


# ***PR 2000/56 - Income tax: Columbia Tristar Television Fund***

 This cover sheet is provided for information only. It does not form part of *PR 2000/56 - Income tax: Columbia Tristar Television Fund*

 This document has changed over time. This is a consolidated version of the ruling which was published on *17 May 2000*



# Product Ruling

## Income tax: Columbia Tristar Television Fund

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>Arrangement</b>	<b>14</b>
<b>Ruling</b>	<b>36</b>
<b>Explanations</b>	<b>38</b>
<b>Detailed contents list</b>	<b>56</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**, **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**

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.

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.

## 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 the Columbia Tristar Television fund, or just simply as 'the Project'.

### 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);
  - 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 are 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). In this Ruling these persons are referred to as 'investors'.

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 from the arrangement described in this ruling.**

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 might be 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 any device 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 17 May 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, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no change in the arrangement or the persons' involvement in the arrangement.

## Arrangement

---

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

- Application for a product ruling for the Columbia Tristar Television Fund (the Project) dated 27 January 2000 and associated documentation received from Blake Dawson Waldron on behalf of Astucity Holdings Limited ('Astucity');
- Draft Prospectus for the Project received by the ATO under covering letter dated 19 April 2000;
- Draft Constitution of the Project dated January 2000 received by the ATO as part of the original application;
- Draft Compliance Plan of the Project dated 14 January 2000 received by the ATO as part of the original application;
- Draft Management Agreement for the Project dated March 2000 between Columbia TriStar Productions Pty Limited ('Columbia Productions') and Astucity received by the ATO under covering letter dated 14 April 2000;
- Draft Production Contract for the Project between each investor, Astucity and CT Australian Productions Pty Limited ('CT Productions') received by the ATO under covering letter dated 19 April 2000;

- Draft Distribution Agreement for the Project between each investor, and CT Australian Distribution Pty Limited ('CT Distribution') received by the ATO under covering letter dated 19 April 2000;
- Draft Completion Guarantee Deed for the Project between each investor, Columbia Tristar Television Pty Limited ('Columbia Television'), CT Productions, CT Distribution and Astucity received by the ATO under covering letter dated 19 April 2000;
- Draft Implementation Deed for the Project dated March 2000 between Astucity, CT Productions, CT Distribution and Columbia Tristar Television Pty Limited ('Columbia Television') received by the ATO under covering letter dated 19 April 2000;
- Correspondence from Blake Dawson Waldron to the ATO dated 14 April 2000, 17 April 2000 and 4 May 2000 and enclosed documentation.

15. 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 with the exception of finance agreements to which paragraphs 32 to 35 apply.

16. The Project involves the production of an Australian feature film to be titled 'F.E.A.R.(ing)' ('the film') and six Australian television movies titled, 'Ihaka', 'My Husband My Killer', 'After The Rain', 'Thredbo: A Story of Survival', 'Saturn Return' and 'When Hope Runs Dry' ('the movies'). Provisional Certificate Numbers PO5788, PO5718, PO5719, PO5716, PO5717, PO5720 and PO5740 have been issued respectively for the film and the movies by the Department of Communications and the Arts (now the Department of Communications, Information Technology and the Arts). These certificates are currently in force in relation to the film and the movies and state that, when completed, the proposed film and movies will be 'qualifying Australian films' for the purpose of Division 10BA of Part III of the ITAA 1936.

17. The planned completion date for the film and each of the movies will be no later than 30 June 2002 in order to satisfy the requirements of Division 10BA.

18. The film and the movies will be produced for a total cost of \$29,700,000 to be raised from investors (\$27,600,000), Premium Movie Partnership (\$1,650,000) and the Australian Broadcasting Corporation(\$450,000).

# PR 2000/56

19. Each investor's Application Money will be initially held by Astucity on trust. The Project will be registered as a managed investment scheme under the Corporations Law.
20. An investor whose application to the Project is accepted will be entitled to one unit in the Project ('Unit') for each \$1.00 of the Application Money.
21. The minimum investment is \$35,000 being a subscription for 35,000 Units at \$1.00 each in the Fund.
22. Astucity, as agent for each of the investors, will enter into a production agreement with CT Productions for the production of the film and the movies ('Production Contract') and will pay the investor's Application Money, as required by the Constitution of the Project, to CT Productions for application towards the production costs. It is expected and intended that the Production Contract will be entered into before 30 June 2000 and that the payment of the investor's Application Moneys will occur on or before 30 June 2000.
23. All 'non deductible' expenditure associated with the Project will be paid from funds other than those provided by the investors for which deductions under Division 10BA are sought.
24. Upon completion of the film and each movie, ownership of the Copyright and other physical and intellectual property ('Film Copyright') in the film and the movies will vest in the investors by operation of law in proportion to the number of units held and the investors' contribution to the production costs of the film and each movie ('Investor Proportion'). The investors will thereby be the first owners of the Copyright.
25. CT Productions will grant the investors an exclusive use and exploitation licence for all media not owned by the investors but necessary for the distribution of the film and the movies. That licence will be for the period ending 7 years after the last of the film or the movies has been completed ('Initial Copyright Period').
26. CT Productions and in some cases co-producers will be entitled to a fee as set out in the budget for the film and each movie.
27. CT Productions will pay to each investor \$100 for the present assignment to CT Productions of future rights being all the investor's interest in the Copyrights and other physical and intellectual property in the film and the movies for the period commencing at the end of the Initial Copyright Period. That assignment will take effect at the end of the Initial Copyright Period and from then on that film and those movie Copyrights will be the property of CT Productions.
28. Astucity, as agent for each of the investors, will enter into a distribution agreement with CT Distribution for the worldwide distribution of the film and the movies ('Distribution Agreement') by

the grant of a worldwide distribution licence during the Initial Copyright Period ('Distribution Licence').

29. The investors will receive fees ('Licence Fees') in accordance with the Distribution Agreement calculated on gross receipts less certain expenditure including, a distribution fee of 30% of the gross receipts from the movies.

30. The Licence Fee payable to the investors under the Distribution Agreement will be at least 35% of the amount contributed by investors to the Project. However, the Licence Fee will not be payable to the extent that the film or one or more of the movies are not actually produced and delivered to CT Distribution for distribution under the Distribution Agreement.

### **The Participants**

31. The following entities are participants in the Project:

- Astucity Holdings Ltd will act as the 'Responsible Entity' for the Project.
- CT Australian Productions Pty Ltd will act as the 'Producer' for the Project.
- CT Australian Distribution Pty Ltd will act as the 'Distributor' for the Project.
- Columbia Tristar Television Pty Limited will guarantee completion of the movies.
- Columbia TriStar Productions Pty Limited which has engaged Astucity to manage the Project.

### **Interest on Borrowed Funds**

32. Investors can fund the investments themselves, borrow from an unassociated lending body or borrow through finance arrangements organised by Astucity. Astucity may arrange for the St George Bank Ltd, a company not associated with Astucity or any other participant entity or any entity associated with the participants, to make available loans to any investor seeking finance to cover the Application Money payable to Astucity. Apart from any arrangement with St George, there is no agreement, arrangement or understanding between any entity or party associated with the Project and any financial or other institution for the provision of any finance to the investors for any purpose associated with the Project.

33. The loans made available by St George will be on the normal commercial terms of the bank, they will be both in form and substance, full recourse, and borrowers will be obliged to make

regular repayments regardless of any income derived from the Project. Astucity will receive funds directly as a result of these loans, upon the investors being accepted as borrowers. Astucity will not place any of these funds on deposit with St George, the lender, or any associated entities of St. George, but will substantially use these funds in carrying out its obligations in relation to the Project.

34. This Ruling does not apply if an investor enters into a finance arrangement that includes 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 investors in the Project;
- there are indemnity arrangements, or equivalent collateral agreements, in relation to the loan, designed to limit the borrower's 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;
- the loan or rate of interest is non-arm's length;
- 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.

35. Interest incurred in respect of funds borrowed by the 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**

---

36. Subject to the assumptions listed below at paragraph 37 of this Ruling:

- (a) A deduction is available in a year of income to the investors in the Project under Division 10BA, Part III, ITAA 1936 for 100% of the capital moneys expended in that year by way of contribution to the cost of producing the film and the movies
- (b) Licence Fees and any other amounts payable to the investors in the Project in respect of the exploitation of their interest in the film and movie copyrights (including any transfer of an interest in the copyright) and any related property or rights attached thereto will be assessable to the investors as film income under section 26AG when derived.
- (c) The consideration of \$100 for an Australian resident investor's interest in the Copyrights on termination of the Fund will be assessable to the investors as film income under section 26AG of the ITAA 1936 when receivable and is accepted as an arm's length amount for this transaction.
- (d) The transfer of interest in copyrights held by the investors to the CT Productions will not give rise to any capital gain or loss consequences for the 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.
- (e) 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.

37. The Ruling at paragraph 35, is made subject to the following assumptions:

- (a) The investor was a resident of Australia for tax purposes at the time the money was expended;
- (b) The investment moneys contributed by the investors will be paid to CT Productions by way of contribution to the cost of producing the film and the movies. Moneys contributed by the investors towards the cost of production of the film and the movies will be directly expended in the production of that film and those movies (paragraph 124ZAF(1)(a) read in

conjunction with subsection 124ZAA(6)). The Production Agreement specifies that the investment money contributed represents the estimated cost of production of the film and the movies as set out in the Film Production Budget (paragraph 124ZAF(1)(a) and subparagraph 124ZAF(1)(d)(iv));

- (c) At the relevant time, provisional certificates (section 124ZAB) or final certificates (section 124ZAC) are in force in relation to the film and the movies ;
- (d) Each investor, at the relevant time, expects to become one of the first owners of the Copyrights in the film and the movies when the copyrights comes into force (subparagraph 124ZAF(1)(c)(i));
- (e) Each investor, at the relevant time, intends to use the interest in the copyrights for the purpose of producing assessable income from the exhibition of the film and the movies as mentioned in subparagraph 124ZAF(1)(c)(ii);
- (f) There will be in force a declaration lodged in respect of the film and the movies in accordance with subsection 124ZADA(1) by a person accepted by the Commissioner under subsection 124ZADA(2) as an appropriate person to make such a declaration (subparagraph 124ZAF(1)(d)(iii));
- (g) Before the expiration of six months after the time when the film and the movies are completed, an application will be made for final certificates in accordance with section 124ZAC, otherwise the provisional certificates shall be deemed never to have been in force (subsection 124ZAB(10));
- (h) All requirements of the Department of Communications, Information Technology and the Arts will be met and final certificates will be issued;
- (i) The film and the movies will be completed and the investors' interest in the copyrights in the film and the movies 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));
- (j) By reason of the said capital moneys being expended, the investor will become one of the first owners of the Copyrights in the film and the movies of the Fund before 1 July 2002;

- (k) In producing the film and the movies of the Fund:
- where an amount is expended by a person ('the film and movies producer') for the supply of goods or the provision of services; and
  - the Commissioner is satisfied that the film and movies 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 and movie producer if the film and movie producer and the person supplying the goods or providing the services had dealt with each other at arm's length (section 124ZAJ);
- (l) At the time the investor expends the capital moneys by way of contribution to the cost of producing the film and the movies, 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));
- (m) 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 the investors, by loan or otherwise, to enable them to expend capital moneys by way of contribution to the cost of producing the film and the movies;
- (n) In the event of any underage, CT Productions will expend the underage amount on the production and marketing of the film and the movies in a manner that will preserve the status of the film and the movies as 'qualifying Australian Films'.
- (o) The dominant purpose of the investors is to make a commercial return from their investment in the film and the movies and the arrangements will be executed in the manner described in this Ruling.
- (p) Non-deductible expenditure associated with the preparation and issue of the Prospectus and the

Establishment of the Fund, as set out in the Non-Deductible Expenses Budget, will be paid by CT Distribution or its affiliates and will be recouped from Gross Receipts. Non-deductible Expenses related to production, including stills camera crew and equipment and publicity will be paid by CT Productions or its affiliates.

## Explanations

---

### The 'directly expended' requirement

38. 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.

39. 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 costs of insurance of production associated risks, drawing up performers' contracts and the building of sets and scenery**' (emphasis added).

40. Our view is that the 'directly expended' requirement is not met at the point in time when the investors, make payments to the CT Productions in respect of the budget for the film and the movies. Rather, the extent of the application of the money by the CT Productions to elements of production will ultimately determine the portion of the investors' contribution that meets this requirement. Generally, this will not be known until after the completion of the film and the movies.

41. Astucity will pay the investor's application money to CT Productions for application towards the production costs. In doing this, CT Productions is to ensure that funds contributed by investors are only expended on items within the film production budget, with non-deductible expenditure paid by CT Productions, CT Distribution or associated entities and funded from sources other than investors' application moneys.

42. In determining the amount that is 'directly expended' on the production of the film and the movies, we will also consider the ultimate application of any funds obtained by the CT Productions as 'underage'. In this regard, CT Productions has agreed any underage

will be expended on the production of the film and the movies in a manner that will preserve the status of the film and movies as Qualifying Australian Films.

43. 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 a 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 inadequate in this regard.

44. Accordingly, while a deduction should be available in respect of the contributions made by Australian investors, the deduction will be withdrawn with retrospective effect if the amounts contributed are not directly expended on the film or the movies.

#### **The 'at risk' rule**

45. 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).

46. 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.'

47. 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 also 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.

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

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

49. 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.

50. 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 and the movies have been produced. Furthermore, to make such a determination, a full audit of the application of each film and movies production funds would normally be required.

51. Accordingly, while a deduction should be available in respect of capital moneys expended by investors by way of contribution to the cost of producing the film and the movies 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 and the movies of the Fund dealt with a supplier of goods or a provider of services, in the course of producing that film or movie, 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**

52. 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.

53. 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 subsection 170AA(11) under which the Commissioner can remit, in appropriate circumstances, the whole or part of the interest payable under section 170AA.

**Part IVA**

54. 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.

55. 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 and the movies. 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**

56. Below is a detailed contents list for this Product Ruling:

	Paragraph
<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>Arrangement</b>	<b>14</b>
The Participants	31
Interest on Borrowed Funds	32
<b>Ruling</b>	<b>36</b>
<b>Explanations</b>	<b>38</b>
The 'directly expended' requirement	38
The 'at risk' rule	45
Non-arm's length transactions	49
Payment of interest by an Investor where an assessment is amended	52
Part IVA	54
<b>Detailed contents list</b>	<b>56</b>

**Commissioner of Taxation**

17 May 2000

*Previous draft:*

Not previously issued in draft form

- film industry
- interest expenses
- product Rulings
- public Rulings
- tax avoidance
- tax administration

*Related Rulings/Determinations:*

PR 98/1; TR 92/20; TD 93/34;  
IT 2111; PR 1999/95; TR 92/1;  
TR 97/16; TR 98/22

*Legislative references:**Subject references:*

- Australian films
- film income

- ITAA 1936 26AG
- ITAA 1936 82KL
- ITAA 1936 124ZAA

---

- ITAA 1936 124ZAA(6)	- ITAA 1936 124ZAM(1)
- ITAA 1936 124ZAB	- ITAA 1936 124ZAM(2)
- ITAA 1936 124ZAB(10)	- ITAA 1936 124ZAM(3)
- ITAA 1936 124ZAC	- ITAA 1936 124ZAO(2)
- ITAA 1936 124ZADA	- ITAA 1936 124ZAO(3)
- ITAA 1936 124ZADA(1)	- ITAA 1936 Part IVA
- ITAA 1936 124ZADA(2)	- ITAA 1936 Part III
- ITAA 1936 124ZAF	- ITAA 1936 Div. 10BA
- ITAA 1936 124ZAF(1)(a)	- ITAA 1936 170AA
- ITAA 1936 124ZAF(1)(b)(i)	- ITAA 1936 170AA(11)
- ITAA 1936 124ZAF(1)(c)(i)	- ITAA 1936 177A
- ITAA 1936 124ZAF(1)(c)(ii)	- ITAA 1936 177C
- ITAA 1936 124ZAF(1)(d)(iii)	- ITAA 1936 177D
- ITAA 1936 124ZAF(1)(d)(iv)	- ITAA 1997 8-1
- ITAA 1936 124ZAF(2)	- ITAA 1997 104-10
- ITAA 1936 124ZAJ	- ITAA 1997 118-30
- ITAA 1936 124ZAJ(1)	
- ITAA 1936 124ZAM	

---

## ATO references:

NO 99/16938-9

BO

FOI number: I 102750

ISSN: 1441-1172