



# ***PR 2010/4W - Income tax: Willmott Forests Premium Forestry Blend 2010 Project***

 This cover sheet is provided for information only. It does not form part of *PR 2010/4W - Income tax: Willmott Forests Premium Forestry Blend 2010 Project*

 This document has changed over time. This is a consolidated version of the ruling which was published on *14 March 2012*



# Notice of Withdrawal

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## Product Ruling

### Income tax: Willmott Forests Premium Forestry Blend 2010 Project

Product Ruling PR 2010/4 is withdrawn with effect from today.

1. Product Ruling PR 2010/4 set out the Commissioner's view on the tax consequences for entities participating as Investors in the Willmott Forests Premium Forestry Blend 2010 Project (the Project), a forestry managed investment scheme (MIS) with the purpose of establishing and tending Radiata Pine, African Mahogany and Silky Oak Trees for felling in Australia.

2. This Product Ruling has been withdrawn in accordance with subsection 358-20(1) of Schedule 1 of the *Taxation Administration Act 1953*, which states the Commissioner may withdraw a public ruling either wholly or to an extent. Where the scheme described in the ruling is materially different from the scheme actually carried out, the ruling does not have, and never had any binding effect on the Commissioner, as the scheme entered into is not the scheme ruled upon.

#### **No deduction under Division 394 or section 8-1**

3. Paragraph 23 of PR 2010/4 required that all of the trees be established within 18 months of the end of the income year in which the first participant was accepted into the Project, that is, by 31 December 2011. However, the Project's Liquidator advised no land was acquired and no trees were planted.

4. Given that trees were not established by 31 December 2011, Investors are not entitled to claim a deduction for the Application Price of \$5,000 per Forestry Interest under section 394-10 of the *Income Tax Assessment Act 1997* (ITAA 1997) because the conditions of subsection 394-10(4) of the ITAA 1997 have not been satisfied.

5. Paragraph 21 of Product Ruling PR 2010/4 determined that Investors were not considered to be carrying on a business of primary production. The Application Price paid by an Investor in the Project is considered to be a capital payment and is not deductible under section 8-1 of the ITAA 1997 (paragraph 8-1(2)(a) of the ITAA 1997). For more information refer to Taxation Determination TD 2010/15.

## CGT event

6. The Application Price of \$5,000 per Forestry Interest is a capital amount paid to become a member of the Project. The Project is a registered MIS for the purposes of the *Corporations Act 2001*.

7. The amount paid to become a member of the MIS will represent the first element of the cost base of a CGT asset (subsection 110-25(2) of the ITAA 1997). CGT event C2 in section 104-25 of the ITAA 1997 will happen on termination of the Investor's interest in the MIS and a capital loss may arise to the Investor. The termination will need to be in accordance with the Project Constitution and the *Corporations Act 2001*.

## Interest and borrowing costs on loans to finance the Forestry Interest

8. Paragraph 33 of PR 2010/4 ruled that Investors can claim deductions for interest incurred and borrowing costs on a loan to fund their investment in the Project if the loan was between the Investor and Willmott Finance Pty Ltd. Interest expenses incurred following this withdrawal will continue to be deductible provided the requirements outlined in TR 2004/4 *Income tax: deductions for interest incurred prior to the commencement of, or following the cessation of, relevant income earning activities* are met.

9. On termination, an Investor may have a balance of undeducted borrowing costs. Applying the principles in *FC of T v. Brown* 99 ATC 4600; (1999) 43 ATR 1 and *FC of T v. Jones* 2002 ATC 4135; (2002) 49 ATR 188, the borrowing costs will continue to be deductible.

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## Commissioner of Taxation

14 March 2012

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### ATO references

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