

IT 2195A - Addendum - Income tax: Afforestation Schemes - FC of T v LAU

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TAXATION RULING IT 2195

ADDENDUM

F.O.I. EMBARGO: may be released

Taxation Ruling IT 2195 deals with the decision of the Federal Court of Australia in *FC of T v. Lau* (1984) 16 ATR 55; 84 ATC 4929.

The findings of the Appeal judges were not conclusive as to the operation of section 82KL of the *Income Tax Assessment Act 1936* in circumstances where there was the likelihood of non repayment of loan finance (see paragraph 11 of IT 2195).

The subsequent decision of the Administrative Appeals Tribunal in *Case W2 89 ATC 107; AAT Case 4769* (1988) 20 ATR 3033 is also relevant to this issue.

That case concerned a film industry scheme where non recourse financing was provided to investors. Senior Member Roach found, as a matter of fact, that due to the manner of finance provision and the limited partnership status of the investors, an 'additional benefit' arose within the terms of section 82KL. The benefit was having the use of the borrowed money without any obligation to repay.

Commissioner of Taxation

3/11/94

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