



PR 2006/9 - Income tax: The Paulownia Tree Farming Project No 1 - NCL

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 This document has changed over time. This is a consolidated version of the ruling which was published on *8 March 2006*



Product Ruling

Income tax: The Paulownia Tree Farming Project No 1 – NCL

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

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

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

No guarantee of commercial success

The Tax Office **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 and how the product fits an existing portfolio. 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 in the **Ruling** part of this document are available, **provided that** the scheme is carried out in accordance with the information we have been given, and have described below in the **Scheme** part of this document.

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

Potential participants should be aware that the Tax Office will be undertaking review activities to confirm the scheme has been implemented as described below and to ensure that the participants in the scheme 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 entity(ies) 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 'taxation provision(s)' identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant taxation provisions

2. The taxation provisions dealt with in this Ruling are:
- Division 35 of the *Income Tax Assessment Act 1997* (ITAA 1997).

Class of entities

3. The class of entities to whom this Ruling applies is the persons who are more specifically identified in the Ruling part of Product Ruling PR 1999/70, who entered into the scheme during the period 16 June 1999 to 30 June 1999, and entered into the specified scheme that is set out in paragraphs 12 to 41 of that Ruling. At the time of entering the Project, they had (and continue to have) a purpose of staying in the scheme until it is completed (that is, being a party to the relevant agreements until their term expires), and deriving assessable income from this involvement as set out in the description of the scheme. In this Ruling, these persons are referred to as 'Growers'.

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

Qualifications

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 12 to 41 of Product Ruling PR 1999/70.

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

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

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Date of effect

8. This Ruling applies prospectively from 8 March 2006 for Growers who, between 16 June 1999 and 30 June 1999, entered into the scheme as set out in paragraphs 12 to 41 of PR 1999/70. 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).

9. 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 scheme covered by the private ruling has not begun to be carried out, and the income year to which it relates has not yet commenced, this Ruling applies to the taxpayer to the extent of the inconsistency only (see Taxation Determination TD 93/34).

Withdrawal

10. This Product Ruling is withdrawn and ceases to have effect after 30 June 2006. Even following its withdrawal, the Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons who, between 16 June 1999 and 30 June 1999, entered into the specified scheme that is set out in paragraphs 12 to 41 of Product Ruling PR 1999/70. This is subject to there being no change in the scheme or in the persons' involvement in the scheme.

Scheme

11. The scheme that is the subject of this Ruling is described in paragraphs 12 to 41 of Product Ruling PR 1999/70.

12. In addition to the documents considered in paragraph 12 of PR 1999/70, the following documents have also been considered:

- correspondence received 5 October 2005, 25 November 2005 and 2 February 2006.

13. The scheme that is the subject of this Ruling is the same as that described in Product Ruling PR 1999/70 except to the extent that Woodland Asset Pty Ltd has assigned its interest and duties in the scheme to Goldzone Investments Pty Ltd.

Ruling

Continuing application of previous Product Ruling

14. Although now withdrawn, the tax benefits set out in PR 1999/70 continue to apply to participants who are within the specified class of persons to which the ruling applied and who entered into the specified scheme between 16 June 1999 and 30 June 1999.

Division 35 – deferral of losses from non-commercial business activities

Section 35-55 – exercise of Commissioner’s discretion

15. A Grower who is an individual accepted into the Project from 16 June 1999 to 30 June 1999 may have losses arising from their participation in the Project that would be deferred to a later income year under section 35-10 of the ITAA 1997. Subject to the Project being carried out in the manner described above, the Commissioner will exercise the discretion in paragraph 35-55(1)(b) of the ITAA 1997 for these Growers for the income years ending **30 June 2005 to 30 June 2010**. This conditional exercise of the discretion will allow those losses to be offset against the Grower’s other assessable income in the income year in which the losses arise.

Commissioner of Taxation

8 March 2006

Appendix 1 – Explanation

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

Division 35 – deferral of losses from non-commercial business activities

Section 35-55 – exercise of Commissioner's discretion

16. In deciding to exercise the discretion in paragraph 35-55(1)(b) of the ITAA 1997 on a conditional basis for the income years ending **30 June 2005 to 30 June 2010** the Commissioner has applied the principles set out in Taxation Ruling TR 2001/14 Income tax: Division 35 – non-commercial business losses. Accordingly, based on the evidence supplied, the Commissioner has determined that for those income years ended 30 June 2005 up to and including 30 June 2010:

- it is because of its nature the business activity of a Grower that will not satisfy one of the four tests in Division 35; and
- there is an objective expectation that within a period that is commercially viable for the afforestation industry, a Grower's business activity will satisfy one of the four tests set out in Division 35 or produce a taxation profit.

17. Therefore, a Grower who would otherwise be required to defer a loss arising from their participation in the Project under subsection 35-10(2) of the ITAA 1997 until a later income year is able to offset that loss against their other assessable income.

18. The exercise of the Commissioner's discretion under paragraph 35-55(1)(b) of the ITAA 1997 is conditional on the Project being carried on in the manner described in this Ruling during the income years specified. If the Project is carried out in a materially different way to that described in the Ruling a Grower will need to apply for a private ruling on the application of section 35-55 to those changed circumstances.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

PR 1999/70; TD 93/34;
TR 92/20; TR 2001/14

Subject references:

- commissioner's discretion
 - non-commercial loss
 - product rulings
-

Legislative references:

- ITAA 1997 Div 35
- ITAA 1997 35-10
- ITAA 1997 35-10(2)
- ITAA 1997 35-55
- ITAA 1997 35-55(1)(b)
- TAA 1953
- Copyright Act 1968

ATO references:

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