

PR 2007/15A1 - Addendum - Income tax: ITC Pulpwood Project 2007

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Addendum

Product Ruling

Income tax: ITC Pulpwood Project 2007

This Addendum is issued as a result of the failure of Pulpwood plantations in the Bundaberg/Gladstone and Mackay regions of central Queensland due to the emergence of a previously unknown fungal disease.

The Project's Product Disclosure Statement requires the Responsible Entity to re-establish these plantations at its own expense. The Responsible Entity is unable to re-establish the failed plantations in the existing locations because the fungal disease remains prevalent and untreatable.

As a result, a Deed of Variation of Land Agreement (the Deed) will be entered into by the Responsible Entity on the affected Growers' behalf. The Deed will terminate the Growers' existing interests in land and grant equivalent interests in land in the new plantations.

This Addendum amends Product Ruling PR 2007/15 to extend the term of the Project and the period the Commissioner will exercise his discretion under Division 35 of the *Income Tax Assessment Act 1997* (ITAA 1997) for individual Growers in the Project affected by the reallocation of their Plantation Units.

PR 2007/15 is amended as follows:

1. Paragraph 24

Omit the paragraph and headings; substitute:

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

Section 35-55 – exercise of Commissioner's discretion

2006-07 to 2016-17 income years

24. Subject to the Project being carried out in the manner described in this Ruling, the Commissioner will exercise the discretion in paragraph 35-55(1)(b) for Growers as it applied at 28 February 2007, the date this Ruling was made, for the 2006-07 to 2016-17 income years. 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.

2017-18 to 2021-22 income years

24A. For the 2017-18 to 2021-22 income years, the Commissioner will exercise the discretion in subsection 35-55(1) once the following conditions are satisfied:

- the Grower carried on their business of afforestation during the income year; and
- the business activity that is carried on is not materially different to that in the scheme described in this Ruling; and
- the Grower has incurred a taxation loss for the income year from carrying on that business activity.

24B. If these conditions are met for the 2017-18 to 2021-22 income years, the Commissioner will exercise the discretion for that year under:

- paragraph 35-55(1)(b) for a Grower in the Project who satisfies the income requirement in subsection 35-10(2E); and
- paragraph 35-55(1)(c) for a Grower in the Project who does not satisfy the income requirement in subsection 35-10(2E).

24C. If the Commissioner determines that the discretion will not be exercised for a particular year or years the Grower will be informed of that decision and the reasons. In any year where the discretion is not exercised losses incurred by a Grower will be subject to the loss deferral rule in section 35-10 and the Grower will not be able to offset the losses from the Project against other assessable income.

24D. The issue of this Product Ruling of itself does not constitute the exercise of the Commissioner's discretion in subsection 35-55(1) for any income year.

2. Paragraph 26

(a) Omit the first dot point; substitute:

- Application for a Product Ruling as constituted by documents dated 18 October 2006 and additional correspondence, including e-mails, dated 20 October 2006, 23 November 2006, 13 December 2006, 19 December 2006, 21 December 2006, 11 January 2006, 11 January 2007, 1 February 2007, 17 February 2011, 18 March 2011, 20 April 2011, 23 May 2011 and 14 June 2011;

(b) Omit the last two dot points; substitute:

- Sample Pulpwood Treefarm Management Plan, received 18 October 2006;
- Draft Independent Forester's Report, received 18 October 2006;
- Final **Product Disclosure Statement** issued by ITC Project Management Limited on 14 March 2007; and
- Draft **Deed of Variation of Land Agreement for the ITC Pulpwood Project 2007**, received 17 February 2011.

3. Paragraph 29

Omit row six; substitute:

Term of the Project	Until final harvest proceeds are distributed in approximately 2021-22
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4. Paragraph 36

After paragraph; insert:

36A. If, within 12 months of planting, an area is damaged by pests or disease to the extent that it will materially affect timber yield, the Responsible Entity will re-establish the damaged area at its cost (clause 5.2 of the final PDS). In circumstances where successful re-establishment will require the reallocation of an affected Grower's Plantation Unit, a Deed of Variation of Land Agreement will be entered into to give effect to the reallocation.

5. Paragraph 48

After paragraph; insert:

Deed of Variation of Land Agreement

48A. Where the Responsible Entity has executed a Land Agreement on behalf of a Grower and a need arises to reallocate that Grower's Plantation Unit(s), a Deed of Variation of Land Agreement will be executed by the Responsible Entity on behalf of the Grower. The Deed of Variation of Land Agreement will maintain the Grower's identifiable interest in land following the reallocation of the Grower's Plantation Unit(s).

6. Paragraph 89

Omit the paragraph; substitute:

89. Based on information provided with the application for this Product Ruling, a Grower accepted into the Project in the 2006-07 income year who carries on a business of afforestation individually (alone or in partnership) is expected to incur losses from their participation in the Project for each of the income years from 2006-07 to 2021-22 which will be subject to Division 35.¹ These losses will be subject to the loss deferral rule in section 35-10 unless an exception applies or, for each income year in which losses are incurred, the Commissioner exercises the discretion in subsection 35-55(1) on 30 June of that specific income year.

7. Paragraph 90

Omit the paragraph; substitute:

90. The exceptions to the loss deferral rule depend upon the circumstances of individual Growers and are outside the scope of this Product Ruling.

8. Paragraph 91

Omit the paragraph; substitute:

91. The Commissioner will apply the principles set out in Taxation Ruling TR 2007/6 Income tax: non commercial business losses: Commissioner's discretion when exercising the discretion.

91A. For the 2006-07 to 2016-17 income years, a Grower who incurs a loss in an income year from carrying on their business activity in a way that is not materially different to the Scheme described in the Ruling, and the discretion in paragraph 35-55(1)(b) as it applied is exercised for that year, the Commissioner will be satisfied that:

- it is because of its nature that the business activity of the Grower 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, the Grower's business activity will satisfy one of the four tests set out in Division 35 or produce assessable income for an income year greater than the deductions

¹ Division 35 does not apply to Growers who do not carry on a business or who carry on a business other than as individuals (alone or in partnership).

attributable to it for that year (apart from the operation of subsections 35-10(2) and (2C)).

91B. In the 2009-10 income year an income requirement was introduced to Division 35. This income requirement will apply to Growers in the Project from the 2017-18 to 2021-22 income years. Where a Grower with income for NCL purposes of less than \$250,000 (that is, the Grower satisfies the income requirement in subsection 35 10(2E)) incurs a loss in an income year from carrying on their business activity in a way that is not materially different to the Scheme described in this Product Ruling, and the discretion in paragraph 35-55(1)(b) is exercised for that year, the Commissioner will be satisfied that:

- it is because of its nature that the business activity of the Grower 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, the Grower's business activity will satisfy one of the four tests set out in Division 35 or produce assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsections 35-10(2) and (2C)).

91C. For the 2017-18 to 2021-22 income years, where a Grower with income for NCL purposes of \$250,000 or more (that is, the Grower does not satisfy the income requirement in subsection 35-10(2E)) incurs a loss in an income year from carrying on their business activity in a way that is not materially different to the scheme described in this Product Ruling, and the discretion in paragraph 35-55(1)(c) is exercised for that year, the Commissioner will be satisfied that:

- it is because of its nature that the business activity of the Grower will not produce assessable income greater than the deductions attributable to it; and
- there is an objective expectation that within a period that is commercially viable for the afforestation industry, the Grower's business activity will produce assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsections 35-10(2) and (2C)).

91D. A Grower will satisfy the income requirement in subsection 35-10(2E) where the sum of the following amounts is less than \$250,000:

- taxable income for that year (ignoring any loss arising from participation in the Project or any other business activity);
- total reportable fringe benefits for that year;
- reportable superannuation contributions for that year; and
- total net investment losses for that year.

91E. In each individual year where the Commissioner's discretion is exercised a Grower within either paragraph 91A, paragraph 91B or paragraph 91C of this Ruling who would otherwise be required to defer a loss arising from their participation in the Project under section 35-10 until a later income year is able to offset that loss against their other assessable income.

9. Detailed contents list

Insert the following:

<i>2006-07 to 2016-17 income years</i>	24
<i>2017-18 to 2021-22 income years</i>	24A
Deed of Variation of Land Agreement	48A

10. References

(1) Insert into Related Rulings/Determinations:

- TR 2007/6

(2) Insert into the Legislative references:

- ITAA 1997 35-10(2)
- ITAA 1997 35-10(2C)
- ITAA 1997 35-10(2E)
- ITAA 1997 35-55(1)
- ITAA 1997 35-55(1)(c)

This Addendum applies on and from 20 July 2011

Commissioner of Taxation

20 July 2011

ATO references

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