



PR 2004/39 - Income tax: Beyond Group Media Fund 2004

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 This document has changed over time. This is a consolidated version of the ruling which was published on *7 April 2004*



Product Ruling

Income tax: Beyond Group Media Fund 2004

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Participants 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.

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

The Australian Taxation Office (ATO) **does not** sanction or guarantee this product. 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 participants 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 this product fits an existing portfolio, etc. We recommend 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 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, participants lose the protection of this Product Ruling. Potential participants may wish to seek assurances from the promoter that the arrangement will be carried out as described in this Product Ruling.

Potential participants 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 Fund', 'the Projects' or 'the arrangement'.

Tax law(s)

2. The tax laws dealt with in this Ruling are:
- Division 27 of the *Income Tax Assessment Act 1997* (ITAA 1997);
 - Section 995-1 of the (ITAA 1997);
 - Section 82KL of the *Income Tax Assessment Act 1936* (ITAA 1936);
 - Division 5 of Part III (ITAA 1936);
 - Division 10B of Part III (ITAA 1936); and
 - Part IVA of the (ITAA 1936).

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

Goods and Services Tax

3. In this Ruling, where applicable, all fees and expenditure referred to include Goods and Services Tax (GST) set out in the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). A person or entity is entitled to claim input tax credits for the GST included in its expenditure provided that the acquisition is a creditable acquisition under Division 11 of the GST Act.

Business Tax Reform

4. The Government is currently evaluating further changes to the tax system in response to the *Ralph Review of Business Taxation* and continuing business tax reform is expected to be implemented over a number of years. Although this Ruling deals with the laws enacted at the time it was issued, future tax changes may affect the operation of those laws and, in particular, the tax deductions that are allowable. Where tax laws change, those changes will take precedence over the application of this Ruling and, to that extent, this Ruling will be superseded.

5. Taxpayers who are considering investing in the Project 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

6. Product Rulings were introduced for the purpose of providing certainty about tax consequences for investors in projects such as this. In keeping with that intention, the Tax Office suggests that promoters and advisers ensure that potential investors are fully informed of any changes in tax laws that take place after the Ruling is issued. Such action should minimise suggestions that potential investors have been negligently or otherwise misled.

Class of persons

7. The class of persons to whom 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 agreement until their term expires), and deriving assessable income from this involvement as set out in the description of the arrangement. In this Ruling, each of these persons, referred to as 'Investors', will be wholesale clients for the purpose of the *Corporations Act 2001*.

8. 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

9. The Commissioner rules on the precise arrangement identified in the Ruling. 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. The Ruling will be withdrawn or modified.

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:

Commonwealth Copyright Administration
Intellectual Property Branch
Department of Communications, Information Technology and
the Arts
GPO Box 2154
Canberra ACT 2601

or by e-mail: commonwealth.copyright@dcita.gov.au

Date of effect

11. This Ruling applies prospectively from 7 April 2004, 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 2006 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 persons, 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.

Arrangement

14. The arrangement is the Beyond Group Media Fund 2004 and is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The

relevant documents or parts of documents incorporated into this description of the arrangement are:

- Application for a Product Ruling and Product Ruling Checklist dated 6 November 2003 in respect of the Beyond Group Media Fund 2004 as constituted by documents received in the ATO on 7 November 2003, 12 February 2004, 8 March 2004, 12 March 2004, 15 March 2004 and 23 March 2004 and additional correspondence dated 5 February 2004, 10 February 2004, 12 February 2004, 16 February 2004, 8 March 2004, 12 March 2004, 15 March 2004 and 30 March 2004;
- **Draft Film Investment Joint Venture Agreement between Zero Bond Financial Services Pty Limited ('Manager') and each Investor received in the ATO under covering letter dated on 12 March 2004;**
- **Draft Acquisition Agreement in relation to the acquisition of copyright of each Television Series between the Manager, Beyond Simpson Le Mesurier Pty Ltd ('Series Producer') and each Investor received in the ATO under covering letter dated 8 March 2004;**
- **Draft Acquisition Agreement in relation to the acquisition of an interest in the copyright of each Documentary between the Manager, Beyond Properties Pty Limited ('Documentary and Program Producer') and each Investor received in the ATO under covering letter dated 8 March 2004;**
- **Draft Acquisition Agreement in relation to the acquisition of an interest in the copyright of each Television Program between the Manager, the Program and Documentary Producer and each Investor received in the ATO under covering letter dated 8 March 2004;**
- **Draft Umbrella Distribution Agreement ('Distribution Agreement') between the Manager, the Series Producer, the Documentary and Program Producer, Beyond Distribution Pty Limited ('Distributor') and each Investor received in the ATO under covering letter dated 12 March 2004; and**
- Draft Beyond Group Media Fund 2004 Information Memorandum received in the ATO on 15 March 2004.

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

15. The documents highlighted are those which Investors enter into or become a party to. There are no other agreements, whether formal or informal, and whether or not legally enforceable, that an Investor, or any associate of an Investor, will be a party to.

16. In accordance with the above documents, an Investor who participates in the arrangement must be a wholesale client. **This Ruling does not apply unless the Investor is a wholesale client as defined in section 761G of the *Corporations Act 2001*.**

17. An explanation of the types of Investors that qualify as wholesale clients is provided in paragraphs 48 to 52 in the Explanation area of this Product Ruling.

The Participants

18. The parties involved in the arrangement are:

- Zero Bond Financial Services Pty Limited is the Manager of the Fund and will act as agent for each of the Investors;
- each Investor, being a purchaser of a number of copyright interests who licences them to derive assessable income;
- Beyond Properties Pty Ltd will produce the Television Documentaries and Programs in relation to the Fund;
- Beyond Simpson Le Mesurier Pty Ltd will produce the Television Series in relation to the Fund; and
- Beyond Distribution Pty Limited is the Distributor for the Fund.

The Fund

19. The Manager will make an invitation to the specially selected persons to invest in the Television Series, Documentaries and Programs (the 'Projects') in the Fund. The offer will close, Copyright Interests will be allocated and documents will be executed on or before 30 June 2004. Investment in the Fund will involve an Investor paying to the Manager an amount (the 'Investment'), together with Application Moneys equal to 2% of the Investment amount (intended to cover the fundraising costs in relation to the arrangement).

20. The Manager will apply 100% of each Investment to investment in the Projects, all of which are 'Australian films' for the purposes of Division 10B.

21. The maximum investment in the Fund is to be \$88 million and there is no minimum subscription. Depending on the level of funds raised under the offer, a varying number of Projects will be acquired, being a mix of Television Series, Documentaries and Programs. The Manager has the final choice of which Projects are selected for acquisition and which Projects are not selected for acquisition.

22. Each of the parties above will enter in a Distribution Agreement (with the Manager contracting on behalf of each of the Investors severally). It will cover each of the Projects and will provide for licence fees to be paid semi-annually based on the performance of the Projects. The Distributor will provide a distribution guarantee which will guarantee that Investors will receive by 30 June 2011 (on a cumulative basis) from all territories under the Distribution Agreement an amount equal to the level of presales obtained with arm's length third parties at the time of entry into the Distribution Agreement or 70% of the cost of acquiring the Copyright Interests in the Projects (whichever is the greater).

23. In addition, the Distributor may enter into a credit insurance arrangement with an arm's length financial institution for the purpose of enhancing the credit obligations of the third party broadcasters and sub-distributors and of the Distributor. It is understood that any such arrangement will be entered into with an OECD bank in the ordinary course of business and at commercial rates. The credit insurance will only protect Investors and/or the Manager against an insolvency issue or contractual default of a third party broadcaster or sub-distributor or the Distributor.

24. Investors are expected to derive assessable income from the Projects from the year ending 30 June 2004 through to the end of the year ending 30 June 2014.

Film Investment Joint Venture Agreement

25. This Agreement sets out the terms and conditions under which the Investors agree to invest in the Projects.

26. Under the Agreement, each of the Investors authorises the Manager to execute on their behalf the Distribution Agreement and the three Acquisition Agreements in relation to the Television Series, Documentaries and Programs.

27. The Manager will, by the earlier of the receipt of the first Proceeds from the Projects and 30 June 2004, open the Proceeds Account in the name of the Manager. The Manager will operate the Proceeds Account until the Expiry Date of 30 June 2014 and will pay into it any monies received by it on behalf of the Investors.

Acquisition Agreements

28. Under each of the three Acquisition Agreements in relation to the Television Series, Documentaries and Programs respectively, the relevant Producer assigns to each Investor that Investor's Copyright Interest in respect of the Copyright in the relevant Projects covered by the particular Acquisition Agreement. 98% of the Copyright in each of the Television Series, Documentaries and Programs will be allocated to the Investors with the remaining 2% being allocated to the relevant Producer.

29. Each of the Investors, the Manager and the relevant Producer, agree that Gross Revenue, being all non-returnable amounts resulting from the use, distribution and exploitation of the Projects received by the Producers or Distributor, will be applied in accordance with the Distribution Agreement.

Umbrella Distribution Agreement

30. Under this Agreement, the Documentary and Program Producer and the Investors grant the Distributor the exclusive world wide marketing rights for the Television Documentaries and Programs until the expiry of the Fund. Similarly, the Series Producer and Investors grant the Distributor the exclusive world wide marketing rights for the Television Series until the expiry of the Fund.

31. The Distribution Agreement contains Annexure A and Annexure AA. Annexure A is specifically concerned with the distribution of the Television Documentaries and Programs and Annexure AA is specifically concerned with the distribution of the Television Series.

32. Both Annexures provide that Gross Revenue will be applied in the following order:

- (i) For commission payable to the Distributor or its agent;
- (ii) To recoup costs of sales and marketing expenses incurred by the Distributor or its agent; and
- (iii) To recoup any part of the Distribution Guarantee the Distributor has paid or has not recouped.

After the Gross Proceeds have been so applied, the remaining proceeds, being the net proceeds, are to be paid as follows:

- (iv) 20% to the Manager on behalf of the Investors and 80% to the Producer until such time as the Investors have received an amount equal to 100% of the Investment; and thereafter as follows:
- (v) the Distributor, 25%;
- (vi) the Investors, 25%; and
- (vii) the Producer, 50%.

33. The funding of the distribution guarantee under the Distribution Agreement is not attributable in any way or form whether directly or indirectly to any money raised or expended in relation to the acquisition of the Projects. This includes the fees payable to the producer, director and any other person who receives payment out of any moneys contributed to the cost of producing the Projects.

Finance

34. There is no finance facility offered by the Manager or any other party to the arrangement. Investors can fund their investment in the Fund themselves, or borrow from an independent lender. Regardless of the source of loan funds, this Ruling will not apply to Investors if the Manager accepts their investment subject to finance approval by a lending institution and the full amount payable at the time of the Investment is not paid to the Manager on or before 30 June 2004.

35. This Ruling does not apply if a finance arrangement entered into by an Investor to fund the Investor's investment in the arrangement 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 or the funding arrangements transform the Project into a 'scheme' to which Part IVA 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 are involved or become involved, in the provision of finance to Investors for the Project.

Ruling

36. A deduction is available to an Investor in the Project under Division 10B as follows:

- (a) 50% of the Investment is allowable in the year of income in which the Television Series, Documentaries and/or Programs are first used to produce assessable income, and
- (b) the remaining 50% is allowable in the next succeeding year of income.

37. For example, for each \$500,000 Investment, a deduction of \$250,000, less any GST input tax credit (see below), will be allowable as a deduction in both the year of income in which the Television Series, Documentaries and/or Programs are first used to produce assessable income and the next succeeding year of income. Refer to paragraphs 61 to 68 for details on the calculation of these deductions.

38. The Application Moneys, which equal 2% of the Investment and are to be used for fund-raising costs, do not form part of the Investment and are non-deductible.

39. A deduction is not available until an Investor has entered into the Film Investment Joint Venture Agreement, production of the Television Series, Documentaries and/or Programs are completed and used to produce assessable income. (subsection 124L(1)).

40. During the period that the Investors, the Series Producer and the Documentary and Program Producer receive distributions from the Proceeds Account, the Investors and the Series Producer and the Investors and the Documentary and Program Producer respectively, will be in a tax law partnership for the purposes of Division 5 of Part III of the ITAA 1936 (see definition of 'partnership' in section 995-1 of the ITAA 1997). The partners will receive income jointly from the commercial exploitation of the Copyrights in the Television Series, Documentaries and/or Programs. Section 90 of ITAA 1936

provides that the net income of a partnership is calculated as if the partnership were a resident taxpayer, and is the assessable income less all allowable deductions. The partnership will be required to lodge a partnership return for each year of income, as required by section 91 of the ITAA 1936.

41. Each partner will be a partner in a partnership and, in accordance with section 92 of the ITAA 1936, where the partner is a resident, will be required to include his or her individual interest in the net income of the partnership in his or her assessable income. Where the Investor is a non-resident, he or she is required to include in his or her assessable income his or her individual interest in the net income of the partnership as is derived from sources in Australia.

42. Each partner will be entitled to a deduction under section 92 of so much of his or her individual interest in any loss of the partnership as is attributable to a period when he or she was a resident. Where the Investor is a non-resident, he or she will be entitled to a deduction for so much of his or her individual interest in the partnership loss as is attributable to sources in Australia.

43. The amounts payable by Investors under the Film Investment Joint Venturer Agreement are inclusive of GST. Where an Investor who is registered or required to be registered for GST is entitled to an input tax credit on their Investment, the tax deduction otherwise allowable will exclude any amounts of input tax credit (Division 27 of the ITAA 1997).

44. The deductibility or otherwise of interest arising from loan agreements entered into with financiers is outside the scope to this Ruling.

45. Section 82KL will not be applied to deny deductions otherwise allowable.

46. Part IVA will not apply to deny deductibility or to accelerate assessability of the above amounts.

Assumptions

47. This Ruling is made subject to the following assumptions in respect of each Project:

- (a) An Investor will incur capital expenditure on the purchase of Copyright (paragraph 124L(1)(b));
- (b) An Investor's interest in the Copyright amounts to ownership of the Copyright for the purposes of Division 10B (subsection 124K(1));

- (c) The Project will be completed and the Partnership will use the Copyright for the purpose of producing assessable income (section 124L(1));
- (d) A certificate, issued by the Department of Communication, Intellectual Technology and the Arts, will be in existence in relation to the Television Series, Documentaries and Programs (subsection 124K(1));
- (e) The Investors will not exercise the discretion contained in subsection 124UA(2);
- (f) The effective life of the Copyright in the Projects is two years (subsection 124UA(1));
- (g) 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 acquiring copyright interests in the television series, documentaries and programs ('Australian Films');
- (h) The dominant purpose of the Investors is to make a commercial return from their investment in the Projects and the arrangements will be executed in the manner described in this Ruling; or
- (i) Copyright Interests are acquired at an arms length value from the Producers.

Explanation

Corporations Act 2001

48. For this Ruling to apply, an offer for an interest in the project must have been made to, and accepted by an Investor, who qualifies as a wholesale client as defined in Section 761G of the *Corporations Act 2001*.

Offers to wholesale clients do not require a prospectus or product disclosure statement.

49. An Investor in the Project may be a person who is a wholesale client within the definition in section 761G. A person will be a wholesale client where the person satisfies one of the following tests:

- the 'product value test' (paragraph 761G(7)(a));
- the 'individual wealth test' (paragraph 761G(7)(c)); and

- the 'professional investor test' (paragraph 761G(7)(d)).

50. A participant in a managed investment scheme, referred to below as 'the person' or 'the person to whom the offer is made', will satisfy the 'product value test' where:

- the minimum amount payable for the interests in the project on acceptance of the offer by the person to whom the offer is made is at least \$500,000; or
- the amount payable for the interests in the project on acceptance by the person to whom the offer is made and the amounts previously paid by the person for interests in the project of the same class that are held by the person add up to at least \$500,000.

51. A participant in a managed investment scheme, referred to below as 'the person' or 'the person to whom the offer is made', will satisfy the 'individual wealth test' where, it appears from a certificate given by a qualified accountant no more than 6 months before the offer is made, that the person to whom the offer is made:

- has net assets of at least \$2.5 million; or
- has a gross income for each of the last 2 financial years of at least \$250,000 a year.

52. A participant in a managed investment scheme, referred to below as 'the person' or 'the person to whom the offer is made', will satisfy the 'professional investor test' where:

- the person is a financial services licensee; or
- the person controls at least \$10 million for the purposes of investment in securities.

Partnership for income tax purposes

53. The Investors and the Series Producer and the Investors and the Documentary and Program Producer respectively, will comprise a partnership for income tax purposes as they are in receipt of ordinary income or statutory income jointly (see the definition of 'partnership' in section 995-1 of the ITAA 1997). Division 5 of Part III applies so that the assessable income of a partner includes so much of the individual interest of the partner in the net income of the partnership or, in the case of a partnership loss, a partner is entitled to a deduction for so much of his or her individual interest in any loss of the partnership. It should be noted that the partnerships are not common law partnerships and consist only of the persons who receive income jointly from the exploitation of the Copyright in the Television Series, Documentaries and Programs.

54. The partners will receive passive income from the exploitation of the Copyright in the Television Series, Documentaries and Programs.

55. As the Investors and the Series Producer and the Investors and the Documentary and Program Producer between them hold 100% of the Copyrights in the Television Series and the Documentaries and Programs respectively, the Investors, the Series Producer and the Documentary and Program Producer, are entitled to share in the distributions from the Proceeds Account.

56. A partnership return will be required to be furnished for each year of income as required by section 91. The Investors will be required to disclose their share of the partnership net income or loss in their returns of income as required by section 92.

The Cost of a Unit of Industrial Property

57. The cost of an Australian film for the purposes of Division 10B is determined under section 124R.

58. In our view, based on the information provided, the Investors and the Series Producer and the Investors and the Documentary and Program Producer, are dealing at arm's length. The Investors will pay the Investment to the Series Producer and the Documentary and Program Producer who will apply 100% of the Investment towards the direct production costs of the Television Series, Documentaries and Programs. The 2% Application Moneys are intended to cover the fundraising costs and will be for non-production expenditure.

Used for the purpose of producing assessable income

59. For Division 10B to apply, section 124L requires the owner of a unit of industrial property to have used it in the year of income concerned or in a previous year of income for the purpose of producing assessable income.

60. The Investors and the relevant Producer will licence their interest in the Copyrights to Beyond Distribution Pty Limited. Beyond Distribution Pty Limited will market the Television Series, Documentaries and Programs worldwide. The Partnership is to receive income generated from the commercial exploitation of the Television Series, Documentaries and Programs in accordance with Annexures A and AA of the Umbrella Distribution Agreement. It is our view that the Television Series, Documentaries and Programs will be used for the purpose of producing assessable income. In the year of income that these events occur, a deduction will be first available to the Investors.

Entitlement to annual deductions

61. The amount of the annual deduction allowable to the owner of a unit of industrial property to whom Division 10B applies is determined in accordance with section 124M.

62. The amount of the annual deduction is calculated by dividing the residual value of the unit at the end of the income year by the number of whole years in the effective life of the unit as at the beginning of the year. The residual value of a unit is determined in accordance with section 124S and the effective life of a unit, being a copyright subsisting in an Australian film, is determined in accordance with section 124UA.

(i) Residual Value

63. Residual value is determined under section 124S. Generally speaking, the residual value, as per subsection 124S(1), is the cost of the unit to the owner less the sum of:

- (a) the deductions (if any) allowed or allowable to that person in respect of the unit in previous years; and
- (b) any consideration receivable by the owner in respect of any earlier part disposal of the unit.

(ii) Effective life of a unit

64. The effective life of a unit to which s 124UA applies, i.e. a copyright subsisting in an Australian film, will commence at the commencement of the year of income during which it is first used by the owner for the purpose of producing assessable income and shall end at the conclusion of the next succeeding year of income, or, where the unit was acquired for a specified period, the end of the year of income in which that specified period ends, whichever first occurs. Effectively this means that the cost of the unit is written off over two years except in circumstances where the unit is acquired for a specified period which expires within the same year of income in which the unit was acquired, in which case the capital cost of the unit will be fully deductible in that year.

65. Subsection 124UA(2) gives an owner of a unit of industrial property that relates to a copyright in an Australian film the right to elect to have the effective life of the unit determined under section 124U. If the owner makes such an election, the deductions allowable in respect of the cost to the owner will be determined under the general basis provided for in Division 10B, i.e. by way of annual

deductions over 25 years or any shorter effective life as determined in accordance with section 124U.

66. The Series Producer and the Documentary and Program Producer will assign 98% of the Copyright in the Television Series, Documentaries and Programs to the Investors. The residual value for an Investor will be the capital expenditure incurred by that Investor to acquire their Copyright interest in the Television Series, Documentaries and Programs.

67. Given that no election in terms of subsection 124UA(2) has been made, the effective life of the series is two years. Consequently, the deduction available to an Investor in the year in which the Copyright is first used by the Partnership to produce assessable income is 50% of the capital expenditure incurred by that Investor to acquire his or her interest in the Copyright.

68. The deduction available in the following year will be the residual value of the Television Series, Documentary and/or Program at that time, being the cost of the unit to the owner less the deductions allowed in previous years (assuming that no consideration was received by the Partnership or the Investors when the Partnership enters into the Distribution Agreement). The deduction available is therefore the remaining 50% being, the capital expenditure incurred (cost of unit) less the 50% deduction allowed in the previous year.

Interest deductibility

69. The deductibility of interest incurred by Investors who finance their participation in the project through a loan facility with a bank or other financier is outside the scope of this Ruling. Product Rulings only deal with arrangements where all details and documentation have been provided to, and examined by, the Tax Office.

Section 82KL - recouped expenditure

70. The operation of section 82KL depends, among other things, on the identification of a certain quantum of 'additional benefits'. Insufficient 'additional benefits' will be provided in respect of this project, to trigger the application of section 82KL. It will not apply to deny the deductions otherwise allowable under section 124M.

Part IVA

71. 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

Investors will obtain, for example, a ‘tax benefit’ from entering into the scheme, in the form of a deduction allowable under the provisions in Division 10B, 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 a tax benefit.

72. 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 Television Series, Documentaries and Programs. 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

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

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Commissioner of Taxation

7 April 2004

Previous draft:

Not previously issued in draft form

- ITAA 1936 124K(1)
 - ITAA 1936 Div 10 of 124K(1)
 - ITAA 1936 124L

Related Rulings/Determinations:

PR 1999/95; TR 92/1; TR 92/20;
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 - tax avoidance
 - Australian films
 - Film income
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