



***TD 2010/8 - Income tax: does the disposal or termination of an interest in a non-forestry managed investment scheme which arises as a result of circumstances outside the control of the taxpayer result in the denial of deductions previously allowed under paragraph 8-1(1)(b) of the Income Tax Assessment Act 1997 in respect of your contributions to the scheme?***

 This cover sheet is provided for information only. It does not form part of *TD 2010/8 - Income tax: does the disposal or termination of an interest in a non-forestry managed investment scheme which arises as a result of circumstances outside the control of the taxpayer result in the denial of deductions previously allowed under paragraph 8-1(1)(b) of the Income Tax Assessment Act 1997 in respect of your contributions to the scheme?*

 There is a Compendium for this document: **TD 2010/7EC; TD 2010/8EC; TD 2010/9EC** .



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## Taxation Determination

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Income tax: does the disposal or termination of an interest in a non-forestry managed investment scheme which arises as a result of circumstances outside the control of the taxpayer result in the denial of deductions previously allowed under paragraph 8-1(1)(b) of the *Income Tax Assessment Act 1997* in respect of your contributions to the scheme?

**❗ This publication provides you with the following level of protection:**

This publication (excluding appendixes) 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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid 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.

### Ruling

1. No.
2. Investors in non-forestry managed investment schemes may incur expenditure that is deductible under section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997). Special rules about the year of income in which that expenditure can be claimed are contained in Subdivision H of Division 3 of Part III (Subdivision H) of the *Income Tax Assessment Act 1936* (ITAA 1936). There are no rules in Subdivision H applicable to non-forestry schemes that subsequently deny deductions that have been claimed if the scheme is discontinued because, for example, it is wound up on the basis that the purpose of the scheme cannot be accomplished.

## **Example**

3. *Jane invested in a horticultural managed investment scheme in 2007, and claimed deductions in her 2007 and 2008 taxation returns. In 2009, due to the insolvency of the Responsible Entity, the scheme assets were sold by a liquidator, and the scheme was wound up. Jane's interest in the scheme came to an end as a result of circumstances outside the control of either herself, or the Responsible Entity. Jane will remain entitled to the relevant deductions.*

## **Date of effect**

4. This Determination applies to years of income commencing both before and after its date of issue. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

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**Commissioner of Taxation**

31 March 2010

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## 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.*

### Explanation

5. Section 82KZMG in Subdivision H of the ITAA 1936 and Division 394 of the ITAA 1997 apply only to forestry managed investment schemes. In certain circumstances deductions claimed under these provisions can be subsequently denied if a CGT event happens in relation to the forestry interests to which the deductions relate.

6. Expenditure incurred in respect of participation in a non-forestry managed investment scheme will generally be deductible under section 8-1 of the ITAA 1997 as per *Hance v. FC of T*; *Hannebery v. FC of T* [2008] FCAFC 196; 2008 ATC 20-085. The year of income in which those deductions are allowable is governed by Subdivision H of the ITAA 1936.

7. However, where there is evidence that the investor intends at the time of entering into the scheme to exit the scheme once deductions for the initial fees are claimed and the resultant tax savings obtained or before income is due to flow to the investor, or the intention is not to maintain the scheme interest beyond the initial years, then the inference may be drawn that the investor entered the scheme for the sole or dominant purpose of obtaining a tax deduction. In such a case the total anticipated allowable deductions will far exceed the total assessable income reasonably expected to be derived until the time of termination. Accordingly the rule in *Fletcher & Ors v. FC of T* 91 ATC 4950 may have application or, alternatively, the general anti-avoidance rule in Part IVA of the ITAA 1936 may apply.

8. Where there is no evidence upon which to draw the inference mentioned in paragraph 7 of this Determination, and the scheme itself comes to an end, for example because the Responsible Entity is no longer able to discharge its obligations and the scheme is wound up, the deductions previously claimed will continue to be allowable.

9. That is, there is no section equivalent to section 82KZMGA of the ITAA 1936 or subsection 394-10(5) of the ITAA 1997 (about deductions for forestry managed investment schemes) that applies to non-forestry managed investment schemes.

## References

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*Previous draft:*

TD 2009/D10

*Related Rulings/Determinations:*

TR 2006/10

*Subject references:*

- advance expenditure
- advance expenses and payments
- deductions & expenses

*Legislative references:*

- ITAA 1936 Pt III Div 3 Subdiv H
- ITAA 1936 82KZMG

- ITAA 1936 82KZMGA
- ITAA 1936 Pt IVA
- ITAA 1997 8-1
- ITAA 1997 8-1(1)(b)
- ITAA 1997 Div 394
- ITAA 1997 394-10(5)
- TAA 1953

*Case references:*

- Fletcher & Ors v. FC of T 91 ATC 4950
- Hance v. FC of T; Hannebery v. FC of T [2008] FCAFC 196; 2008 ATC 20-085

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ATO references

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