



***TD 2010/7 - Income tax: does a change of Responsible Entity of a registered agricultural managed investment scheme affect the tax outcomes for participants if the arrangement continues to be implemented in accordance with the relevant product ruling?***

 This cover sheet is provided for information only. It does not form part of *TD 2010/7 - Income tax: does a change of Responsible Entity of a registered agricultural managed investment scheme affect the tax outcomes for participants if the arrangement continues to be implemented in accordance with the relevant product ruling?*

 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 a change of Responsible Entity of a registered agricultural managed investment scheme affect the tax outcomes for participants if the arrangement continues to be implemented in accordance with the relevant product ruling?

**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, 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. Where the managed investment scheme (MIS) continues to be carried out in accordance with the terms of the relevant product ruling, including under the management of an administrator, receiver or new Responsible Entity (RE), the ruling will continue to apply. That is, the Commissioner continues to be bound by the ruling and a participant will continue to be able to rely on the ruling (section 357-60 of Schedule 1 of the *Taxation Administration Act 1953*).

2. However, where any change results in there being a material difference in the implementation of the scheme, the participant will not be able to rely on the product ruling for the scheme.

## **Example 1**

3. *Tane invested in a MIS in 2007, and claimed deductions according to the terms of the relevant product ruling. In 2009, due to the insolvency of the former RE, a new RE was appointed, with no other change to the scheme. The change in the RE is not a material difference in the implementation of the scheme. Accordingly, Tane can continue to claim deductions for ongoing charges, in accordance with the relevant product ruling.*

## **Example 2**

4. *Lane invested in a MIS in 2007, and claimed deductions according to the terms of the relevant product ruling. In 2009, due to the insolvency of the former RE, a new RE was appointed on terms which included a significant variation to the ongoing charges to be levied on investors under the management agreement.*

5. *In reviewing the arrangement it is found that the change in fees means that there is no longer an objective expectation that the scheme will satisfy the conditions of paragraph 35-55(1)(b) of the non-commercial loss rules contained in Division 35 of the Income Tax Assessment Act 1997. That is, the scheme will now not meet one of the objective tests in sections 35-30, 35-35, 35-40 or 35-45, or produce assessable income for an income year in excess of deductions within the commercially viable period.*

6. *This change constitutes a material difference to the arrangement as set out in the relevant Product Ruling. The Commissioner then withdraws the ruling. Accordingly, Lane would no longer be able to rely on it to claim deductions for the ongoing charges.*

## **Class of persons**

7. This Determination applies to participants in schemes that are either subject to a current product ruling, or were subject to a product ruling which has been withdrawn with effect from immediately before any material difference occurred.

## **Date of effect**

8. 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**

9. The appointment of a new RE, an administrator or receiver does not, of itself, result in the implementation of a scheme in a materially different way to that described in the product ruling. However, if the appointment of the new RE also results in a change in the activities/work conducted under the various agreements that make up the MIS, then the appointment of the new RE may result in there being a material difference to the scheme ruled on in the relevant product ruling.

10. A difference is material if it results in a tax outcome different to that set out in the product ruling (see paragraph 19 of PR 2007/71).

11. Where there is a material difference in the scheme, the product ruling will ordinarily be withdrawn. The consequences of a product ruling being withdrawn will depend on the circumstances under which the material difference arises and the time when it occurred. This will be explained in any notice of withdrawal. Where the difference is not material, an addendum to the product ruling will ordinarily be issued to confirm the situation.

12. Where a withdrawal occurs, the product ruling may be taken to have never applied because the relevant arrangement never came into existence. Where the withdrawal is such that the product ruling is taken to never have applied, entities participating in the scheme are not able to rely on it.

13. Alternatively, where the arrangement commences but subsequently materially changes from the ruled scheme, the withdrawal may take effect from immediately before the time the material difference occurred. This may enable participants to be able to rely on the product ruling in relation to deductions already incurred and claimed.

## References

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*Previous draft:*

TD 2009/D9

- product rulings
- public rulings

*Related Rulings/Determinations:*

TR 2006/10; PR 2007/71

*Legislative references:*

- ITAA 1997 Div 35
- ITAA 1997 35-30
- ITAA 1997 35-35
- ITAA 1997 35-40
- ITAA 1997 35-45
- ITAA 1997 35-55(1)(b)
- TAA 1953 Sch 1 357-60

*Subject references:*

- advance expenses & payments
  - afforestation expenses
  - forest operations
  - forestry
  - prepayments
  - primary production
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ATO references

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