



Information required for a product ruling application – Agribusiness (except Division 394 forestry managed investment schemes)

A product ruling is a type of public ruling on the tax consequences of a particular arrangement. For information on the product rulings system, see product ruling [PR 2007/71 The Product Rulings system](#).

! This downloadable application form and checklist should only be used for an Agribusiness ruling application (except Division 394 forestry managed investment schemes).

Separate application checklists are available for:

- [Division 394 forestry managed investment schemes](#)
- [Schemes relating to financial products](#)

The information provided on this checklist forms part of your application. Full disclosure is required for all documents relating to the scheme on which the ruling is sought – if you do not provide sufficient information or fail to adequately address the question or information request, your application will be invalid.

If your application is invalid, you or your agent will be contacted. To ensure that applicants who submit valid applications are not disadvantaged, work will not commence on your application until missing or incomplete information is received and the validity of the application is confirmed. Where there are significant delays in providing missing or incomplete information, the product ruling will be delayed, or may be refused.

If you have not previously lodged an application for a product ruling, you may contact the [Product Rulings](#) area for further assistance.

When requested, the [Product Rulings](#) area can hold discussions with applicants and their representatives before a product ruling is submitted. This allows issues to be canvassed without prejudice, to assist the applicant prepare the product ruling application and reduce compliance costs.

! This version of the application checklist is current as at September 2016 and supersedes all earlier versions.

COMPLETING THIS CHECKLIST

When preparing an application, read this section in conjunction with section M.

Complete this checklist and provide an electronic copy of all requested information. Keep a copy of documents for your records.

You should provide an electronic copy of:

- all documents, agreements and spread sheets
- the draft sections of the proposed product ruling.

! All documents must be in Microsoft Word or Excel format, or PDF format.

- When answering each of the questions or the requests for information, you must indicate in the reference in the box adjacent to the question or the information request where the answer or the requested information can be found in the attachments – for example, the annexure number, and/or the page number and/or the paragraph/clause reference should be shown. Responses such as 'see draft ruling' are not acceptable, nor are general responses such as 'see Constitution'.
- Write 'Not available' in the reference box if you cannot provide an item. Make a note of the reason why the item is not available in the 'Outstanding items' area in part 3 of this application, and indicate when the information will be available.
- Make sure you note the requirements of the [Product Rulings – Terms of Use](#) and [PS LA 2008/8 – Application of the promoter penalty laws to schemes involving product rulings](#).
- When completing this checklist, the information can be typed directly into the space provided after each question or request for information. If there is insufficient space, attach extra pages and indicate which question you are referring to.

LODGING YOUR APPLICATION

- Refer to [Applying for a product ruling](#) or
- Contact the Product Rulings area via e-mail ATO-Product-Rulings@ato.gov.au.

PART 1: GENERAL APPLICATION DETAILS

Section A: Applicant/agent information

1 Applicant details

Name

Contact person

Address

Suburb/town

State/territory

Postcode

Telephone

Facsimile

Email address

ABN (or other relevant ID number)

TFN (not mandatory)

2 Agent/tax professional details

Name

Contact person

Agent ID

Address

Suburb/town

State/territory

Postcode

Telephone

Facsimile

Email address

Other relevant contact information (including details of who this application may be discussed with)

3 Does the agent/tax professional adviser hold written consent to make this application on behalf of the applicant?

No Yes Written consent must be supplied on request.

4 Provide a signed declaration from the applicant (or the applicant’s agent) that the material contained in the application is true and correct.

! If the declaration is made by an officer of a company, declare the officer’s position in the company.

Section B: About the ruling you seek

5 List the income years for which you seek a ruling.

! The Australian Taxation Office (ATO) will not rule beyond three years from the end of the income year in which the ruling is made, with the exception of the Commissioner of Taxation’s discretion under section 35-55.

6 List the questions for which an answer is sought.

7 List the tax laws you are seeking a ruling on.

8 Has this application (or any similar application) been lodged by, or on behalf of, the applicant (or their associate) at any other time or at any other office of the ATO?

No Yes Provide details.

! The product ruling will be published openly. It will disclose the name of the applicant and all other parties in the scheme.
Provide separate written consent from each party in the scheme set out in the product ruling to be named in the ruling (for example, financier, landowner, material subcontractors, custodian).
 Where an entity not associated with the applicant declines to be named in the ruling, provide a statement explaining the refusal.
 You must name the applicant, and any associated entities, and provide their written consent.
 Taxation advisers and agents will not be named in the ruling.

Section C: Existing action/rulings

9 Is the scheme (or any similar scheme) on which the ruling is sought the subject of a taxpayer's objection, appeal or audit?

No

Yes

Provide details. If the scheme is subject to a review or audit, the Commissioner will generally be unable to provide a product ruling to an applicant. This is because the review or audit will determine the ATO view of the scheme and the product ruling becomes unnecessary.

10 Is the scheme on which the ruling is sought subject to a double taxation agreement?

No

Yes

Which one? Provide details.

11 List existing Taxation Rulings or Product Rulings relating to the scheme on which the ruling is sought.

12 List any private rulings or administrative binding advice you are aware of that relate to the scheme (or any similar scheme) on which the ruling is sought.

PART 2: DETAILS OF THE SCHEME

Section D: The scheme

13 Provide a brief (1–2 page) overview of the scheme, including where applicable:

- the nature of the business activity
- the location and size of the scheme
- intended life of the scheme and minimum period of a participant’s involvement in the scheme
- entities involved and their relationships (contractual or otherwise)
- expected production.

Insert reference

14 Does the participant personally participate in the activities of the scheme?

No Who carries out the activities and how? Yes

15 Provide details (nature, size, scale, repetition and regularity) of the services to be provided on behalf of each participant.

In particular, list:

- a services from the date a participant is accepted into the scheme until the end of that income year**
- b services to be provided in each subsequent income year**
- c the cost to the responsible entity and/or the manager to provide each of the services listed at 15a and 15b.**

Refer to relevant clauses of agreements and provide a copy of these agreements and any other agreements relating to the scheme. For example:

- management agreement
- scheme constitution
- subcontracting agreements
- loans
- arrangements relating to the acquisition of assets
- distribution of profits arising from the scheme.

Insert reference

16 Do any of the agreements or contracts allow the applicant, or entities associated with the applicant, to participate in the scheme?

No Yes Will this occur and to what extent?

17 Provide marketing materials and any promotional material issued, or to be issued, to participants, financial planners or advisers, or commission agents.

Insert reference

18 Provide written information to be distributed to participants regarding their investment – for example, Product Disclosure Statement or Information Memorandum.

Insert reference

Section E: Land

19 Is land required for this scheme?

No

Yes

Provide a copy of all agreements relating to the land (such as lease, sublease, licence) and advise what type of interest in land the participants will have.

20 Has suitable land been purchased or secured for this scheme?

No

What arrangements or proposed arrangements have been entered into by the manager or other arrangement entities to have suitable land available?

Yes

Provide land title details



The ATO will not issue product rulings for non-forestry agribusiness schemes where the land has not been identified.

21 List the criteria used in selecting suitable land – for example, soil suitability, water supply, climate evaluation, accessibility to infrastructure, such as processing and sales facilities, ports, roads.

22 Describe how the manager and/or other associated entities will obtain funds to secure access to suitable land for the scheme.

23 What activities will be completed before participants can be accepted into the scheme?

24 Will the project require irrigation for optimal yields?

No

Yes

Provide details.

25 For irrigated schemes, are sufficient water rights held?

No

Explain when and how sufficient water rights will be obtained.

Yes

Provide full details, including relevant documentation.

Section F: Corporations law

26 Provide a copy of any offer document in draft or final form that will be provided to potential participants in the scheme.

Advise whether the offer document will be or has been lodged and/or approved by the Australian Securities & Investments Commission (ASIC).

Insert reference

27 Have all requirements under the *Corporation Act 2001* (Corporations Act) been met? In particular:

a is the scheme a managed investment scheme within the terms of the Corporation Act?

No Yes

b is it required to be a registered scheme?

No Yes Provide the Australian Registered Scheme Number (ARSN) for the scheme.
If the scheme is not yet registered, when is it intended to be registered?

c has the relevant Australian Financial Services (AFS) Licence been obtained?

No Yes Provide a copy of the AFS licence. Where a final version of the AFS Licence has not yet been issued, provide a copy of the current draft AFS Licence, and details of when the final version is expected to be issued.

Day Month Year
 / /

28 Provide details of the scheme property for Corporation Act purposes. Where the scheme is a managed investment scheme, does the scheme property include any of the participants' leasehold or licence rights?

29 What interests in specific property (whether real, personal, intellectual, or intangible) will participants receive? What are their rights to deal with the property?

Section G: Fees

30 List all fees and charges payable by a participant over the period of the scheme, such as licence, lease, application and/or management fees.

31 What options are available for participants to fund the fees and charges listed at 30 above?

32 What are the consequences for a participant if they default on payment of management or other fees?

33 Will the fees payable by participants under all agreements be sufficient to carry out services under the scheme and to fund any capital expenditure required throughout the life of the project?

No Where will additional funds be obtained? Yes

34 Provide working papers and any other materials used in setting the fees payable by a participant.

Include a breakdown of the cost of providing each service to the participant as requested at 15c above.

Insert reference

--

Section H: Subscription monies

35 Provide details of the:

a minimum subscription

b maximum subscription

c number of potential participants

d cash expected to be received from participants in the first income year.

\$,,-~~X~~

36 Will all subscription monies paid by participants (including those financed under the scheme) be available to the manager (or another appropriate entity involved in the scheme) for immediate use in the scheme?

No How will these monies be used? Provide details. Yes

37 Is there any agreement, arrangement or understanding for subscription monies or other amounts received from participants:

a to be placed on deposit

No Yes Provide details.

b to be invested with a financier or associate of the financier either directly or indirectly

No Yes Provide details.

c that result in funds flowing to a financier or an associate of the financier?

No Yes Provide details.

38 Are participants, or associates of participants, entitled to recoup, or have any part of their subscription monies, including commission rebates, refunded or returned after entering the scheme?

No Yes Provide details.

39 Answer these questions in relation to income earned by the applicant and associated entities:

a will the applicant and associated entities include, in assessable income, amounts equivalent to expenses incurred and deductions claimed by participants?

No Provide details. Yes

b where there are transactions between the applicant and associated entities, or between associated entities, will assessable income and deductions be matched across entities?

No Provide details. Yes

c will income earned by the applicant and associated entities be included in assessable income in the same year as deductions are claimed by participants or other associated entities in relation to those amounts of income?

No Identify the amount for each year and give reasons for that timing. Yes

d what type and amount of deductions will be claimed in relation to assessable income of the applicant and associated entities?

e will the applicant and associated entities enter into any arrangements that are intended to, or have the effect of, sheltering income from tax?

No Yes Provide details

f identify any entities within the scheme that are acting in the capacity of trustee and the relevant trust structure, including the beneficiaries.

40 Provide a flowchart detailing the flow of funds (amounts per single interest) between the participant, applicant, manager, financier, trustee or any other entity in receipt of funds from the scheme.

Show directors, shareholders, partners and beneficiaries of these entities and the residency status of each.

Insert reference

41 Provide cash flow forecasts and budgeted profit and loss statements for the applicant over the life of the scheme.

Insert reference

42 Provide an after-tax cash flow projection, geared and ungeared, for a single participant on the top marginal tax rate over the life of the scheme.

! Where finance is offered under the scheme, an after-tax cash flow projection will also be required for each loan option offered under the scheme.

Section I: Finance

43 Will the applicant or any associated entity:

a be involved in providing finance to participants ('internal finance')

No Yes

b introduce participants to external sources of finance from parties unrelated to the arrangement ('preferred financiers')?

No Yes

➤ If you answered 'No' to both, go to section J.

⚠ The ATO's [Financing Principles](#) for all managed investment schemes are available at ato.gov.au

44 For all finance options to be offered to participants by either a financier associated with the scheme promoter (an internal financier) or a preferred external finance entity, provide in final draft form:

- a full copies of all loan agreements and all supporting documents that will be made available to participants – for example, the loan application form, the terms and conditions and other information relating to the loans, where these are separate to the loan agreement
- b all agreements relating to any vendor terms available, if such arrangements will be offered to participants, and
- c all agreements between
 - i the responsible entity/manager and any external finance entity, or
 - ii an associated/internal finance entity and any external finance entity

where those agreements relate to loans to be offered to participants in the scheme. This includes agreements for the responsible entity/manager or the associated finance entity to act as an agent of the external finance entity.

Insert reference

45 For loans offered to participants by an internal financier:

- a provide evidence of the internal financier's ability to fund the full amount of loan monies to participants (such as balance sheet, group accounts, letter of credit) and
- b where loan monies will be paid by the internal finance entity directly to the applicant on behalf of an initial participant, provide a written assurance that the full amount of loan monies will be paid by transfer of liquid funds to the applicant's bank account by 30 June of the income year in which the initial participant is accepted into the scheme.

Insert reference

46 Are repayments of principal and payments of interest in any way linked to the derivation of income from the arrangement?

No Yes Provide details

47 Will participants' loans be non-recourse, limited recourse or deferred recourse?

The term 'non-recourse' is used to describe a loan arrangement where a financier has no recourse beyond a specified security of the borrower – for example, where security is linked to the income proceeds from the scheme.

No Yes Provide details

48 Are there circumstances in which a participant will not be required to repay the borrowed monies to the financier in the period specified in the loan agreement?

No Yes Provide details

49 Will the financier undertake normal commercial recovery activity, including legal proceedings where necessary, to recover borrowed monies from defaulting participants.

No Why not? Yes Provide details

Section J: Guarantees and indemnities

50 Will there be any insurance, indemnity, put option or other similar arrangement that participants can enter into to limit their liability for any aspect of the scheme?

No Yes Provide details

51 Provide details of any of the following features of the scheme, or confirm that these features do not exist:

- a guaranteed returns for the 'participant'**
- b any features of the scheme which may operate to reduce or defer a 'participant's' liability or obligation under the scheme**
- c an express or implied undertaking to redeem shares or purchase interests during or at the completion of the scheme, or**
- d an express or implied undertaking to reverse the transactions if tax deductions are not allowed.**

Insert reference

--

Section K: Exercise of the discretion in section 35–55 of the *Income Tax Assessment Act 1997*

52 Does the nature of the business activity mean that there is a lead time before profitability can be expected, and that participants can expect to incur losses during this lead time?

No Go to section L Yes

53 Are you applying for the Commissioner to rule on the operation of paragraphs 35-55(1)(b) and (c) in relation to this scheme?

No Go to section L Yes Provide details of the period you are requesting that the Commissioner exercise his discretion.

54 What is the normal lead time before a profit can be expected in this industry?

If the income and expenditure projections for your scheme point to a different time, explain why this difference is expected to arise.

55 Provide evidence from independent sources of the nature and extent of operations that are required for this type of activity to become commercially viable – for example, material from industry bodies, scientific research, independent expert reports, or descriptions from successful independent operators in the industry.

Insert reference

--

56 Referring to the material supplied above, describe the basis on which you claim that for a participant who takes up a single interest there is an objective expectation that the scheme will either:

- a meet the assessable income test (section 35-30), profits test (section 35-35), real property test (section 35-40) or other assets test (section 35-45), (for paragraph 35-55(1)(b) only) or**
- b produce assessable income for an income year greater than the deductions attributable to it (apart from any deferred loss deduction brought forward from a previous year under section 35-10(2)(b)) (that is, produce a profit) within a commercially viable period for the industry concerned (for both paragraphs 35-55(1)(b) and (c)).**

57 Provide any other information or evidence you think should be taken into consideration in relation to the operation of subsection 35-55(1).

Section M: Documentation requirements

62 Before submitting this application, tick the boxes below to indicate that you have:

Read the important information about completing this checklist at Part 1.

Provided full disclosure of all documents, agreements, and contracts relating to the scheme on which the Product Ruling has been sought.

Provided an electronic copy (on disk) containing your draft product ruling, documents, agreements and spreadsheets.

Noted in the 'Outstanding items' table below, the reason any of the information has not been supplied and the date that you expect to supply it.

Provided a declaration signed by the applicant (or the applicant's agent) that the material in the application is true and correct.

Included with the application consents from all parties to be named in the Product Ruling.

Provided the draft sections of the Product Ruling as required in Question 61.

PART 3: OUTSTANDING ITEMS

Missing item	Reason item not supplied (We will treat the application as invalid until you provide all outstanding items)	Date you expect to provide missing item

Declaration

! Before you sign this application, check you have completed it correctly. Penalties may be imposed for giving false or misleading information.

Privacy

The ATO is a government agency bound by the *Privacy Act 1988* in terms of collection and handling of personal information and tax file numbers (TFNs). For further information about privacy law notices for product ruling applications, please go to ato.gov.au/privacy

I declare that the information I have provided in this application is true and correct.

Name

Position

Email address

Signature

Date

Day	/	Month	/	Year
<input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/>		<input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/>		<input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/>