



# ***PR 2006/139 - Income tax: Australian Forests Project 2001***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *27 September 2006*



## Product Ruling

### Income tax: Australian Forests Project 2001

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#### **❶ 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, 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 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.

## **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(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 Ruling is about

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1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates. In this Ruling this scheme is sometimes referred to as the Australian Forests Project 2001, or simply as 'the Project'.

### Relevant provision(s)

2. The relevant provision dealt with in this Ruling is:
- Division 35 of the *Income Tax Assessment Act 1997* (ITAA 1997).

All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

### Changes in the Law

3. Although this Ruling deals with the taxation legislation enacted at the time it was issued, later amendments may impact on this Ruling. Any such changes will take precedence over the application of this Ruling and, to that extent, this Ruling will be superseded.
4. Entities participating 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

5. Product Rulings were introduced for the purpose of providing certainty about tax consequences for participants in projects such as this. In keeping with that intention, the Tax Office suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Ruling is issued.

### Class of entities

6. The class of entities to whom this Ruling applies consists of the entities who are described in Product Ruling PR 2001/13 and who, between 14 February 2001 and 30 June 2001, entered into the scheme that is set out in paragraphs 14 to 32 of that Ruling. They will 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. In this Ruling these entities are referred to as 'Growers'.

7. The class of entities to whom this Ruling applies does not include entities 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 the Project. Growers who elect to market their own produce are also excluded from the class of entities to whom this Ruling applies.

### **Qualifications**

8. 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 paragraph 16 of this Ruling.

9. 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**

11. This Ruling applies for the income years ending 30 June 2010 to 30 June 2017 for Growers who, between 14 February 2001 and 30 June 2001, entered into the scheme that is set out in paragraphs 14 to 32 of PR 2001/13. 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. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

12. If this Product Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

13. If this Product Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Product Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

14. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

## Withdrawal

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15. This Product Ruling is withdrawn and ceases to have effect after 30 June 2007. Even following its withdrawal, this Ruling continues to apply, in respect of the relevant provisions ruled upon, to all entities within the specified class who, between 14 February 2001 and 30 June 2001, entered into the specified scheme that is set out in paragraphs 14 to 32 of PR 2001/13. This is subject to there being no material difference in the scheme or in the Growers involvement in the scheme.

## Scheme

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16. The scheme that is the subject of this Ruling is described in paragraphs 14 to 32 of PR 2001/13.

## Ruling

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### Continuing application of Product Ruling PR 2001/13

17. Although now withdrawn, the tax benefits set out in PR 2001/13 continue to apply to Growers who are within the specified class of entities to which the Ruling applied and who entered into the specified scheme between 14 February 2001 and 30 June 2001. This is subject to there being no material difference in the scheme or in the Growers involvement in the scheme.

**Division 35 – deferral of losses from non-commercial business activities*****Section 35-55 – exercise of Commissioner's discretion***

18. A Grower who is an individual and was accepted into the Project by 30 June 2001 may have losses arising from their participation in the Project that would be deferred to a later income year under section 35-10.

19. Subject to the Project being carried out in the manner described above, for these Growers the Commissioner will extend his earlier exercise of the discretion in paragraph 35-55(1)(b) (see paragraph 37 of PR 2001/13) to include the following income years:

- from the income year ending 30 June 2010 to the income year ended 30 June 2017; or
- from the income year ending 30 June 2010 to the income year immediately prior to clearfell harvest.

20. 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.

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**Commissioner of Taxation**27 September 2006

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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.*

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

21. In PR 2001/13 the Commissioner exercised his discretion under paragraph 35-55(1)(b) for this Project for the income years ended 30 June 2001 to 30 June 2009. At that time subsection 35-55(2) precluded the Commissioner from exercising the discretion under paragraph 35-55(1)(b) beyond a year in which a taxation profit was made. Where the trees were thinned prior to the clear fell harvest this restriction impacted adversely on forestry projects such as this. Recognising this was an unintended outcome of Division 35, subsection 35-55(2) was later repealed. This Product Ruling is being issued to extend the earlier exercise of the Commissioner's discretion to the income year prior to the income year in which the clear fell harvest of the trees will occur.

22. In deciding to extend the period for which the discretion in paragraph 35-55(1)(b) is being exercise to include the income years from **30 June 2010 to 30 June 2017 or the income year immediately prior to clearfell harvest**, 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 2010 up to and including 30 June 2017 or the income year immediately prior to clearfell harvest:

- it is because of its nature the business activity of a Grower will not satisfy one of the four tests in Division 35;
- 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; and
- a Grower who would otherwise be required to defer a loss arising from their participation in the Project under subsection 35-10(2) until a later income year is able to offset that loss against their other assessable income.

23. The exercise of the Commissioner's discretion under paragraph 35-55(1)(b) 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**

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

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

PR 2001/13; TR 2001/14

*Subject references:*

- afforestation
- non-commercial business losses

- ITAA 1997 Div 35
- ITAA 1997 35-10
- ITAA 1997 35-10(2)
- ITAA 1997 35-55
- ITAA 1997 35-55(1)(b)
- ITAA 1997 35-55(2)
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

*Legislative references:*

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ATO References

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