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or

- entities associated with the Project or the Manager, are involved or become involved in the provision of finance to Growers for the Project.

Commissioner of Taxation

9 May 2012

Appendix 1 – Explanation

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

Structure of the Project

99. In return for payment of the Establishment Services Fee required under the Forestry Management Agreement, Growers will hold a 'forestry interest' in a 'forestry managed investment scheme'. The Project qualifies as a 'forestry managed investment scheme' because its purpose is for 'establishing and tending trees for felling in Australia' (see subsection 394-15(1)).

100. However, the Put Option Fee and Units in the associated Land Trust do not form part of the scheme for the purposes of subsection 394-15(1) because these fees are not concerned with establishing and tending trees for felling in Australia.

101. Under the Constitution of the Project and the other supporting agreements, the holding of a 'forestry interest' in the Project gives each Grower a right to a share in the proceeds of the harvest and share of proceeds of thinnings of the trees grown on the Project land. That share of proceeds is determined using the number of 'forestry interests' held by a Grower as a proportion of all 'forestry interests' held by 'participants'⁷ in the Project.

Is the Grower carrying on a business?

102. 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 Income tax: Am I carrying on a business of primary production?

103. More recently, and in relation to a managed investment scheme similar to that which is the subject of this Ruling, the Full Federal Court in *Hance v. FC of T; Hannebery v. FC of T* [2008] FCAFC 196; 2008 ATC 20-085; (2008) 74 ATR 644 applied these principles to conclude that 'Growers' in that scheme were carrying on a business of producing almonds (at FCAFC 90; ATC 90; ATR 90).

104. Application of these principles to the arrangement set out above leads to the conclusion that a Grower (as described in paragraphs 3 to 7 of this Ruling), in the AgriWealth 2012 Softwood Timber Project is not considered to be carrying on a business of primary production involving afforestation activities.

⁷ The term 'participant' is defined in subsection 394-15(4).

Allowable deductions

Sections 8-5, 12-5, 394-10 and 394-20

105. 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).

The '70% DFE rule'

Paragraph 394-10(1)(c) and section 394-35

106. 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 2012, the amount of 'direct forestry expenditure'⁸ under the scheme will be no less than 70% of the amount of payments under the scheme.⁹

107. The amount of all 'direct forestry expenditure' is the amount of the net present value of all 'direct forestry expenditure' that the Manager, as 'forestry manager'¹⁰ of the Project, has paid or will pay under the scheme (subsection 394-35(2)).

108. The 'amount of payments under the scheme' is the amount of the net present value of all amounts (that is, the fees and expenses) that all current and future 'participants' in the scheme have paid or will pay under the scheme (subsection 394-35(3)).

109. Both of the above amounts are determined as at 30 June 2012 taking into account:

- the timing requirements in subsections 394-35(4) and (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).

110. Applying all of these requirements to the information provided by the Manager of the Project the Commissioner has determined that the Project will satisfy the '70% DFE rule' on 30 June 2012.

⁸ See section 394-45.

⁹ See subsection 394-35(1) and section 394-40.

¹⁰ Defined in section 394-15(2).

The other elements for deductibility under subsection 394-10(1)

111. The requirement of paragraph 394-10(1)(d) that Growers in the Project not have day to day control over the operation of the Project is clear from the Project Agreements as are the alternative elements of paragraph (e) relating to the number of Growers in the scheme and the Manager's role in other managed investment schemes.

112. The final requirement for deductibility requires all the Project trees to be established within 18 months of 30 June 2012 (see paragraph 394-10(1)(f) and subsection 394-10(4)). The planting timeline provided with the application for this Ruling by the Manager indicates that all the trees required to be established under the scheme will be planted on the Project land by 31 December 2013.

113. Accordingly, subject to the qualifications set out below, amounts paid by Growers to the Manager in relation their 'forestry interests' satisfy all requirements of subsection 394-10(1). The amounts are allowable deductions in the income year in which they are paid (subsection 394-10(2)).

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

115. Where a Grower does not fully pay an amount, or the amount is not fully paid on their behalf in an income year (see section 394-20), it is deductible only to the extent to which it has been paid. The unpaid balance is then deductible in the year or years in which it is actually paid. This may occur, for example, if all or part of the amount is borrowed and the financier fails to transfer the funds to the account of the 'forestry manager' on or before 30 June in an income year.

Loss of deductions previously allowed under subsection 394-10(1)

116. Two situations may lead to a loss of deductions previously allowed to Growers.

117. The first of these situations will occur if the Manager fails to establish the trees on the Project land within 18 months. Where this occurs the Manager is required to notify the Commissioner within three months of the end of the 18 month period (section 394-10 of Schedule 1 to the TAA).

118. The second situation where a Grower may have deductions disallowed is where a 'CGT event' happens to their 'forestry interest' within four years from 30 June of the income year they paid an amount under the scheme, for example, the Application Price (see subsection 394-10(5)).

119. For the purposes of this provision, the Commissioner is able to amend the assessment of a Grower within two years of the relevant 'CGT event' happening. The Commissioner's power to amend in these circumstances applies despite section 170 of the ITAA 1936 (subsection 394-10(6) of the ITAA 1997).

120. Where a 'CGT event' happens to the 'forestry interest' of a Grower within four years, the market value of the forestry interest at the time of the 'CGT event' or the decrease in the market value of the 'forestry interest' as a result of the 'CGT event' is still included in the assessable income of the Grower 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.

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

Prepayment provisions

Sections 82KZL to 82KZMF

122. The prepayment provisions contained in Subdivision H of Division 3 of Part III of the ITAA 1936 affect the timing of deductions for certain prepaid expenditure. These provisions apply to certain expenditure incurred under an agreement in return for the doing of a thing under the agreement that will not be wholly done within the same year of income as the year in which the expenditure is incurred. For schemes such as this Project, the main operative provisions are sections 82KZMD and 82KZMF of the ITAA 1936.

123. However, subsection 394-10(7) of the ITAA 1997 specifically provides that sections 82KZMD and 82KZMF of the ITAA 1936 do not affect the timing of amounts deductible under section 394-10 of the ITAA 1997.

Assessable income, 'CGT events' and the 'forestry interests' of Growers who are 'initial participants'

Sections 6-10, 10-5 and 394-25

124. Section 6-10 includes in assessable income amounts that are not ordinary income. These amounts, called statutory income, are listed in the table in section 10-5 and include amounts that are included in the assessable income of 'initial participants' of a 'forestry managed investment scheme' by subsection 394-25(2).

Application Price Rebate

125. To participate in the Project as a Grower each applicant must complete the 2012 Application Form and pay the Application Price in full. Growers may be referred to, and complete the Application Form for the Project by a Distributor.

126. A Distributor will have executed the AgriWealth 2012 Softwood Timber Project Distribution Agreement. A Distributor is entitled to a Referral Fee from the Manager. The Referral Fee is a percentage of the Application Price paid by a Grower to the Manager.

127. Where the Distributor elects to rebate an amount of the Referral Fee to the Grower, this amount will be an assessable recoupment under subsection 20-20(2) and included in the Grower's assessable income in the year of receipt.

128. Where the Distributor elects to rebate an amount of the Referral Fee to the Grower and the Grower directs that the payment of the rebate be made to another entity, this amount will be an assessable recoupment under subsection 20-20(2) and included in the Grower's assessable income in the year of receipt.

Subsection 394-25(2)

129. Where a 'CGT event' (other than for a 'CGT event' in respect of a thinning)¹¹ happens to a 'forestry interest' held by a Grower in this Project, subsection 394-25(2) includes an amount in the assessable income of the Grower if:

- the Grower can deduct or has deducted an amount under section 394-10; or
- the Grower would have met the condition immediately above if subsection 394-10(5) had not applied to disallow the deduction(s). Paragraphs 30 to 33 and paragraphs 116 to 121 of this Ruling explain when deductions will be disallowed under subsection 394-10(5).

Market value rule applies to' CGT events'

130. If, as a result of the 'CGT event' the Grower either:

- no longer holds the 'forestry interest'; or
- otherwise – where the Grower continues to hold the 'forestry interest', but there is a decrease in the market value of the 'forestry interest';

¹¹ A thinning under this scheme is not a 'CGT event'.

then the market value of the 'forestry interest' at the time of the event, or the reduction of the market value of the 'forestry interest' as a result of the event, is included in the assessable income of the Grower in the income year in which the 'CGT event' happens (subsection 394-25(2)). A market value rule applies rather than the amount of money actually received from the 'CGT event' (subsection 394-25(3)). However, the market value and the actual amount of money received may be the same.

131. The market value amount included in the assessable income of a Grower is the value of the 'forestry interest' just before the 'CGT event', or where the Grower continues to hold their interest after the event, the amount by which the market value of the 'forestry interest' is reduced as a result of the 'CGT event' (subsection 394-25(2)).

132. Section 394-25 will apply where the 'forestry interest' is sold, is extinguished, or ceases, and will include 'CGT events' such as a full or partial sale of the 'forestry interest' or from a full or partial clear-fell harvest of the trees grown under the Project.

133. Based on the scheme set out in the Product Ruling application and as ruled upon herein, where the Put Option is exercised, the Sale Consideration means the market value of the Put Option Property at the time of exercise.

Amounts received by Growers where the Project trees are thinned

Section 6-5

134. Section 394-25 specifically excludes from the operation of Division 394 a 'CGT event' that happens in respect of a thinning (see paragraph 394-25(1)(c)).

135. Thinning amounts received by a Grower in this Project do not arise as a result of a 'CGT event' and are not otherwise assessable under Division 394. The receipt of an amount arising from a thinning of the Project trees is a distribution that arises as an incident of the Grower holding a 'forestry interest' in the Project. It is an item of ordinary income and is assessable under section 6-5 in the year in which it is derived.

Sections 35-10 and 35-55 – deferral of losses from non-commercial business activities and the Commissioner's discretion

136. Division 35 has no application to losses arising from the Grower's participation in the Project, as a Grower who is an 'initial participant' in the Project is not carrying on a business activity.

Section 82KL – recouped expenditure

137. The operation of section 82KL of the ITAA 1936 depends, among other things, on the identification of a certain quantum of 'additional benefit(s)'. Insufficient 'additional benefits' will be provided to trigger the application of section 82KL of the ITAA 1936. It will not apply to deny the deduction otherwise allowable under section 8-1 of the ITAA 1997.

Part IVA – general tax avoidance provisions

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

139. The AgriWealth 2012 Softwood Timber Project will be a 'scheme' and a Grower will obtain a 'tax benefit' from entering into the 'scheme', in the form of tax deductions for the amounts detailed at paragraph 29 of this Ruling that would not have been obtained but for the scheme. However, it is not possible to conclude the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

140. Growers to whom this Ruling applies will derive assessable income from holding or disposing of their 'forestry interest' in the Project. There are no facts that would suggest that Growers have the opportunity of obtaining a tax advantage other than the tax advantages identified in this Ruling. There is no non-recourse financing or round robin characteristics, and no indication that the parties are not dealing at arm's length or, if any parties are not dealing at arm's length, that any adverse tax consequences result. Further, having regard to the factors to be considered under paragraph 177D(b) of the ITAA 1936 it cannot be concluded, on the information available, that Growers will enter into the scheme for the dominant purpose of obtaining a tax benefit.

141. A Grower can rely on this Ruling and the Commissioner will not apply Part IVA of the ITAA 1936 to deny the tax deductions set out in paragraphs 25 to 29 of this Ruling by reason of a Grower acquiring units in the Land Trust.

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 97/7; TR 97/11; TR 98/22

Subject references:

- 4 year holding period
- 70 per cent DFE rule
- carrying on a business
- DFE
- direct forestry expenditure
- forestry interest
- forestry MIS
- interest expenses
- managed investment schemes
- market value substitution rule
- payments under the scheme
- producing assessable income
- product rulings
- reasonable expectation
- tax avoidance
- taxation administration

Legislative references:

- ITAA 1936 82KL
- ITAA 1936 82KZMD
- ITAA 1936 82KZMF
- ITAA 1936 Pt IVA
- ITAA 1936 170
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1936 318
- ITAA 1997 6-5
- ITAA 1997 6-10
- ITAA 1997 8-1
- ITAA 1997 8-1(1)
- ITAA 1997 8-1(1)(a)
- ITAA 1997 8-1(2)
- ITAA 1997 8-1(2)(a)
- ITAA 1997 8-5
- ITAA 1997 8-10
- ITAA 1997 10-5
- ITAA 1997 12-5
- ITAA 1997 17-5
- ITAA 1997 20-20
- ITAA 1997 20-20(2)
- ITAA 1997 Div 35
- ITAA 1997 35-10
- ITAA 1997 35-55
- ITAA 1997 110-25(2)

- ITAA 1997 Div 394
- ITAA 1997 394-10
- ITAA 1997 394-10(1)
- ITAA 1997 394-10(1)(c)
- ITAA 1997 394-10(1)(d)
- ITAA 1997 394-10(1)(e)
- ITAA 1997 394-10(1)(f)
- ITAA 1997 394-10(2)
- ITAA 1997 394-10(4)
- ITAA 1997 394-10(5)
- ITAA 1997 394-10(5A)
- ITAA 1997 394-10(6)
- ITAA 1997 394-10(7)
- ITAA 1997 394-15(1)
- ITAA 1997 394-15(5)
- ITAA 1997 394-20
- ITAA 1997 394-25
- ITAA 1997 394-25(1)(c)
- ITAA 1997 394-25(2)
- ITAA 1997 394-25(3)
- ITAA 1997 394-30
- ITAA 1997 394-35
- ITAA 1997 394-35(1)
- ITAA 1997 394-35(2)
- ITAA 1997 394-35(3)
- ITAA 1997 394-35(4)
- ITAA 1997 394-35(5)
- ITAA 1997 394-35(6)
- ITAA 1997 394-35(7)
- ITAA 1997 394-35(8)
- ITAA 1997 394-40
- ITAA 1997 394-45
- ITAA 1997 995-1
- TAA 1953
- TAA 1953 Sch 1 394-10
- Corporations Act 2001
- Corporations Act 2001 761G
- SISA 1993
- Copyright Act 1968

Case references:

- Australian National Hotels Ltd v. Federal Commissioner of Taxation (1988) 19 FCR 234; 88 ATC 4627; (1988) 19 ATR 1575
- Hance v. FC of T; Hannebery v. FC of T [2008] FCAFC 196; 2008 ATC 20-085; (2008) 74 ATR 644
- Federal Commissioner of Taxation v. Roberts (1992) 37

FCR 246; 92 ATC 4380;
(1992) 23 ATR 494
- Fletcher & Ors v. Federal
Commissioner of Taxation
(1991) 173 CLR 1; 91 ATC
4950; (1991) 22 ATR 613
- Ronpibon Tin NL v. Federal
Commissioner of Taxation
(1949) 78 CLR 47; (1949) 8
ATD 431

- Steele v. Federal
Commissioner of Taxation
(1999) 197 CLR 459; 99 ATC
4242; (1999) 41 ATR 139

Other references:

- Hannebery and Hance
(NSD 492-493 of 2008)

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