



# ***PR 2000/24 - Income tax: 'AUSTRALIA: Land Beyond Time'***

 This cover sheet is provided for information only. It does not form part of *PR 2000/24 - Income tax: 'AUSTRALIA: Land Beyond Time'*

 This document has changed over time. This is a consolidated version of the ruling which was published on *29 March 2000*



## Product Ruling

### Income tax: ‘AUSTRALIA: Land Beyond Time’

Contents	Para
<b>What this Product Ruling is about</b>	<b>1</b>
<b>Date of effect</b>	<b>11</b>
<b>Withdrawal</b>	<b>13</b>
<b>Previous Rulings</b>	<b>14</b>
<b>Arrangement</b>	<b>15</b>
<b>Ruling</b>	<b>41</b>
<b>Explanations</b>	<b>43</b>
<b>Detailed contents list</b>	<b>62</b>

#### *Preamble*

*The number, subject heading, and the **What this Product Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Previous Rulings**, **Arrangement** and **Ruling** parts of this document are a ‘public ruling’ in terms of Part IVAAA of the **Taxation Administration Act 1953**. Product Ruling PR 1999/95 explains Product Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

#### **No guarantee of commercial success**

The Australian Taxation Office (ATO) **does not** sanction or guarantee this product as an investment. Further, we give 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 investors must form their own view about the commercial and financial viability of the product. This will involve a consideration of important issues such as whether projected returns are realistic, the ‘track record’ of the management, the level of fees in comparison to similar products, how the investment fits an existing portfolio, etc. We recommend a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential investors by confirming that the tax benefits set out below in the **Ruling** part of this document are available, **provided that** the arrangement is carried out in accordance with the information we have been given, and have described below in the **Arrangement** part of this document.

If the arrangement is not carried out as described below, investors lose the protection of this Product Ruling. Potential investors may wish to seek assurances from the promoter that the arrangement will be carried out as described in this Product Ruling.

Potential investors should be aware that the ATO will be undertaking review activities to confirm the arrangement has been implemented as described below and to ensure that the participants in the arrangement include in their income tax returns income derived in those future years.

#### **Terms of Use of this Product Ruling**

This Product Ruling has been given on the basis that the person(s) who applied for the 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 Ruling.

Potential investors may wish to refer to the ATO’s Internet site at <http://www.ato.gov.au> or contact the ATO directly to confirm the currency of this Product Ruling or any other Product Ruling that the ATO has issued.

## What this Product Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' identified below apply to the defined class of persons who take part in the arrangement to which this Ruling relates. In this Ruling this arrangement is sometimes referred to as 'AUSTRALIA: Land Beyond Time', 'the film', 'the project', or 'the product'.

### Tax law(s)

2. The tax laws dealt with in this Ruling are:
- Division 10BA of Part III of the *Income Tax Assessment Act 1936* (ITAA 1936);
  - Section 26AG (ITAA 1936);
  - Part IVA (ITAA 1936);
  - Section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997);
  - Section 104-10 (ITAA 1997); and
  - Section 118-30 (ITAA 1997).

Unless otherwise stated, all legislative references that follow are in relation to the ITAA 1936.

### Class of persons

3. The class of persons to which this Ruling applies is those persons who enter into the arrangement described below on or after the date this Ruling is made. They will have a purpose of staying in the arrangement until it is completed, i.e. being a party to the relevant agreements until their terms expire, and deriving assessable income from this involvement as a result (as set out in the description of the arrangement).

4. The class of persons to which this Ruling applies does not include persons who intend to terminate their involvement in the arrangement prior to its completion, or who otherwise do not intend to derive assessable income from it.

### Qualifications

5. The Commissioner rules on the precise arrangement identified in the Ruling.

6. If the arrangement described in the Ruling is materially different from the arrangement that is actually carried out:

- The Ruling has no binding effect on the Commissioner, as the arrangement entered into is not the arrangement ruled upon; and
- The Ruling will be withdrawn or modified.

7. Note: without limiting the generality of the term, a material difference may arise in relation to a variation in the facts of the arrangement described in the Ruling. It may also arise in circumstances where additional transactions or arrangements (including financing arrangements) are entered into that, when viewed as a whole with the arrangement described in the Ruling, will produce a different taxation consequence for the arrangement.

8. This might include, for example, where the investor borrows to enter into the arrangement by way of a limited or non-recourse loan and the overall consequence to that the arrangement is one that would have attracted the application of a tax avoidance provision.

9. A material difference may also arise where an investor enters into or benefits from an insurance policy, or another device of similar effect, which limits or eliminates the risk in respect of the amount contributed by the investor.

10. A Product Ruling may only be reproduced in its entirety. Extracts may not be reproduced. As each Product Ruling is copyright, apart from any use as permitted under the *Copyright Act 1968*, no Product Ruling may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to the Manager, Legislative Services, AusInfo, GPO Box 1920, Canberra ACT 2601.

## **Date of effect**

---

11. This Ruling applies prospectively from 29 March 2000, the date this Ruling is made. However, the Ruling does 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 Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

12. If a taxpayer has a more favourable private Ruling (which is legally binding), the taxpayer can rely on the private Ruling if the income year to which the private Ruling relates has ended, or has commenced but not yet ended. However, if the arrangement covered by the private Ruling has not begun to be carried out, and the income year to which it relates has not yet commenced, the Product Ruling

applies to the taxpayer to the extent of the inconsistency only (see Taxation Determination TD 93/34).

## Withdrawal

---

13. This Product Ruling is withdrawn on 30 June 2003 and ceases to have effect on and from that date. The Ruling continues to apply, in respect of the tax laws ruled upon, to all persons within the specified class who enter into the specified arrangement during the term of the Ruling. Thus, the Ruling continues to apply to those people, even following its withdrawal, for arrangements entered into prior to withdrawal of the Ruling. This is subject to there being no change in the arrangement or the persons' involvement in the arrangement.

## Previous Rulings

---

14. This Ruling applies to the Project that was ruled on in Product Ruling PR 1999/87. PR 1999/87 is withdrawn on and from the date this Ruling is made.

## Arrangement

---

15. The arrangement that is the subject of this Ruling is described below. This description incorporates the following documents:

- Application for Product Ruling prepared by Gadens Lawyers dated 29 November 1999 and enclosed documentation;
- Production Agreement between Living Pictures (Australia) Pty Limited (the "Production Company") and certain Australian resident private investors (the "Private Investors") (version dated 14 November 1999);
- Production and Investment Agreement between the Australian Film Finance Corporation (the "FFC"), the Production Company and Museum Victoria (version dated 7 January 2000);
- Distribution Agreement between the Production Company and Houston Museum of Natural Science (the "Distributor") (version dated 15 November 1999);

- Exhibitors Agreement between the Distributor, the Production Company and Heidtman & Co (version dated 15 November 1999);
- Letters from Gadens Lawyers to the ATO dated 2 February 2000, 29 February 2000 and 2 March 2000.

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

16. No other agreements, whether formal or informal and whether or not legally enforceable, involving an investor or any other party to the arrangement are part of the arrangement to which this Ruling applies.

### **The Project**

17. The Project involves the production of an Australian IMAX film to be titled '*AUSTRALIA: Land Beyond Time*' ('the film'). Provisional Certificate No. PO5231 has been issued by the Department of Communications and the Arts (now the Department of Communications, Information Technology and the Arts) on 21 November 1997 in respect of the film. This certificate is currently in force in relation to the film and states that, when completed, the proposed film will be a 'qualifying Australian film' for the purpose of Division 10BA of Part III of the ITAA 1936. This status has been confirmed by a letter dated 21 January 1999 from the Department of Communications, Information Technology and the Arts.

18. The planned completion date is June 2001. This date is negotiable between the parties to the arrangement but will be no later than 30 June 2002 in order to satisfy the two-year requirement in Division 10BA.

19. The film will be produced for a total cost of AUD6,300,000 to be raised from the Australian Film Finance Corporation Limited (AUD2.5m), Private Investors (AUD2m), 6 U.S. Exhibitors (consisting of the Cincinnati Museum Centre, the Boston Museum of Science, the Houston Museum of Natural Science, the Museum of Science and Industry, Tampa, Florida; the Denver Museum of Natural History, and the Fort Worth Museum of Science and History, Texas) (USD930,000), and an Australian large format exhibitor chain (Cinema Plus Limited) (USD200,000).

20. Private Investors will contribute via the Production Agreement and the FFC will contribute via the Production and Investment Agreement to the Living Pictures (Australia) Pty Limited AUSTRALIA: Land Beyond Time Production Account (the 'Fund')

and, in return for their contributions, will receive a pro-rata share with other equity investors in the Copyright to the film. The U.S. and Australian Exhibitors (the Exhibitors) will contribute via a pre-licence agreement.

21. The Exhibitors will not earn an interest in the Copyright to the film.
22. Minimum individual private investment in the Fund has been set at AUD500,000 which will earn an approximate 11% share in the copyright to the film for each AUD500,000 invested, with the exact proportions to be determined in accordance with the currency exchange rate ruling at the time of execution of the Production Agreement.
23. Contributions from the Private Investors are to be used solely for expenditure set out in the Film Production Budget.
24. The Production Company only is liable for certain 'non-deductible' expenditures. These expenses will be paid by the Production Company from part of both the Exhibitors' and the FFC's contributions to the budgeted cost.
25. Private Investors will make capital contributions towards the production of the film under the Production Agreement.
26. The FFC will make capital contributions towards the production of the film under the Production and Investment Agreement.
27. No assistance with the financing of the investments by the Private Investors is offered under the constituent documents or associated documentation.

## **The participants**

28. Living Pictures (Australia) Pty Limited (ACN 001 874 148) will act as the '**Production Company**' of the film.
29. Houston Museum of Natural Science will act as the '**Distributor**' of the film.
30. Film Finances Inc ('**Film Finances**') is to guarantee completion of the film.

## **Financing arrangements**

31. The Private Investors will contribute to the Fund a total of AUD2m being their contribution to the cost of producing the film. These Private Investors will receive a pro-rata share with other equity investors in Copyright to the film in return for their contribution.

32. Finance of USD930,000 will be contributed by the U.S. Exhibitors in the form of revenues paid in advance under a pre-licence arrangement. Pre-completion licence fees of USD500,000 will be made available to the Fund. The balance, USD430,000, is payable on delivery of the film to the Distributor as post-completion licence fees. A further post-completion licence fee amount of USD200,000 will be contributed by Australian Exhibitors under a pre-licence arrangement and will be payable on delivery of the film to the Distributor. These latter two amounts, totalling USD630,000, will be paid under a cash flow arrangement to the Fund in accordance with the approved draw down schedule and will be used to meet the Film Production Budget. This cash-flowing arrangement will be undertaken by one or more Australian state government owned film funding bodies.

33. The Private Investors will have no right, title or interest in the USD930,000 contributed by the US Exhibitors as pre-completion and post-completion licence fees or in the post-completion licence fees of USD200,000 contributed by Australian Exhibitors, as these amounts will not form part of the returns to investors.

34. The FFC will make progress payments to the Production Company in accordance with an agreed 'draw-down' schedule. The total of these payments will be equivalent to AUD2,500,000.

35. These payments will be used by the Production Company to produce the film in accordance with the Film Production Budget that has been prepared in line with standard industry format.

36. Some of the expenditure will be in USD, reflecting the fact some of the production activities will be undertaken in the USA.

37. Part of the AUD2,500,000 contributed by the FFC will be used by the Production Company to finance the non-deductible items included in the Film Production Budget. These items relate to the issue and financing costs and other fees associated with the funding of the film. The balance of the funds received from the FFC will be used to meet the Film Production Budget.

### **Interest on borrowed funds**

38. The Private Investors can fund their investments themselves or borrow from an unassociated lending body.

39. This Ruling does not apply if a Private Investor enters into a finance arrangement with any of the following features:

- there are split loan features of the type referred to in Taxation Ruling TR 98/22;

- entities associated with the Project are involved, or become involved, in the provision of finance to Private Investors for the Project;
- there are indemnity arrangements, or equivalent collateral agreements, in relation to the loan, designed to limit the borrowers risk;
- ‘additional benefits’ are granted to a borrower, for the purposes of section 82KL, or the funding arrangements transform the Project into a ‘scheme’ to which Part IVA applies;
- repayments of principal and payments of interest are linked to 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 are transferred (by any means, and whether directly or indirectly) back to the lender, or any associate of the lender; and
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers.

40. Interest incurred in respect of funds borrowed by the Private Investors, if any, to make their contributions will only be deductible in any year to the extent of film income derived in that year (subsection 124ZAO(2) of the ITAA 1936). Any excess interest may be carried forward to succeeding years of income for offset against future film income (subsection 124ZAO(3)).

## **Ruling**

---

41. Subject to the assumptions listed below at paragraph 42 of this Ruling:

- (a) A deduction is available in a year of income to the Private Investors in the Fund under Division 10BA of Part III of the ITAA 1936 for 100% of the capital moneys expended in that year by way of contribution to the cost of producing the film ‘*AUSTRALIA: Land Beyond Time*’;
- (b) Neither the pre-paid licence fees of USD930,000 received from the U.S. Exhibitors nor the pre-paid licence fees received from the Australian Exhibitors of USD200,000 are income derived by the Private Investors;

- (c) Any other distribution advances, pre-sale amounts, or any other amounts payable to the Private Investors for the exploitation of their interest in the copyright (including any transfer of an interest in the copyright), and rights attached thereof will be assessable to the Private Investors as film income under section 26AG of the ITAA 1936;
- (d) The consideration of \$1.00 for an Australian resident investor's interest in the Copyright on termination of the Fund will be assessable to the Private Investors as film income under section 26AG of the ITAA 1936 and is accepted as an arm's length amount for this transaction;
- (e) On the 10<sup>th</sup> anniversary of the completion of the film the Fund will terminate and the interest in copyright held by the Private Investors will be transferred to the Production Company. This will not give rise to any capital gain or loss consequences for the Private Investors by way of a disposal of a CGT asset for the purposes of section 104-10 of the ITAA 1997 by virtue of the operation of section 118-30 of the ITAA 1997; and
- (f) The anti-avoidance provisions in Part IVA of the ITAA 1936 will not apply to the arrangement described in this Ruling to deny deductibility or to accelerate assessability of the above amounts.

42. The Ruling, at paragraph 41, is made subject to the following assumptions:

- (a) The investment moneys contributed by the Private Investors will be paid to the Production Company by way of contribution to the cost of producing the film under the Production. Moneys contributed by the Private Investors towards the cost of production of the film will be directly expended in the production of that film (paragraph 124ZAFA(1)(a) read in conjunction with subsection 124ZAA(6)). The Production Agreement and Production and Investment Agreements specify that the investment money contributed represents the estimated cost of production of the film as set out in the Film Production Budget (paragraph 124ZAFA(1)(a) and subparagraph 124ZAFA(1)(d)(iv));
- (b) At the relevant time, a provisional certificate (section 124ZAB) or a final certificate (section 124ZAC) is in force in relation to the film;

- (c) There is evidence to show that each investor, at the relevant time, expects to become one of the first owners of the Copyright in the film when the copyright comes into force (subparagraph 124ZAF(1)(c)(i));
- (d) There is evidence to show that each investor, at the relevant time, intends to use the interest in the copyright for the purpose of producing assessable income from the exhibition of the film to the public in cinemas (subparagraph 124ZAF(1)(c)(ii));
- (e) There will be in force a declaration lodged in respect of the film in accordance with subsection 124ZAD(1) by a person accepted by the Commissioner under subsection 124ZAD(2) as an appropriate person to make such a declaration (subparagraph 124ZAF(1)(d)(iii));
- (f) Before the expiration of six months after the time when the film is completed, an application will be made for a final certificate in accordance with section 124ZAC, otherwise the provisional certificate shall be deemed never to have been in force (subsection 124ZAB(10));
- (g) All requirements of the Department of Communications, Information Technology and the Arts will be met and a final certificate will be issued;
- (h) The film will be completed and the Private Investors' interest in the copyright in the film will be used for income producing purposes within two years after the close of the financial year in which the contributions are made (subsection 124ZAF(2));
- (i) By reason of the said capital moneys being expended, the Investor will become one of the first owners of the Copyright in the film of the Fund before 1 July 2001;
- (j) In producing the film of the Fund:
  - where an amount is expended by a person ('the film producer') for the supply of goods or the provision of services; and
  - the Commissioner is satisfied that the film producer and the person supplying the goods or providing the services are not dealing with each other at arm's length in relation to the transaction;

that the amount of moneys expended on the supply of those goods or the provision of those services will not exceed the amount of moneys that would have been

expended by the film producer if the film producer and the person supplying the goods or providing the services had dealt with each other at arm's length (section 124ZAJ);

- (k) At the time the Investor expends the capital moneys by way of contribution to the cost of producing the film, the Investor is at risk, according to the definition of 'risk' in subsection 124ZAM(2), with respect to an amount equal to or greater than the amount of those capital moneys expended (subsection 124ZAM(1));
- (l) No pre-sale arrangements, distribution rights agreements, distribution guarantee agreements, or other like agreements, have been, or will be, entered into in circumstances where such agreements would put funds into the hands of Private Investors, by loan or otherwise, to enable them to expend capital moneys by way of contribution to the cost of producing the film;
- (m) In the event of any underage, the Production Company will expend the underage amount on the production and marketing of the film in a manner that will preserve the status of the film as a 'qualifying Australian Film';
- (n) The dominant purpose of the Private Investors is to make a commercial return from their investment in the film and the arrangements will be executed in the manner described in this Ruling; and
- (o) Part of the funds received from the Exhibitors and the FFC will be used to meet the non-deductible expenditure incurred by the Production Company as set out in the Non-Deductible Budget.

## **Explanations**

---

### **The 'directly expended' requirement**

43. Subsection 124ZAA(6) requires that capital money contributed to the production of a film must be 'expended directly in producing [the] film' in order for a deduction under Division 10BA to be available.

44. Paragraph 8 of Taxation Ruling IT 2111 discusses this requirement. It states: 'Direct expenses on a film production which qualify for a deduction under Section 124ZAA can generally be described as **those relating to the production process** as distinct from those associated with financing or marketing of the film. Such expenses would **typically include amounts paid for the acquisition**

**of story rights and the surveying of locations, payments to the producers, directors and cast, and the cost of insurance of production associated risks, drawing up performers' contracts and the building of sets and scenery'** (emphasis added).

45. Our view is that the 'directly expended' requirement is **not** met at the point in time when the Private Investors, make payments to the Production Company in respect of the budget for the film. Rather, the extent of the application of the money by the Production Company to elements of production will ultimately determine the portion of the Private Investors' contribution that meets this requirement. Generally, this will not be known until after the completion of the film.

46. The Production Company is to retain the funds received from the Private Investors in such a way as to ascertain those funds representing funds provided by Private Investors and funds provided by the Exhibitors and the FFC. In doing this, the Production Company is to ensure that funds contributed by Private Investors are only to be expended on items within the Film Production Budget, with part of the funds provided by the Exhibitors and the FFC to be expended on non-deductible expenditure specified in the Non-Deductible Budget.

47. In determining the amount that is 'directly expended' on the production of the film, we will also consider the ultimate application of any funds obtained by the Production Company as 'underage'. In this regard, the Production Company has agreed any underage will be expended on the production and marketing of the film in a manner that will preserve the status of the film as a Qualifying Australian Film.

48. Quantification of the amount of money directly expended on the production of a film, and consequently the deduction available under Division 10BA, can only be determined after the film has been produced. To do this, a full audit of the application of the film production funds would normally be required. The practice of conducting an audit of the contribution account that is held by Production Company (known as an audit of the 'film fund') is considered as inadequate in this regard. A full audit of the application of the film production funds is required under the terms of the Production Agreement and the Production and Investment Agreement.

49. Accordingly, while a deduction should be available in respect of the contributions made by Australian investors under the contract to be entered into on or before the financial year in which the capital money is to be expended, being 30 June 2000, the deduction will be withdrawn with retrospective effect if the amounts contributed are not directly expended on the film.

**The ‘at risk’ rule**

50. Section 124ZAM reduces claims for Division 10BA deductions where the Commissioner is satisfied that a taxpayer was not at risk in respect of any part of the expenditure of capital moneys the taxpayer made by way of contribution to the cost of producing a film. Subsection 124ZAM(2) specifies the amount of risk is the amount of loss that, in the Commissioner’s opinion, would be suffered by reason of the taxpayer’s said capital expenditure where no income is derived from the taxpayer’s interest in the copyright of the film, other than excepted income as defined in subsection 124ZAM(3).

51. Paragraph 13 of Taxation Ruling IT 2111 discusses the ‘at risk’ rule and states the rule:

‘... does not operate to affect the deductions available to investors where pre-sale arrangements or the sale of distribution rights are effected prior to completion of the film unless the arrangements put funds into the hands of investors - by loan or otherwise - to enable them to make their contributions to the costs of film production. Similar considerations apply in respect of a distribution guarantee arrangement under which an amount may be paid to investors by a producer or another person in exchange for distribution rights, if a specified return is not achieved within a particular period (e.g., a specified percentage of the film budget within 2 years). Payments under an arrangement of that kind would also not offend the ‘at risk’ rule.’

52. The ‘at risk’ rule applies to an investor’s risk of loss before and after completion and distribution of the film. Any arrangement which limits an investor’s risk of loss can breach the ‘at risk’ rule. Certain types of common industry arrangements affecting risk during production of the film are accepted as not offending the ‘at risk’ rule. This acceptance does not extend to arrangements which put funds into the hands of investors to enable them to make their contributions to the costs of film production. This cannot be taken to mean that post-completion arrangements are acceptable if they do not put funds into the hands of investors to enable them to make their contributions. The position in paragraph 13 of IT 2111 is limited to the situations expressly mentioned.

53. A film revenue insurance policy is likely to breach the ‘at risk’ rule. A policy of this kind provides an indemnity against a loss based on the amount contributed by an investor to a film and income earned by the investor on the film by a particular time. The investor is not ‘at risk’ in respect of this loss.

54. The arrangement ruled on does not contain any features which attract the operation of section 124ZAM.

## **Non-arm's length transactions**

55. Where, in producing a film, an amount is expended by a person ('the film producer') for the supply of goods or the provision of services, subsection 124ZAJ(1) allows the Commissioner to reduce deductions under Division 10BA for such amounts where he is satisfied that:

- the film producer and the person supplying the goods or providing the services were not dealing with each other at arm's length in relation to the transaction; and
- the amount of moneys expended on the supply of those goods or the provision of those services exceeds the amount of moneys that would have been expended by the film producer if the film producer and the person supplying those goods or providing those services had dealt with each other at arm's length.

56. The Commissioner will not be in a position to determine whether his discretion in subsection 124ZAJ(1) ought to be exercised until such time as the film has been produced. Furthermore, to make such a determination, a full audit of the application of each film's production funds would normally be required.

57. Accordingly, while a deduction should be available in respect of capital moneys expended by Private Investors by way of contribution to the cost of producing the film of the Fund before the end of the financial year ending 30 June 2000, the deduction will be reduced with retrospective effect if the Commissioner determines that a producer of the film of the Fund dealt with a supplier of goods or a provider of services, in the course of producing that film, in circumstances where the parties were not dealing at arm's length and the producer paid more for the goods or the services than the producer would have paid had the transaction been at arm's length.

## **Payment of interest by an Investor where an assessment is amended**

58. Section 170AA provides that, where an amendment of an assessment increasing the liability of a taxpayer to tax is made, the taxpayer is liable to pay interest to the Commissioner on the amount by which the tax payable by the taxpayer under the amended assessment exceeds the tax payable by the taxpayer under the assessment that was amended.

59. Investors who expend capital moneys by way of contribution to the cost of producing a film should be aware of this provision because, should the circumstances surrounding the production of a

‘qualifying Australian film’ require the Commissioner to go back and reduce the deductions claimed by Investors in that film, section 170AA will have application. There is a discretion in 8AAG of the *Taxation Administration Act 1953* under which the Commissioner can remit, in appropriate circumstances, the whole or part of the interest payable under section 170AA.

#### **Part IVA**

60. For Part IVA 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). The arrangement subject to this ruling will be a ‘scheme’. The Investor will obtain, for example, a ‘tax benefit’ from entering into the scheme, in the form of a deduction allowable under the provisions in Division 10BA, that would not have been obtained but for the scheme. However, it is not possible to conclude, from the arrangement outlined in this ruling, that the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

61. An Investor to whom this Ruling applies intends to stay in the scheme for its full term and derive assessable income from the exploitation of the Copyrights of the film. Further, there are no features of the Project, as described in the said arrangement, that suggest that the Project is so ‘tax driven’ and ‘so designed to produce a tax deduction of a certain magnitude’, that the operation of Part IVA is attracted.

### **Detailed contents list**

---

62. Below is a detailed contents list for this Ruling:

	<b>Paragraph</b>
<b>What this Product Ruling is about</b>	<b>1</b>
Tax law(s)	2
Class of persons	3
Qualifications	5
<b>Date of effect</b>	<b>11</b>
<b>Withdrawal</b>	<b>13</b>
<b>Previous Rulings</b>	<b>14</b>
<b>Arrangement</b>	<b>15</b>
The Project	17
The Participants	28

Financing arrangements	31
Interest on borrowed funds	38
<b>Ruling</b>	<b>41</b>
<b>Explanations</b>	<b>43</b>
The ‘directly expended’ requirement	43
The ‘at risk’ rule	50
Non-arm’s length transactions	55
Payment of interest by an Investor where an assessment is amended	58
Part IVA	60
<b>Detailed contents list</b>	<b>62</b>

**Commissioner of Taxation**

29 March 2000

<i>Previous draft:</i>	- ITAA 1936 124ZAB(10)
Not previously issued in draft form	- ITAA 1936 124ZAC
	- ITAA 1936 124ZADA
<i>Related Rulings/Determinations:</i>	- ITAA 1936 124ZADA(1)
PR 1999/95;	- ITAA 1936 124ZADA(2)
TR 92/1	- ITAA 1936 124ZAF A
TR 92/20;	- ITAA 1936 124ZAF A(1)(a)
TR 97/16;	- ITAA 1936 124ZAF A(1)(b)(i)
TR 98/22;	- ITAA 1936 124ZAF A(1)(c)(i)
TD 93/34;	- ITAA 1936 124ZAF A(1)(c)(ii)
IT 2111	- ITAA 1936 124ZAF A(1)(d)(iii)
	- ITAA 1936 124ZAF A(1)(d)(iv)
<i>Subject references:</i>	- ITAA 1936 124ZAF A(2)
- Australian films	- ITAA 1936 124ZAJ
- Film income	- ITAA 1936 124ZAJ(1)
- Film industry	- ITAA 1936 124ZAM
- Interest expenses	- ITAA 1936 124ZAM(1)
- Product Rulings	- ITAA 1936 124ZAM(2)
- Public Rulings	- ITAA 1936 124ZAM(3)
- Tax avoidance	- ITAA 1936 124ZAO(2)
- Tax administration	- ITAA 1936 124ZAO(3)
	- ITAA 1936 170AA
<i>Legislative References:</i>	- ITAA 1936 Part IVA
- ITAA 1936 26AG	- ITAA 1997 8-1
- ITAA 1936 Div 10BA	- ITAA 1997 104-10
- ITAA 1936 124ZAA	- ITAA 1997 118-30
- ITAA 1936 124ZAA(6)	- TAA 1953 8AAG
- ITAA 1936 124ZAB	

---

ATO references:

NO T2000/005743

BO

FOI number: I 102304

ISSN: 1441-1172