



Information required for a product ruling application – forestry managed investment scheme

Division 394

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 Ruling system](#).

Note: that the majority of terms referred to in this application checklist take their meaning from [Division 394](#) of the Income Tax Assessment Act 1997 ('the ITAA 1997'). Terms to which [Division 394](#) applies are generally shown in inverted commas.

! This checklist should be used for all product ruling applications seeking binding taxation advice in respect of amounts paid by 'initial participants' to the 'forestry manager' of a 'forestry managed investment scheme' within [Division 394](#) of the ITAA 1997.

Separate application checklists are available for:

- [Agribusiness \(except Division 394 forestry managed investment schemes\)](#)
- [schemes relating to financial products](#).

The information provided on this checklist, forms part of your application. Full disclosure is required of 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 the 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 application is submitted. This allows issues to be canvassed without prejudice, to assist the applicant prepare the product ruling application and reduce compliance costs.

COMPLETING THIS CHECKLIST

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

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 (including calculations of direct forestry expenditure (DFE))
- a copy of 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 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.

! This version of the application checklist is current as at May 2013 and supersedes all earlier versions.

PART 1: GENERAL APPLICATION DETAILS

Section A: Applicant/agent information

1 Applicant details

Name

Contact person

Address

Suburb/town

Phone

Fax

Email address

ABN (or other relevant ID number)

TFN (not mandatory)

2 Agent/tax professional details

Name

Contact person

Agent ID

Address

Suburb/town

Phone

Fax

Email address

Other relevant contact information (including details of who this application should 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 written assurance that the applicant understands and will comply with the reporting requirements of sections 394-5 and section 394-10 of the *Taxation Administration Act 1953*.

! Section 394-5 imposes a mandatory reporting requirement on the forestry manager of the scheme in respect to initial contributions assessable under section 15-46 of the ITAA 1997. Section 394-10 relates to the requirement to establish the trees under the scheme within the time referred to in section 394-10(4) of the ITAA 1997.

Forms for these purposes are available from the ATO or can be accessed from the links below:

- [Initial contributions notification form](#)
- [Failure to establish notification form](#)

5 Provide a signed declaration by 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

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

! For a 'forestry managed investment scheme' the Commissioner of Taxation will rule for the whole of the scheme. This will be until the completion of the first clear-fell harvest of the trees grown under the scheme (where the scheme is for a single species of trees to be established within the period set out in section 394-10(4)) or the completion of the first clear-fell harvest of each species of tree grown under the scheme (where the scheme has more than one species of tree established within the period set out in section 394-10(4)).

The Commissioner will only provide a ruling for the immediate income year for investors entering a 'forestry managed investment scheme'.

7 List your questions for which an answer is sought.

! If a question asks whether an amount is allowable under both Division 394 and under section 8-1 of the ITAA 1997 and the Commissioner determines that it is deductible under Division 394, the question of whether it is also deductible under section 8-1 will **not** be dealt with in the product ruling, unless the Commissioner also rules on whether the scheme constitutes a business activity (see paragraph below).

The statutory deductions under Division 394 do not require an 'initial participant' in a 'forestry managed investment scheme' to be carrying on a business of forestry. However, where a ruling is required on whether the scheme activities constitute carrying on a business information will need to be provided in relation to the exercise of the Commissioner's discretion under section 35-55 of the ITAA 1997 (see Section L).

The product ruling will only deal with the tax outcomes for 'initial participants' in the 'forestry managed investment scheme'. If a ruling is sought for a 'subsequent participant' a private ruling should be requested.

8 List the tax laws you seek ruling on.

9 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**10 Is the scheme (or any similar scheme) on which you seek a ruling the subject of a taxpayer's objection, appeal or audit?**

No Yes Provide details. If the scheme is subject to an objection, appeal or audit, then the Commissioner will generally not be able 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.

11 Is the scheme on which you seek a ruling subject to a double taxation agreement?No Yes Which one?

12 List existing taxation rulings or product rulings relating to the scheme on which you seek a ruling.

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

PART 2: DETAILS OF THE FORESTRY MANAGED INVESTMENT SCHEME

Section D: The scheme

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

- a the activity, including the species of trees to be grown
- b the geographic location(s) where the trees will be planted and the expected size of the scheme, in hectares
- c the intended term of the ‘forestry managed investment scheme’ from the commencement date (that is, the closing date for acceptance of ‘initial participants’) to the anticipated date of completion of first clear-fell harvest of the trees grown under the scheme (where the scheme is for a single species of trees to be established within the period set out in section 394-10(4)) or the completion of the first clear-fell harvest of each species of tree grown under the scheme (where the scheme has more than one species of tree established within the period set out in section 394-10(4))
- d the method by which the trees under the ‘forestry managed investment scheme’ will be established – that is, by a new planting of tree seedlings or by coppicing previously harvested trees
- e for ‘forestry managed investment schemes’ where the trees under the scheme will be established by coppicing previously harvested trees:
 - set out the average number of previously harvested trees per hectare and estimate the loss rate, if any, of the stools after that harvesting
 - describe what specific steps, if any, were taken at harvest to ensure the survival of the maximum number of stools, including the method of felling and the timing of the harvest, and
 - give a brief description of how the coppicing will be carried out.
- f for ‘forestry managed investment schemes’ where the trees will be established by a new planting of tree seedlings, indicate whether a coppice option will be offered to participants *after* the completion of the first clear-fell harvest
- g the average number of trees to be planted per hectare (where several species are to be grown, provide details in respect of each species)
- h the date when all trees to be established under the ‘forestry managed investment scheme’ will be planted on the scheme land
- i the minimum number of ‘forestry interests’ that need to be sold to make the ‘forestry managed investment scheme’ viable
- j the maximum number of ‘forestry interests’ to be offered under the scheme
- k the size of each ‘forestry interest’ and the minimum number of ‘forestry interests’ that a participant in the scheme is required to hold under the ‘forestry managed investment scheme’
- l the expected production expressed on a yield-per-hectare basis
- m how the trees will be sold, that is, by:
 - existing forward contract
 - contract currently being negotiated
 - spot market, or
 - other means.
- n whether the trees will be sold for:
 - woodchips
 - higher value use such as sawlogs, veneers, and similar, or
 - both woodchips and higher value use.
- o whether the responsible entity (RE)/manager or an associate of the RE/manager manages, arranges or promotes similar schemes to this scheme, and
- p full details of all entities involved in the scheme and their relationships (contractual or otherwise).

Insert reference

15 Will a participant in the ‘forestry managed investment scheme’:

- have the right, and to what extent, if any, to personally take part in the activities of the ‘forestry managed investment scheme’
- have the right under the scheme agreements to be consulted or give directions on how the scheme or the scheme activities will be conducted, or
- have no right to participate or personally take part in the scheme activities, and if this is the case, describe how the activities are expected to be carried out and advise the name(s) of the entities that will carry them out.

No

Yes

16 Provide a copy of *all* scheme agreements and any other agreements relating to the ‘forestry managed investment scheme’.

The following agreements should be provided where they apply under the ‘forestry managed investment scheme’ or are associated with the ‘forestry managed investment scheme’.

- a the scheme constitution, scheme deed, or equivalent founding document
- b the compliance plan
- c the management agreement
- d all agreements with contractors for the supply of goods and services (this includes both executed agreements or agreements that are in draft form at the time of submitting this application)
- e the independent forester’s report and a copy of the letter of engagement
- f copies of all agreements relating to the land (for example, all head leases, leases, or subleases, licences, forestry rights, or documents relating to other land rights). This includes both executed agreements or agreements that are in draft form at the time of submitting this application
- g any agreements relating to the acquisition of assets (this includes both executed agreements or agreements that are in draft form at the time of submitting this application)
- h copies of forward contracts for the sale of the harvested trees or the produce of the trees (for example, woodchips). This includes both executed agreements or agreements that are in draft form at the time of submitting this application
- i any agreements relating to distribution of profits arising from the ‘forestry managed investment scheme’, and
- j any other relevant agreements.

! At the application stage it is preferable to provide copies of agreements in their **final draft form**. Final draft form means that agreements should relate to the current scheme and not be work in progress or the subject of ongoing revision by the applicant or the applicant’s agent or adviser. *If during the processing of the product ruling application an applicant submits revised agreements that were not requested by the ATO the applicant’s product ruling application will be finalised and the revised material treated as a fresh application.*

Requests for agreements relating to financing arrangements are dealt with under a specific, separate heading below.

Ensure that information such as independent reports is current and relevant to this application.

Insert reference

17 Other than the forestry manager (which is precluded from being a participant by subsection 394-15(4) of the ITAA 1997), can entities associated with the applicant hold ‘forestry interests’ in the scheme?

! The term forestry manager is defined in subsection 394-15(2) of the ITAA 1997.

No Yes Provide an assurance that such entities will be required to make the same payments during the term of the scheme as all other participants in the scheme.

18 Provide copies of marketing materials and any promotional material issued, or to be distributed to financial planners or advisers or commission agents. Provide copies of this material in final or current draft form.

! Where this information is not available at the time of submitting the product ruling application, provide copies of the information that was provided or made available to these entities at the time of the responsible entity’s or the manager’s immediate past forestry scheme (This includes a forestry scheme that was not a ‘forestry managed investment scheme’ under Division 394 of the ITAA 1997).

If marketing materials and any promotional material will not be issued for this scheme or were not issued or made available to financial planners, advisers or commission agents for the immediate past scheme, provide a statement to that effect and an explanation of how the scheme was or is to be promoted to participants.

Insert reference

--

19 Provide details of:

- any brokerage fees (commissions and/or marketing allowance) that will, or may, be paid to financial planners, accountants, or other entities following a participant's investment in the scheme
- any commission rebates that financial planners, accountants, or other entities will, or may, pay to scheme participants or their associates from their brokerage fees.

Insert reference

20 Provide copies of all written and/or electronic information (other than the product disclosure statement (PDS) or other offer document) to be provided to scheme applicants and participants regarding the scheme and their investment.

! Where this information is not available at the time of submitting the product ruling application, provide copies of the information provided or made available at the time of the RE or manager's immediate past forestry scheme (including a forestry scheme that was not a 'forestry managed investment scheme' under Division 394 of the ITAA 1997).

If written or electronic information other than the PDS or the offer document will not be provided or made available to scheme applicants, or was not provided or made available for the immediate past scheme, provide a statement to that effect.

Insert reference

21 Will the applicant or an associate of an applicant buy back or redeem the 'forestry interests' of a participant in the 'forestry managed investment scheme' if that participant wishes to exit from the scheme?

No Yes Will this be done as part of a formal or structured early exit scheme, arrangement or proposal?
If so, provide full details below of the early exit scheme, arrangement or proposal.

22 If the applicant or an associate of the applicant does not intend to buy back 'forestry interests' of participants, will the applicant or an associate of the applicant, offer to facilitate such disposals or assignments between parties?

No Yes Provide details.

Section E: Land**23 Has sufficient suitable land been purchased or secured for this scheme?**

No What arrangements or proposed arrangements have been entered into by the responsible entity/manager or other scheme entities to ensure that sufficient suitable land will be available?
Yes

24 Provide details of the area (in hectares) of land that is held (at the time of this application) and whether that land is owned, leased, or it has been secured in some other manner such as by licence or by an option to purchase.

25 What area of additional land (if any) will be acquired for the purposes of the ‘forestry managed investment scheme’?

26 Describe how the manager and/or other associated entities will obtain funds to secure access to suitable land for the ‘forestry managed investment scheme’.

27 List and describe all of the criteria used in selecting suitable land, for example:

- geographic location
- suitable topography
- past use
- soil suitability
- water supply or rainfall data
- climate evaluation
- accessibility to infrastructure such as sawmills or other processing facilities, ports, roads, and similar.

Indicate where these criteria are listed and described in the PDS/offer document and/or the independent forester’s report.

28 Is any of the land that is currently held subject to a charge, mortgage, or other security, or is it expected that any of the land yet to be acquired will be subject to a charge, mortgage, or other security?

No

Yes

Provide details. Where another entity holds, or will hold, a security over the land, advise how the ‘forestry interests’ of participants will be protected for the term of the ‘forestry managed investment scheme’.

29 Will the trees be irrigated or do they require irrigation for optimal yields?

No

Yes

Provide details, including whether sufficient water rights are held.

Section F: Corporations law

30 Will an offer document be prepared as a product disclosure statement and be lodged with, or a notice given to, the Australian Securities & Investments Commission (ASIC) that the product disclosure statement is in use?

No Yes

31 Provide a copy of the offer document in final draft form or as published.

1 It is preferable for a product disclosure statement, prospectus, information memorandum and similar to be provided in a final draft form, that is, before it is published.

Insert reference

32 Will the 'forestry managed investment scheme' be a *managed investment scheme* that is a *registered scheme* within the meaning of those terms in section 9 of the *Corporation Act 2001* (Corporations Act)?

No Yes Provide the Australian Registered Scheme Number (ARSN) and go to question 35.

33 If the 'forestry managed investment scheme' will not be a registered scheme, under what provision(s) of the Corporations Act will 'forestry interests' be offered?

Provide full details.

34 If the 'forestry managed investment scheme' will not be a registered scheme, explain why registration is not required by section 601ED of the Corporations Act.

35 Provide details of the scheme property for Corporations Act purposes.

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

37 Have all other requirements of the Corporations Act been met, or will they be met?

38 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.

Section G: Subscription monies

39 Provide details of the:

a **minimum subscription**

b **maximum subscription**

c **number of potential participants**

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

\$, , .

40 Will all subscription monies paid by participants (including those financed by loan monies) be available to the forestry manager (or another appropriate entity involved in the scheme) for immediate use in the 'forestry managed investment scheme'?

No How will these monies be used?

Yes

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

a **to be placed on deposit, (other than in an account of the RE/manager set up to hold payments made by participants and be immediately available for draw down and use in the 'forestry managed investment scheme')**

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 **to be subject to an arrangement which results in funds flowing to a financier or an associate of the financier?**

No

Yes Provide details.

42 Are participants or associates of participants entitled to recoup, or have any part of their subscription monies refunded or returned, after entering the 'forestry managed investment scheme'?

No

Yes Provide details.

43 Answer these questions in relation to income earned by the applicant and associated entities and the requirements of section 15-46 of the ITAA 1997:

a will the applicant and associated entities include, in their assessable income, the full amount equivalent to payments made by participants?

No Explain any differences. Yes

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

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

44 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.

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

46 Provide a flowchart detailing the flow of funds (amounts per single ‘forestry interest’) between the initial participant, applicant, manager, financier, trustee or any other entity in receipt of funds from the ‘forestry managed investment scheme’.

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

Insert reference

--

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

Insert reference

48 Provide an after-tax cash flow projection for a single ‘initial participant’ on the top marginal tax rate over the term of the scheme, assuming that the ‘initial participant’ remains in the ‘forestry managed investment scheme’ until the completion of the first clear-fell harvest.

! 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.

Insert reference

Section H: Finance

49 Will the applicant or any associated entity:

a be involved in offering finance to participants (‘internal finance’)

No Yes

b introduce participants to external sources of finance from parties unrelated to the scheme (‘preferred financiers’)?

No Yes

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

50 For all finance options to be offered to participants by either a financier associated with the RE/forestry manager (that is, 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:

- the RE/manager and any external finance entity, or
- 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 RE/manager or the associated finance entity to act as an agent of the external finance entity.

Insert reference

51 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 (for example, balance sheet, group accounts, letter of credit, and similar)
- 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 'forestry managed investment scheme'.

Insert reference

--

52 Are repayments of principal and payments of interest by participants in any way linked to the derivation of income from the scheme?No Yes Provide details.

53 Will initial 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.

54 Are there circumstances in which a participant will not be required to repay the borrowed monies to the financier within the term specified in the loan agreement?No Yes Provide details.

55 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 I: Payments under the forestry managed investment scheme (fees and expenses)

56 Provide full details of all payments that will be made under the ‘forestry managed investment scheme’ by a participant during the term of the ‘forestry managed investment scheme’.

Separately for each individual income year during the term of the ‘forestry managed investment scheme’ provide the following details:

- a a detailed description of each and every payment that a participant is required to make under the ‘forestry managed investment scheme’ including:
 - the amount of the payment
 - the date the payment is required to be made
 - details of the service, good, or asset for which the payment is being charged, and
 - the agreement under which the payment is required, including the details of the clause or paragraph number in that agreement.
- b if the payment will be made by the participant to an entity other than the responsible entity(RE)/forestry manager, provide details of that entity and its relationship to the RE/Forestry Manager
- c where the payment is a set dollar amount, state that amount precisely
- d where the payment will be determined as a percentage of harvest proceeds, set out the full calculation method for the estimated payment, including:
 - the estimated yields and prices on which harvest proceeds have been calculated and on which the percentage has been based
 - how those estimated yields or prices have been determined (including any source materials that support the figures used for example, reports of ABARE or other government bodies, non-government forestry bodies, previous harvest results from earlier schemes, and similar)
 - any uplift factor applied, and
 - any other factors taken into account, or
 - alternatively, where the harvest proceeds are not a function of prices and yields, show how a payment based on a stated percentage has been determined, including details of how the base figure (that is, the harvest proceeds) has been, or will be determined, including all inputs used in determining that base figure
- e show the sum of the present values of the payments that all current and future participants in the ‘forestry managed investment scheme’ have paid or will pay, calculated on 30 June of the income year in which a participant first pays an amount under the scheme, and
 - in respect of each income year, provide the **full calculations** showing how the present value was determined for that income year including all factors and/or assumptions (if any) used in the calculation, including any recoupment of the type referred to in section 394-35(6).

1 Subsections 394-35(4) and (5) of the ITAA 1997 set out certain applicable dates and subsection 394-35(7) of the ITAA 1997 sets the discount rate to be used for net present value calculations. Clearly show the bond yield used and advise the information source of that bond yield.

Insert reference

57 In respect of all of the details of payments and the calculations provided, provide details of any payments you have excluded under section 394-40 of the ITAA 1997 and supply an assurance that these payments have not been included.

Insert reference

58 What are the consequences for a participant in the event of default in the payment of fees or other scheme expenses by that participant?

59 Will the fees payable by participants under all agreements be sufficient to carry out services under the ‘forestry managed investment scheme’ and to fund any capital expenditure required?

No Where will additional funds be obtained?

Yes

Section J: Direct forestry expenditure and the 70% DFE rule

60 Is it the applicant's view that it will be reasonable to expect that on 30 June in the relevant income year (see section 394-35) 'direct forestry expenditure' will be no less than 70% of the amount of the payments under the scheme?

! Where this view is supported by a valuation report authored by an independent expert supply a copy of this report, including the details of the expert(s), their commercial experience in their relevant field, the nature of the services provided, and a copy of the letter of engagement.

No Yes

61 Provide an assurance that all transactions under the scheme will be at market value.

Insert reference

62 Will the forestry manager deal with other parties at arms length in relation to all transactions under the scheme?

No Yes

63 Provide details of any dealings in relation to DFE over the term of the scheme that are not, or may not be, at arm's length.

64 Explain in detail how the arm's length principle was applied in determining amounts for goods and/or services and for the use of land where the transaction is internally generated or is between one or more associated entities.

65 Provide details of the variation between the actual amounts or the notional amounts of DFE that any non-arm's length dealings have had, or may have had on the market value of those items over the term of the scheme.

66 Provide full details of all 'direct forestry expenditure' that the forestry manager has paid or will pay under the 'forestry managed investment scheme'.

! The calculations provided should express all figures on both a 'whole of scheme' and 'per hectare' basis.

Separately for each individual income year during the term of the 'forestry managed investment scheme' provide the following details:

- a a sufficiently detailed description of each class of expenditure (see Note 1 below) that is claimed to be 'direct forestry expenditure'
- b by reference to its purpose as being attributable to either the establishment, the tending, the felling, or the harvest of the trees provide an explanation of how each class of expenditure meets the definition of 'direct forestry expenditure' in section 394-45 of the ITAA 1997
- c categorise each class of 'direct forestry expenditure' as either 'an amount paid under the scheme' (see paragraph (f) below), or a 'notional amount reflecting the market value of goods, services or the use of land, provided by the forestry manager of the scheme' (see paragraph (g) below), and supply of copy of any independent valuation report that has been obtained
- d show the sum of the present values of each of the amounts that the forestry manager has paid or will pay under the scheme calculated on 30 June of the income year in which a participant first pays an amount under the scheme
- e in respect of each income year, provide the **full calculations** showing how the net present value was determined, including all factors and/or assumptions (if any) used in the calculation, including any recoupment of the type referred to in section 394-35(6)

! Subsections 394-35(4) and (5) of the ITAA 1997 set out certain applicable dates and subsection 394-35(7) of the ITAA 1997 sets the discount rate to be used for net present value calculations. Clearly show the bond yield used and attach a dated hard copy of the information source of that bond yield.

66 *continued*

- f in respect of 'direct forestry expenditure' that falls under paragraph 394-45(1)(a) as 'an amount paid under the scheme' show:
 - i where it is known, the date the amount was or will be paid
 - ii where it is known, the name of the supplier or contractor that supplied the goods or services or that is expected to supply the goods or services
 - iii whether the supplier is, or is expected to be an associated entity, an independent contractor, or an independent supplier
 - iv where the amount paid under the scheme is to be an amount for transportation and handling of felled trees state, by reference to paragraph 394-45(4)(a), the point to which the amount has been calculated, and the details of any assumptions made for the purposes of the calculation – for example, average kilometres, cost per kilometre, and similar
 - v where the amount is attributable to more than one scheme (for example, depreciation, research and development (R&D) costs) show how the amount has been allocated across the different schemes (past, current and future) and provide copies of the calculations with explanations, as necessary
 - vi where an amount has been apportioned because only part of the amount is attributable to 'direct forestry expenditure', show the basis of apportionment and provide copies of the calculations with explanations, as necessary, and
 - vii the documentary evidence held that is available to verify the expenditure.
- g in respect of 'direct forestry expenditure' that falls under paragraph 394-45(1)(b) as a 'notional amount reflecting the market value of goods, services, or the use of land' provided by the forestry manager of the scheme, provide:
 - i any documentary evidence that is expected to be available to support the amount of notional expenditure
 - ii a detailed explanation of how the market value of each item was determined
 - iii where market value of the notional expenditure is an amount that is attributable to more than one scheme show how the amount will be allocated across the different schemes (past, current and future) and provide copies of the calculations
 - iv where an amount has been apportioned because only part of the amount is attributable to 'direct forestry expenditure', show the basis of apportionment and provide copies of the calculations with explanations, as necessary
 - v where the market value of the notional expenditure is an amount for the use of land the applicant should supply any supporting documentation provided by a qualified land valuer including the letter of engagement. Where the services of a qualified land valuer have not been used to determine the market value for the use of land, explain why the engagement of a qualified land valuer was not considered necessary and explain the alternative methodology used to determine the notional value of the land. It should be noted that while it is not a mandatory requirement, the ATO considers that the use of a qualified land valuer would be a prudent measure to minimise disputes between the ATO and the forestry manager regarding the amount of 'direct forestry expenditure' for the use of land and it will reduce the time necessary to process the product ruling application, and
 - vi where the market value of the notional expenditure is an amount for transportation and handling of felled trees state, by reference to paragraph 394-45(4)(a), the point to which the notional amount has been calculated, and the details of any assumptions made for the purposes of the calculation, for example, average kilometres, cost per kilometre, and similar.

! Although a class of expenditure approach will generally provide sufficient detail for the 70% DFE test this will depend upon the classes of expenditure being reasonably based. Where a class of expenditure is considered to be too wide or it lacks sufficient detail, further explanation may be requested of the components of the class. This will particularly be the case where the quantum of the class of expenditure is substantial in relative terms. Where insufficient documentation is provided to support a class of expenditure or an amount within the class, a valuation report or an additional valuation report may be requested.

Where an item of 'direct forestry expenditure' has, or will be provided by an internal division of the applicant or by an associated entity of the applicant the following information will be required:

- working papers setting out how the amount was determined including the component that represents profit, and
- any other documentation that is relevant to determining the character, amount and timing of the item of expenditure. This may include such things as time lines, work schedules, and subcontracts, where held or available.

Where an item of 'direct forestry expenditure' is to be provided under a contract with an entity that is not an associated entity of the applicant, the documentation should include:

- a copy of the contract;
- any additional or supplementary documentation relating to the contract that shows of how and when goods and services under the contract will be delivered. This may include such things as time lines, work schedules, and subcontracts, where held or available, and
- where a contract is not yet in place for a good or service that is to be provided under contract, provide a statement to that effect and estimate when such a contract is likely to be executed.

Where an item or items of 'direct forestry expenditure' relates to plant or equipment already held by the applicant, provide a copy of the invoice(s) showing the date of purchase and cost. Alternatively, provide a copy of the appropriate extract from the forestry manager's asset register or depreciation schedule.

Where the projected costs of goods, services or use of land may be explained by reference to expenditure currently being incurred by the forestry manager or its associates, the forestry manager should supply evidence of this expenditure.

Where projected future costs used in net present value (NPV) calculations differ materially from the current value of the same goods, services, or use of land, an explanation of the reasons for this difference is required.

Insert reference

67 Provide details of amounts paid, or expected to be paid, in relation to the items excluded by sub-sections 394-45(3) & (4) of the ITAA 1997, as well as details of how these amounts will be funded.

68 Provide an assurance that the calculations provided for 'direct forestry expenditure' do not include any amounts excluded under sub-sections 394-45(3) & (4) of the ITAA 1997.

Insert reference

--

Section K: Guarantees and indemnities

69 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.

70 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 L: Exercise of the discretion in section 35-55 of the *Income Tax Assessment Act 1997* – where entities under the scheme are engaged in carrying on a business of forestry

71 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 M. Yes

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

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

73 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.

74 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 relevant industry bodies, scientific research, independent expert reports, or descriptions from successful independent operators within the industry.

Insert reference

--

75 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) & (c)).

76 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: **The case**

77 List any propositions of law (if any) relevant to the questions and issues raised in this application, giving:

- a legal reasons and authoritative support for the interpretation of the provision(s) relevant to the questions and issues
- b possible arguments contrary to the interpretation adopted, and legal reasons and authoritative support
- c all other material or relevant matters or sources of information the Commissioner should be made aware of to ensure access to all the necessary facts and law
- d other legislative provisions relevant to the application – both Commonwealth and state.

78 List the legal, policy, practical/commercial and other issues to be considered.

79 Fully address the eight factors referred to in subsection 177D(2) of Part IVA of the ITAA 1936, based on the information and/or understanding that exists at the time you submit the application.

The eight factors are as follows:

- The manner in which the scheme was entered into or carried out.
- The form and substance of the scheme.
- The time at which the scheme was entered into and the period of time during which the scheme was carried out.
- The result that would be achieved by the scheme.
- Any change in the financial position of the relevant taxpayer arising out of the scheme.
- Any change in the financial position of any other person arising out of the scheme.
- Any other consequences for the relevant taxpayer or any other person connected with her or him.
- The nature of any connection between the relevant taxpayer and a person contemplated by factor 6.

80 Provide a draft of the scheme, ruling and explanations sections of a product ruling.



You **must** provide draft electronic copies on computer disk.

Section N: Documentation requirements

81 Before submitting this application, tick the boxes below confirming that you have:

Read the important information about completing this checklist on page 1.

Provided full disclosure of all documents, agreements, and contracts relating to the scheme on which you seek a product ruling.

Provided an electronic copy (on disk) containing your draft product ruling, documents, agreements and spreadsheets (including calculation of direct forestry expenditure (DFE)).

Noted in the 'Outstanding items' table on the next page, the reason any of the information has not been supplied and the date 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 79.

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 supply the 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