PR 2006/47 - Income tax: McLeod's Daughters 2006 Investment

Product Ruling

Income tax: McLeod's Daughters 2006 Investment

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This Ruling 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, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are 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.

No guarantee of commercial success

The Tax Office **does not** sanction or guarantee this product. Further, we give no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. This will involve a consideration of important issues such as whether projected returns are realistic, the 'track record' of the management, the level of fees in comparison to similar products and how the product fits an existing portfolio. We recommend a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out in the **Ruling** part of this document are available, **provided that** the scheme is carried out in accordance with the information we have been given, and have described below in the **Scheme** part of this document.

If the scheme is not carried out as described, participants lose the protection of this Product Ruling. Potential participants may wish to seek assurances from the promoter that the scheme will be carried out as described in this Product Ruling.

Potential participants should be aware that the Tax Office will be undertaking review activities to confirm the scheme has been implemented as described below and to ensure that the participants in the scheme include in their income tax returns income derived in those future years.

Terms of use of this Product Ruling

This Product Ruling has been given on the basis that the entity(s) who applied for the Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Ruling.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant taxation provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant taxation provision(s)

2. The taxation provisions dealt with in this Ruling are:

- section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 25-25 of the ITAA 1997;
- Division 27 of the ITAA 1997;
- Division 40 of the ITAA 1997;
- section 995-1 of the ITAA 1997;
- section 79D of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 82KL of the ITAA 1936;
- Division 5 of Part III of the ITAA 1936;
- Division 10B of Part III of the ITAA 1936; and
- Part IVA of the ITAA 1936.

Unless otherwise stated, all legislative references that follow are in relation to the ITAA 1936.

Goods and Services Tax

3. In this Ruling, where applicable, all fees and expenditure referred to include Goods and Services Tax (GST) set out in the *A New Tax System (Goods and Services Tax) Act 1999* (GST ACT). An entity is entitled to claim input tax credits for the GST included in its expenditure provided that the acquisition is a creditable acquisition under Division 11 of the GST Act.

Changes in the Law

4. Although this Ruling deals with the laws enacted at the time it was issued, later amendments may impact on this Ruling. Any such changes will take precedence over the application of this Ruling and, to that extent, this Ruling will be superseded.

5. Taxpayers who are considering participating in the Project are advised to confirm with their taxation adviser that changes in the law have not affected this Product Ruling since it was issued.

Note to promoters and advisers

6. Product Rulings were introduced for the purpose of providing certainty about tax consequences for participants in Produced Films such as this. In keeping with that intention the Tax Office suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Ruling is issued.

Class of entities

7. The class of entities to which this Ruling applies is those entities who enter into the scheme described below on or after the date this Ruling is made. They will have a purpose of staying in the scheme until it is completed (that is, being a party to the relevant agreement until its term expires), and deriving assessable income from this involvement as set out in the description of the scheme. In this Ruling, each of these entities, referred to as 'Investors', will be 'wholesale clients' for the purposes of section 761G of the *Corporations Act 2001*.

8. The class of entities to whom this Ruling applies does not include entities who intend to terminate their involvement in the scheme prior to its completion, who otherwise do not intend to derive assessable income from it or are non-residents of Australia for the purposes of the ITAA 1936 or ITAA 1997.

Qualifications

9. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 15 to 64.

10. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

Date of effect

12. This Ruling applies prospectively from 12 April 2006, the date this Ruling is made. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling.

13. If this Product Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)). If a private ruling is inconsistent with a later Product Ruling, the earlier private ruling is taken not to have been made if, when the Product Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Withdrawal

14. This Product Ruling is withdrawn and ceases to have effect after 30 June 2007. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons within the specified class who enter into the arrangement specified below. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the persons' involvement in the arrangement.

Scheme

15. The scheme is the McLeod's Daughters 2006 Investment and is described below. This scheme incorporates the following documents:

- Application for a Product Ruling dated 19 December 2005 as constituted by documents provided on 20 December 2005, 5 January 2006, 7, 14, 23, 24 and 27 February 2006 and 8 March 2006 and additional correspondence, including emails, from the Applicant (or Applicant's representative) dated 19 December 2005, 5, 31 January 2006, 2, 7, 14, 16, 22, 23 and 24 February 2006, 8, 15, 17, 21, 23, 24, 27, 28, 29 and 31 March 2006;

- Correspondence, including emails, from the Tax Office to the Applicant (or Applicant's representative) dated 22 December 2005, 2, 9 February 2006, 16, 21 and 31 March 2006;
- Draft Information Memorandum for the McLeod's Daughters 2006 Investment to be issued by Sixteenby9 Film & Television Pty Ltd (the 'Applicant' and 'Issuer'), received by the Tax Office on 27 February 2006;
- Draft Interpretation and General Provisions Deed to be executed by Millennium Pictures Pty Limited (the 'Producer') and Nine Films & Television Pty Limited ('NFT' or 'the Distributor') received by the Tax Office on 20 December 2005;
- Draft **Investor Agent Deed**, each of which is between Christopher Coote & Co Pty Ltd (the 'Agent'), the Producer and an Investor, received by the Tax Office on 20 December 2005;
- Draft Management Deed to be executed by the Agent only, received by the Tax Office on 20 December 2005;
- Letter from the Agent to the Issuer, accepting appointment to act as Agent for Investors, dated 12 December 2005 and received by the Tax Office on 20 December 2005;
- Draft **Investor Acquisition Agreement** between the Producer, the Agent, and each Investor, received by the Tax Office on 20 December 2005;
- Draft **FTA Licence Agreement** between Nine Network Australia Pty Ltd ('NNA' or the 'FTA Licensee'), the Producer, the Agent, and each Investor, received by the Tax Office on 20 December 2005;
- Draft **Investor Distribution Agreement** between NFT, NNA, the Agent, and each Investor, received by the Tax Office on 20 December 2005;
- Draft NFT Acquisition Agreement between the Producer and NFT, received by the Tax Office on 8 March 2006;
- Draft Producer Distribution Agreement between the Producer and NFT, received by the Tax Office on 20 December 2005;
- Draft NFT Licence Deed between NFT as the Licensor and NNA as Licensee, received by the Tax Office on 8 March 2006;

- Draft Sub-Distribution Agreement between NFT, the Producer, the Sub-Distributor ('Sub-Distributor') and others, received by the Tax Office on 20 December 2005;
- Draft Pay Television Licence, between the Sub-Distributor and the Pay Television Licensee ('PTL'), received by the Tax Office on 20 December 2005;
- Draft Pre-committed Equity Participant Acquisition Agreement between the Producer and the Pre-committed Equity Participant ('PCEP'), received by the Tax Office on 20 December 2005;
- Draft Pre-committed Equity Participant Distribution Agreement between the Distributor and the PCEP, received by the Tax Office on 20 December 2005;
- Certificates under subsection 124K(1), received by the Tax Office on 20 December 2005;
- Draft **Business Finance Agreement** between each Investor who chooses to borrow from the Financier and the Financier in the form received by the Tax Office on 20 December 2005;
- Draft **Mortgage of Contractual Rights Agreement** between each Investor who chooses to borrow from the Financier and the Financier in the form received by the Tax Office on 20 December 2005; and
- Draft **Notice of Transfer and Assignment** between each Investor who chooses to borrow from the Financier and the Financier and others in the form received by the Tax Office on 8 March 2006.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

16. The documents highlighted are those that Investors may enter into. For the purposes of describing the scheme to which this Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which an Investor, or any associate of an Investor, will be a party to, which are a part of the scheme. In this Ruling the term 'associate' has the meaning given by section 318.

17. In accordance with the above documents, an Investor who participates in the scheme must be a wholesale client. **This Ruling does not apply unless the Investor is a wholesale client for the purposes of section 761G of the Corporations Act.** The meaning of wholesale client is explained in the Information Memorandum for this Project.

18. All Australian Securities and Investment Commission (ASIC) requirements are, or will be, complied with for the term of the agreements.

The Participants

19. The entities involved in the scheme are:

- **Investor:** A person, being a wholesale client, who incurs capital expenditure in acquiring an interest in the Program Copyright. An investor will licence their interest in the Program Copyright to NNA and NFT for a period of 8 years in return for the payment of licence fees.
- **Applicant and Issuer:** Sixteenby9 Film & Television Pty Ltd ('Sixteenby9') is the Applicant who applied for the Product Ruling. Sixteenby9 is the Issuer of the Information Memorandum to the Investors.
- **Agent:** Christopher Coote & Co Pty Ltd, under the Investor Agent Deed will be appointed by each of the Investors as their attorney to execute the Investor Acquisition Agreement and the Investor Distribution Agreement.
- **Producer:** Millennium Pictures Pty Ltd has the obligation to produce the Program under the Investor Acquisition Agreement.
- **Distributor or NFT:** Nine Films & Television Pty Limited will receive a licence from the Investors under the Investor Distribution Agreement to distribute the Program worldwide (excluding the rights granted under the FTA Licence Agreement). NFT will provide a distribution guarantee of 59.895% (inclusive of GST) of the Investment to Investors. NFT will licence its Free Television Rights in the Australian Territory to NNA under the NFT Licence Deed and NFT will licence certain worldwide rights to the Sub-Distributor.
- **NNA or the FTA Licensee:** Nine Network Australia Pty Ltd will guarantee the performance of the Distributor's payment obligations under the Investor Distribution Agreement. NNA receives a licence from the Investors for the Australian Territory Free Television Rights in the Program in return for licence fees. NNA also receives a licence from the Distributor for the Australian Territory Free Television Rights.
- **Pre-committed Equity Participant or PCEP:** The PCEP will contribute a set amount towards each of the 32 Episodes in McLeod's Daughters – Series 6 for the purchase of an interest in the Program Copyright. PCEP will licence its interest in the Program Copyright to the Distributor in return for a licence fee based on the level of the Gross Receipts.

- **Sub-Distributor:** The Sub-Distributor will receive certain rights from the Distributor to distribute the Program worldwide. The Sub-Distributor will enter into the Pay Television licence with PTL.
- **Pay Television Licensee or PTL:** The PTL will receive a licence for certain pay television rights from the Sub-Distributor under the Pay Television Licence.
- **Financier or Westpac:** Westpac Banking Corporation will be the preferred financier under the scheme. The Financier will provide finance to approved Investors on arm's length terms and conditions and take security over the Investor's contractual rights.

Defined terms

20. Terms which have been defined within the relevant documents to the scheme include the following:

- **Application** means an application by a wholesale client (as defined under the Corporation Act) for an Investment.
- **Application Fee** means an amount equal to 0.22% (inclusive of GST) of each Investor's Investment Amount payable by each Investor towards the Agent's fees.
- **Australian Territory** means Australia and Papua New Guinea.
- **Available Copyright Interest** means 97% of the Copyright Interest.
- **Budget** means the budget for the production of the Program (including all above-the-line and below-the-line items) approved by the Producer, NFT and the PCEP.
- **Budgeted Cost** means the amount agreed by the Producer, NFT and the PCEP as the amount budgeted for the production of the Program, being $636,280 per Episode.
- **Copyright** means:
  - (a) copyright arising under the *Copyright Act 1968*;
  - (b) copyright under the law of a country other than Australia; and
  - (c) rights in the nature of or analogous to the rights described in paragraphs (a) and (b) according to the law of any country.

- **Copyright Interest** means all existing and future Copyright subsisting in the cinematographic film in the Program, strictly limited to the Copyright Term.
- **Copyright Term for Investors** means the 8 year period commencing 30 June 2006 and ending on 30 June 2014.
- **Episode** means each commercial hour episode of the Program.
- **Equity Participant** means each person (excluding each Investor as defined under and for the purposes of the Investor Acquisition Agreement) who pays a contribution to the Producer in respect of the Budgeted Cost (including the PCEP and NFT).
- **Excluded Rights** means the following exclusive rights:

  (a) all rights in the Program Copyright, the Title, the script and the original music and any other works created for the production of the Program, to make any remake, sequel or spin-off and to authorise others to exercise these rights in relation to any remake, sequel or spin-off;

  (b) the right to make cinematograph films about the production of the Program; and

  (c) all rights in the Program assets.
- **FTA Licence Fee** means the amount payable by NNA under the FTA Licence Agreement in respect of the exploitation of the Free Television Rights in the Program in the Australian Territory, being a total amount of $356,400 per Episode (inclusive of GST).
- **Foreign Gross Receipts** means all non-returnable amounts which are received by NFT from the distribution of the Program in the Territory (excluding the Australian Territory) less any withholding tax.
- **Free Television Rights** means each of the following rights in respect of the Program:

  (a) the right to broadcast on the terrestrial spectrum by any manner of audiovisual transmission whether now known or hereafter devised and including, without limitation, all forms and means of broadcast, narrowcast, point to multipoint and point to point;

(b) the right to contemporaneously (to the free to air television broadcast made in each relevant area of the Territory) retransmit a broadcast made in the manner described in paragraph (a) by cable, MDS, satellite or any other system or technology in the course of:

(i) retransmission of a free to air television channel; or

(ii) distribution of NNA's or its sublicensee's principal program stream between television stations in the network of television stations known as the *Nine Network* or the network of any sublicensees and other television stations with which NNA or its sublicensees has a program supply agreement; and

(c) the right to sub-licence any of the rights described in paragraphs (a) and (b) above,

and in each case, the promotional rights for each such right.

- **Gross Receipts** means:

(a) all non-returnable amounts which are received by NFT from the distribution of the Program in the Territory less any withholding tax;

(b) advances, guarantees, security deposits, awards, subsidies, levies and other allowances received by any person relating to the Program or the distribution of the Program;

(c) amounts obtained from or in connection with any claim by any person relating to the Program Copyright, the underlying rights or the distribution of the Program;

(d) amounts received from exploitation of marketing materials by any person relating to the Program Copyright, the underlying rights or the distribution of the Program;

(e) amounts obtained from export marketing and export expansion grants and schemes from any person relating to sales expenses and marketing expenses; and

(f) amounts received by any person from the exploitation of the collection societies rights,

but excluding for the avoidance of doubt:

(g) the FTA Licence Fee;

(h) the Excluded Rights Receipts; and

(i) any amounts received from the distribution of Gross Receipts (including, without limitation, any amounts received from NNA in respect of the exploitation of the Free Television Rights in the Australian Territory) made to or retained by NFT or the Producer (in their capacity as Equity Participant) if either or both of them are an Equity Participant.

- **Investment** means the amount that an Investor pays as a non-refundable contribution to the Producer in respect of the Budgeted Cost (which is an amount exclusive of GST) as set out in Column 2 of Schedule 1 of the Interpretation and General Provisions Deed.
- **Investment Amount** means the amount paid by an Investor for the acquisition of its proportionate share of the Available Copyright Interest.
- **Investor Transaction Documents** means the:

  (a) Investor Acquisition Agreement;

  (b) Investor Distribution Agreement; and

  (c) FTA Licence Agreement.
- **Investor's Share** means the amount expressed as a percentage, calculated using the following formula:

$$\frac{\text{Investment}}{\text{Total Investment}} \times 97$$

- **Licence Agreement** means any agreement between NFT and any third party sub-distributor, agent, sub-agent or licensee appointed or licensed by NFT for the distribution of the Program.
- **Licensee** means any third party sub-distributor, agent, sub-agent or licensee appointed by NFT to distribute the Program.
- **Master Production Account** means the bank account referred to in clause 13.1(a) of the Investor Acquisition Agreement.
- **NFT** means Nine Films & Television Pty Limited ABN 51 066 040 024.
- **NFT Investment** means the amount which NFT pays as a non-refundable contribution to the Producer in respect of the Budgeted Cost (which is an amount exclusive of GST).

- **NFT Share** means the amount expressed as a percentage, calculated using the following formula:

  $$\frac{\text{NFT Investment}}{\text{Total Investment}} \times 97$$

- **NNA** means Nine Network Australia Pty Limited ABN 88 008 685 407.
- PCEP means the Pre-committed Equity Party or any other person approved by the Producer and NFT.
- **PCEP Investment** means the amount the PCEP pays as a non-refundable contribution to the Producer in respect of the Budgeted Cost.
- **Program** means:

  (a) a number of episodes (being a number of episodes determined by NFT that is no greater than 20 and if less than 20 as identified by NFT) of that part of the sixth series of an adult television program known by the Title, comprising certain episodes that are delivered to NFT as cinematographic films on or before 30 June 2006; and

  (b) all copies and versions of the episodes referred to in paragraph (a), whether identical or differentiated by re-editing, cutting, dubbing, sub-titling or otherwise.

- **Program Copyright of Investors** means all existing and future Copyright subsisting in the Program, strictly limited to the period of the Term:

  (a) including, for the avoidance of doubt:

    (i) copyright subsisting in the Program as a cinematograph film or films pursuant to section 86 of the *Copyright Act 1968*; and

    (ii) right to do or authorise the doing of all or any of the acts specified in section 86 of the *Copyright Act 1968*; and

  (b) excluding the Excluded Rights.

- **Represented Investor** means each person who:

  (a) pays a contribution to the Producer in respect of the Budgeted Cost; and

  (b) appoints the Agent as its agent on the same terms as the Investor Agent Deed,

  including, for the avoidance of doubt, the Investor.

- **Runs** means any of the following on one occasion:
  - (a) an analogue broadcast of the Program;
  - (b) a digital broadcast of the Program; or
  - (c) a contemporaneous broadcast of the Program by means of analogue and one or more methods of digital transmissions.
- **Security Interest** means any bill of sale (as defined in any statute), mortgage, charge, lien, encumbrance, pledge, hypothecation, title retention arrangement, trust or power, as or in effect as security for the payment of a monetary obligation or the observance of any other obligation or any rights of third parties.
- **Term** means for each Investor, the period commencing on 30 June 2006 and ending on 30 June 2014.
- **Territory** means worldwide.
- **Title** means McLeod's Daughters.
- **Total Investment** means $628,467.50 per Episode (being the Budgeted Cost per Episode minus the PCEP Investment per Episode) (exclusive of GST) multiplied by the number of Episodes comprised in the Program.

Overview of the McLeod's Daughters 2006 Investment

21. The Issuer will make an invitation to wholesale clients to invest in the Program. The invitation will close, Copyright Interests in the Program Copyright will be allocated and documents will be executed on or before 30 June 2006. The McLeod's Daughters 2006 Investment will involve an Investor paying an amount equal to the Investment Amount, together with an Application Fee equal to 0.22% (inclusive of GST) of the amount of the Investment or such other amount as agreed between the Investors and the Agent (as a contribution towards the Agent's costs).

22. There are 32 Episodes commissioned for the sixth series of McLeod's Daughters (Episodes 139 to 170), 20 of which are planned for completion and delivery by 30 June 2006 (Episodes 139 to 158 inclusive). Investors will be assigned an interest in the Program Copyright of the 20 completed Episodes.

23. The maximum investment is to be $13,826,285 (inclusive of GST), which equates to 20 Episodes at $691,314.25 (inclusive of GST) per completed Episode. There is no minimum subscription as NFT will invest any shortfall if less than the maximum investment of $13,826,285 (inclusive of GST) is received from Investors. NFT will invest any shortfall and Investors will receive the Investors' Share of the Program Copyright with the balance of the Program Copyright being held by NFT (NFT Share) under the terms of the NFT Acquisition Agreement.

24. The Agent, acting on behalf of the Investors, will apply 100% of each Investment to investment in the Program by entering into the Investor Acquisition Agreement with the Producer.

25. Each of the Investors will enter into an Investor Distribution Agreement (with the Agent contracting on behalf of each of the Investors severally). It will cover the Program and will provide for licence fees to be paid annually based on the performance of the Program. In addition, the Distributor will enter into the Producer Distribution Agreement in respect of the Program with the Producer and a similar agreement with any other party having rights in respect of the Program. The Distributor will provide a distribution guarantee which will guarantee that Investors will receive by 30 June 2014 (on a cumulative basis) from all territories under the Investor Distribution Agreement an amount equal to 59.895% (inclusive of GST) of the amount of the Investment (see paragraph 39). Performance of these payment obligations will be guaranteed by NNA.

26. The Financier has agreed to provide a finance facility to approved borrowers on a full-recourse basis with an 8 year term.

Information Memorandum

27. The minimum application amount per Investor is $50,000 (exclusive of GST) and then multiples of $10,000 (exclusive of GST) thereafter. In addition an Investor will be required to pay an Application Fee equal to 0.22% (inclusive of GST) of the Investment Amount to the Issuer or such other amount as agreed between the Investors and the Agent (as a contribution towards the Agent's costs).

28. To invest in the Program an Investor will complete the Application Form attached to the Information Memorandum. The Investor will be required to sign the Application Form and forward to the Issuer the Application Form, a bank cheque for the application amount together with certificates, acknowledgements or other evidence the Issuer needs to ensure the Investor is a wholesale client for the purposes of the Corporations Act and the executed Investor Agent Deed.

Investor Agent Deed

29. Under clause 3.1, each of the Investors irrevocably and by way of security appoints the Agent as their attorney to execute on their behalf the Investor Acquisition Agreement and the Investor Distribution Agreement. The Agent will not enter into these agreements or execute other documents on an Investor's behalf unless the Agent has received payment of the Application Fee. Under clause 3.2, each of the Investors appoints the Producer as their agent to execute on their behalf the FTA Licence Agreement and to grant to NNA a licence for the Free Television Rights.

30. The Agent will, by the receipt of the first Proceeds from the Program, open the Proceeds Account in the name of the Agent. The Agent will operate the Proceeds Account until 30 June 2016 and will pay into it any monies received by it on behalf of the Investors, other than Investors who are financed by the Financier, from licensing agreements entered into on or before 30 June 2014 (clause 11 of the Management Deed which is incorporated into the Investor Agent Deed by reference). Third parties, such as NFT and NNA, who contractually owe moneys to Investors who are financed by the Financier will be required to pay those moneys, covered by the Notice of Assignment, direct to the Financier (refer paragraph 62).

Investor Acquisition Agreement

31. This Agreement sets out the terms and conditions under which the Investors agree to invest in the Program.

32. Under clause 2 the Producer must produce the Program at its own cost and expense. At clause 3.1 the Producer will assign to each Investor that Investor's Copyright Interest in respect of the Program Copyright covered by the Investor Acquisition Agreement in consideration of the non-refundable payment of the Investment by each Investor to the Producer. The Investors will each hold their respective interests in the Program Copyright as tenants in common with each other, the Producer, the Equity Participants and NFT (clause 3.2).

33. At clause 5 each of the Investors and the Producer agree that Gross Receipts must be applied in accordance with the Application Schedule (refer paragraph 43). Investors will only be entitled to Gross Receipts received by NFT up to 30 June 2015 resulting from licensing agreements entered into on or before 30 June 2014.

FTA Licence Agreement

34. This agreement is between the Producer, the Producer as agent for the Investors (as per clause 3.2 of the Investor Agent Deed), the Agent and NNA. Under clause 2, the Investors as Licensor grant NNA as Licensee the Free Television Rights in the Program for 4 Runs in the Australian Territory for the period commencing 30 June 2006 and ending on 30 June 2014.

35. At clause 3, in conjunction with clause 10, in consideration for the grant of the Free Television Rights, NNA must pay the Investors the Investors' Share of the FTA Licence Fee in accordance with Schedule 2 as follows:

- 30 September 2013 Investors' Share of $34,565.30 (inclusive of GST) per Episode;
- 30 September 2014 Investors' Share of $321,834.70 (inclusive of GST) per Episode; and
- Total Investors' Share of $356,400 (inclusive of GST) per Episode.

Note: 1/11th of the Investor's Share will be payable by the tax law partnership of the Investors to the Tax Office in respect of GST.

36. The balance of the FTA Licence Fee not payable to Investors under the agreement will be payable to NFT in its capacity as an Equity Participant under the NFT Licence Deed.

Investor Distribution Agreement

37. The agreement is between NFT, the Investors, the Agent and NNA. Under clause 2(a) each of the Investors licences to NFT the rights to distribute the Program (excluding the rights granted under the FTA Licence Agreement) worldwide for the period commencing 30 June 2006 and ending on 30 June 2014. At clause 2(b) NFT acknowledges Investors are not the sole owners of the Program Copyright and do not own the underlying rights, therefore NFT will need to separately obtain licences of the rights to distribute the Program from all the other owners.

38. At clause 4.1 and 4.2 NFT will be entitled to a commission of 25% for the distribution of the Program as well as reimbursement of sales expenses and marketing expenses from Gross Receipts. Under clause 4.3 NFT must distribute Gross Receipts in accordance with the Application Schedule (refer paragraph 43). Investors are only entitled to Gross Receipts received by NFT up to 30 June 2015 and where received after 30 June 2014 they must be receipts resulting from licensing agreements entered into on or before 30 June 2014. Investors will be entitled to receive Gross Receipts and an annual accounting statement (clause 4.3(d) and clause 6.1).

39. Under clause 5.1 NFT commits to a series of progressive cumulative distribution guarantee(s) payable within 3 months of 30 June 2007, 2008, 2009, 2010, 2011, 2012, 2013 and 2014 and in total equal to a maximum of 59.895% (inclusive of GST) of the amount of the Investor's Investment. NFT will only be required to pay the distribution guarantee if NFT has not paid sufficient Gross Receipts to Investors by each guarantee date. The maximum distribution guarantee amounts are set out in the Table below.

Distribution guarantee amount	Guarantee date
5.5% (inclusive of GST) of the Investor's Investment	30 June 2007
11% (inclusive of GST) of the Investor's Investment	30 June 2008
24.2% (inclusive of GST) of the Investor's Investment	30 June 2009
37.4% (inclusive of GST) of the Investor's Investment	30 June 2010
42.9% (inclusive of GST) of the Investor's Investment	30 June 2011
48.4% (inclusive of GST) of the Investor's Investment	30 June 2012
48.4% (inclusive of GST) of the Investor's Investment	30 June 2013
59.895% (inclusive of GST) of the Investor's Investment	30 June 2014

Note: 1/11th of the above amounts will be payable by the tax law partnership of the Investors to the Tax Office in respect of GST.

40. If NFT is required to make any payments as outlined in the Table above NFT will be entitled to recover such amounts from Gross Receipts (clause 5.2). The distribution guarantee is additional to, and separate from, the Investors entitlement to the FTA Licence Fees.

41. Under clause 13, NNA guarantees to each of the Investors the performance of NFT's payment obligations of any distribution guarantee amounts.

42. The funding of the progressive cumulative distribution guarantee is not attributable in any way or form whether directly or indirectly to any money raised or expended in relation to the acquisition by the Investors of their respective interest in the Program Copyright. This includes the fees payable to the Producer, director and any other person who receives payment out of any moneys contributed to the cost of producing the Program.

Distribution of Gross Receipts – Application Schedule

43. Under Schedule 2 of the Interpretation and General Provisions Deed as incorporated into the Investor Acquisition Agreement and Investor Distribution Agreement, Gross Receipts must be applied as follows:

(a) first, to the Distributor, the Distributor's distribution commissions;

(b) second, to the Distributor, the reimbursement of the Distributor's sales expenses and marketing expenses;

(c) third, by way of licence fees, to the Investors and the Equity Participants (excluding the PCEP), an amount equal to the sum of the Sub-Distributor distribution guarantee and the PTL presale, pari passu and to each of them in the proportion that their respective investments in the Program bears to the total of their Investments;

(d) fourth, to a government film body, 1% of Foreign Gross Receipts;

(e) fifth, by way of licence fees, to the Investors, the Producer, the PCEP and the Equity Participants (excluding the PCEP):

  (i) to the Producer, 15%;

  (ii) to the Investors and the Equity Participants (excluding the PCEP) 82%, pari passu and to each of them in the proportion that their respective investments in the Program bears to the total of their Investments; and

  (iii) to the PCEP, 3%,

  until the Investors and the Equity Participants (excluding the PCEP) have become entitled to amounts (under this paragraph (e), paragraph (c) and from any other source (including, without limitation, pursuant to the FTA Licence Agreement)) in total equal to their respective investments in the Program;

(f) sixth, to the Producer, with the consent of the Agent, NFT and the PCEP, the amount of any overage paid by the Producer; and

(g) thereafter, by way of licence fees, in the following proportions pari passu:

  (i) to the Producer, 55%;

  (ii) to the Investors and the Equity Participants (excluding the PCEP), 44%, pari passu and to each of them in the proportion that their respective Investments in the Program bears to the total of their Investments; and

  (iii) to the PCEP, 1%.

NFT Acquisition Agreement

44. The agreement is between the Producer and NFT. Under clause 2 the Producer must produce the Program at its own cost and expense. At clause 3.1 the Producer will assign to NFT the NFT Share of the Program Copyright in consideration of the non-refundable payment of the NFT Investment by NFT to the Producer. NFT will hold its interests in the Program Copyright as tenants in common with the Producer, the Equity Participants and the Investors (clause 3.2).

45. On execution of this agreement NFT must pay the NFT Investment to the Producer into the Master Production Account, or in such other manner as agreed between the parties (clause 4.2(a)). At clause 5 NFT and the Producer agree that Gross Receipts must be applied in accordance with the Application Schedule (refer paragraph 43). NFT will only be entitled to Gross Receipts received by NFT up to 30 June 2015 resulting from licensing agreements entered into on or before 30 June 2014.

Producer Distribution Agreement

46. The agreement is between NFT and the Producer under which the Producer licences to NFT the rights to distribute the Program, from the creation of the Copyright in each Episode of the Program, throughout the world in perpetuity (clause 2(a)). At clause 2(b) NFT acknowledges the Producer is not the sole owner of the Program Copyright and the underlying rights, therefore NFT will need to separately obtain licences of the rights to distribute the Program from all the other owners.

47. At clause 4.1 and 4.2 NFT will be entitled to a commission of 25% for the distribution of the Program as well as reimbursement of sales expenses and marketing expenses from Gross Receipts. Under clause 4.3(a) NFT must distribute Gross Receipts in accordance with the Application Schedule (refer paragraph 43). The Producer will be entitled to receive Gross Receipts and an accounting statement every three months (clause 4.3(d) and clause 5.1).

48. Clause 25 will apply where the total of Investments by Investors is less than $691,314.25 (inclusive of GST) per Episode. Should this occur, subject to any other agreement between the Producer and NFT, NFT agrees to invest an amount equal to the difference between:

(a) the amount equal to $691,314.25 (inclusive of GST) per Episode multiplied by the number of Episodes included within the Program; and

(b) the total of the Investments by Investors,

on substantially the same terms and conditions as set out in the NFT Acquisition Agreement.

NFT Licence Deed

49. Under clause 2(a) NFT licences to NNA the Free Television Rights in the Program for 4 Runs in the Australian Territory for the period commencing 30 June 2005 and ending on 30 June 2014.

50. To the extent that the whole of the FTA Licence Fee is not payable by NNA to the Investors, or to the Agent on behalf of the Investors, under the FTA Licence Agreement, NNA must pay the remainder of the FTA Licence Fee to the Equity Participants (other than the PCEP and the Investors), in accordance with the Schedule to the NFT Licence Deed (clause 4).

Pre-committed Equity Participant Acquisition Agreement

51. The agreement is between the Producer and the PCEP. Under clause 2 the Producer must produce the Program at its own cost and expense. At clause 3.1 the Producer will assign to the PCEP 1% of the Program Copyright in perpetuity, in consideration of the non-refundable payment of the PCEP Investment by the PCEP to the Producer. The PCEP will hold its interests in the Program Copyright as tenants in common with the Producer, the Investors, NFT and the Equity Participants (clause 3.3).

52. Within 5 business days after the execution of this agreement the PCEP must pay its investment to the Producer into the Master Production Account (clause 4(a)). At clause 5(a) the PCEP and the Producer agree that Gross Receipts must be applied in accordance with the Application Schedule (refer paragraph 43). At clause 5(e) receipts from the Excluded Rights must be distributed in the following proportions pari passu:

(a) to the Producer 55%;

(b) to NFT 44%; and

(c) to the PCEP 1%.

Pre-committed Equity Participant Distribution Agreement

53. The agreement is between NFT and the PCEP. Under clause 2(a) the PCEP licences to NFT the rights to distribute the Program worldwide in perpetuity. At clause 2(b) NFT acknowledges the PCEP is not the sole owner of the Program Copyright and the underlying rights, therefore NFT will need to separately obtain licences of the rights to distribute the Program from all the other owners.

54. At clause 4.1 and 4.2 NFT will be entitled to a commission of 25% for the distribution of the Program as well as reimbursement of sales expenses and marketing expenses from Gross Receipts. Under clause 4.3 NFT must distribute Gross Receipts in accordance with the Application Schedule (refer paragraph 43).

Sub-Distribution Agreement

55. Under the terms of the agreement NFT will grant all rights throughout the world, excluding certain rights, to the Sub-Distributor for a period of 10 years from the delivery of McLeod's Daughters 6th series. McLeod's Daughters 6th series will consist of 32 Episodes with a delivery date of 1 July 2006, or such later date as is reasonably agreed by the parties.

56. The Sub-Distributor will be entitled to a 25% commission as well as reimbursement of sales expenses and marketing expenses from Gross Receipts. Under clause 4 the Sub-Distributor will provide NFT with a distribution guarantee. The guarantee will only be payable where the cumulative Gross Receipts received by NFT is less than the guaranteed amounts. The amount of the guarantee will be the difference between the Gross Receipts actually paid and the guarantee that is due. The Sub-Distributor is entitled to be repaid any guarantee paid from future Gross Receipts.

Pay Television Licence

57. Under this licence the Sub-Distributor will grant non-standard television rights in various countries to the PTL in return for presales payable by the PTL to the Sub-Distributor.

Business Finance Agreement

58. Under the Business Finance Agreement, the Financier will provide financial accommodation to each approved Investor up to an amount equal to the amount of the Investor's Investment, subject to normal Investor approvals. To accept the financial accommodation an Investor is required to sign and return the duplicate Business Finance Agreement.

59. The financial accommodation being offered by the Financier is a 'Commercial Bill Line' for 90 day commercial bills at a variable rate. The fees and expenses in relation to the 90 day commercial bills are as follows:

- Establishment Fee of $1,500 for a Commercial Bill Line up to and including $200,000 and $2,500 for a commercial Bill Line over $200,000. This amount is payable on application for the Commercial Bill Line.
- Acceptance Fee: An Acceptance Fee on a 90 day bill will be 2% divided by 365 multiplied by 90 multiplied by the face value of the commercial bill. The Acceptance Fee will be incurred on the day the bill is rolled over.
- Bill Discount: The rate of Bill Discount will depend on the Commercial Bill rate on the day the bill is rolled over. The Bill Discount will be incurred on each rollover date.

- Rollover Fee: The Rollover Fee is $125 per rollover and will be incurred on the day the bill is rolled over.

60. Investors will be required to have sufficient funds in their Westpac bank account on the day the commercial bill rolls over to cover the Acceptance Fee, the Bill Discount and the Rollover Fee.

Mortgage of Contractual Rights

61. This agreement is between an Investor as Mortgagor and Westpac as Financier. Under clause 2.1 the Investor transfers all of the Investor's contractual rights (that is mainly the rights to receive proceeds under the Investor Transaction Documents), but excluding the Investor's Copyright Interest, to the Financier by way of legal mortgage. The security granted by the Investor to the Financier under the Security Agreement secures the Investor's payment obligations under the Business Finance Agreement.

Notice of Assignment under Mortgage of Contractual Rights Agreement

62. Each of the Investors and the Financier give notice of the assignment under the Mortgage of Contractual Rights Agreement to third parties, such as NFT and NNA, requiring the third parties to pay moneys contractually owing to the Investor, and covered by the Notice of Assignment, to the Financier.

Finance

63. There is no finance facility offered by the Agent, the Issuer or any other party involved in the arrangement (other than the Financier). Investors can fund their investment in the Program themselves, or borrow from an independent lender such as the Financier.

64. This Ruling does not apply if a finance arrangement entered into by an Investor to fund the Investor's Investment in the arrangement includes or has any of the following features which have not been disclosed to the ATO as part of the Product Ruling application process:

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;
- the loan or rate of interest is non-arm's length;
- repayments of the principal and payments of interest are linked to the derivation of income from the Project;

- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender or any associate of the lender;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- entities associated with the Project are involved or become involved, in the provision of finance to Investors for the Project.

Ruling

Division 10B

65. Provided the Investor Agent Deed, Investor Acquisition Agreement, FTA Licence Agreement and Investor Distribution Agreement are all executed and commence on or before 30 June 2006, an Investor will become an owner of the Copyright in the Program for the purposes of subsection 124K(1).

66. A deduction is available to an Investor in the Project under Division 10B of Part III as follows:

(a) 50% of the Investment is allowable in the year ending 30 June 2006, the year of income in which the Program is first used by the Investors to produce assessable income; and

(b) the remaining 50% is allowable in the year ending 30 June 2007.

67. The Application Fee of 0.22% (GST inclusive) of the Investor's Investment, or such other amount as agreed between an Investor and the Agent, are capital in nature and non deductible under Division 10B of Part III of the ITAA 1936 or section 8-1 of the ITAA 1997.

Section 8-1 – Acceptance Fee, Bill Discount and Rollover Fee

68. Investors who use the Commercial Bill Line available from the Financier to finance their participation in the scheme will be entitled to deductions under section 8-1 of the ITAA 1997 for the Acceptance Fee, Bill Discount and Rollover Fee incurred on each rollover of their commercial bill.

Section 25-25 – Borrowing Expenses

69. The Commercial Bill Line Establishment Fee is a borrowing cost and is deductible under section 25-25 of the ITAA 1997. The Establishment Fee is incurred for borrowing funds that are used or are to be used during that income year solely for income producing purposes. The deduction is spread over the period of the loan or 5 years whichever is the shorter. The deductibility or otherwise of borrowing costs arising from loan agreements entered into with financiers other than the Financier is outside the scope of this Ruling.

Partnership

70. For the year ending 30 June 2006 and subsequent years of income, Investors who acquire an interest in the Copyright of the Program from the Producer will be in a tax law partnership for the purposes of Division 5 of Part III of the ITAA 1936 (see definition of 'partnership' in section 995-1 of the ITAA 1997). The partners will receive income jointly from the commercial exploitation of the Copyright in the Program. Section 90 of the ITAA 1936 provides that the net income of a partnership is calculated as if the partnership was a resident taxpayer, and is the assessable income less all allowable deductions. The partnership will be required to lodge a partnership return for each year of income, as required by section 91 of the ITAA 1936.

71. Each partner will be a partner in a partnership and, in accordance with section 92, where the partner is a resident, will be required to include his or her individual interest in the net income of the partnership in his or her assessable income.

Division 40

72. Division 40 of the ITAA 1997 does not apply to the Investors interest in the Copyright.

Section 79D

73. Section 79D does not apply to deny or defer the deductions otherwise allowable.

Section 82KL

74. Section 82KL will not be applied to deny deductions otherwise allowable.

Part IVA

75. Part IVA will not apply to deny deductibility or to accelerate assessability of the above amounts.

Assumptions

76. This Ruling is made subject to the following assumptions in respect of the Program acquired by the Investors:

(a) an Investor will incur capital expenditure on the purchase of Copyright (paragraph 124L(1)(b));

(b) the Investor Agent Deed, Investor Acquisition Agreement, FTA Licence Agreement and Investor Distribution Agreement are all executed and commence on or before 30 June 2006;

(c) the Program will be produced and the Investors tax law partnership will use the Copyright for the purpose of producing assessable income on or before 30 June 2006 (subsection 124L(1));

(d) a certificate, issued by the Department of Communication, Information Technology and the Arts, will be in existence in relation to the Program (subsection 124K(1));

(e) the Investors will not exercise the discretion contained in subsection 124UA(2);

(f) the effective life of the Copyright in the Program is deemed to be two years (subsection 124UA(1));

(g) no pre-sale arrangements, distribution rights agreements, distribution guarantee agreements, or other like agreements, have been, or will be, entered into in circumstances where such agreements would put funds into the hands of the Investors, by loan or otherwise, to enable them to expend capital moneys by way of contribution to the cost of acquiring Copyright interests in the Program ('Australian films');

(h) the dominant purpose of the Investors is to make a commercial return from their investment in the Program and the arrangement will be executed in the manner described in this Ruling; and

(i) Copyright interests are acquired at an arm's length value from the Producer.

Commissioner of Taxation
12 April 2006

Appendix 1 – Explanation

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.

Division 10B

The Cost of a Unit of Industrial Property

77. The cost of an Australian film for the purposes of Division 10B of Part III is determined under section 124R.

78. In our view, based on the information provided, the Investors and the Producer are dealing at arm's length. The Investors will pay the Investment to the Producer under the terms of the Investor Acquisition Agreement. In return for the Investment the Producer will assign each of the Investors an interest in the Program Copyright of the Program for the period commencing 30 June 2006 and ending 30 June 2014.

79. The 0.22% Application Fee the Investors pay to the Agent is not a cost of acquiring a unit of industrial property (the Program Copyright). The Application Fee is capital in nature and is not deductible under either Division 10B of Part III of the ITAA 1936 or section 8-1 of the ITAA 1997.

Used for the purpose of producing assessable income

80. For Division 10B of Part III to apply, section 124L requires the owner of a unit of industrial property to have used it in the year of income concerned or in a previous year of income for the purpose of producing assessable income.

81. The Investors, through the Agent and the Producer, will licence their interest in the Program Copyright to the Distributor and NNA. The Distributor will market the Program worldwide, excluding the Free Television Rights in the Australian Territory. NNA will receive the Free Television Rights in the Australian Territory in return for the FTA Licence Fee. The Investors tax law partnership is to receive income generated from the commercial exploitation of the Program in accordance with Investor Distribution Agreement and the FTA Licence Agreement. It is our view that the Program Copyright in the Program will be used for the purpose of producing assessable income. A deduction will be available to the Investors in the year ending 30 June 2006, provided the Investors purchase their Program Copyright interest in the Program and the relevant transaction documents are executed and commence on or before 30 June 2006.

Entitlement to annual deductions

82. The amount of the annual deduction allowable to the owner of a unit of industrial property to whom Division 10B of Part III applies is determined in accordance with section 124M.

83. The amount of the annual deduction is calculated by dividing the residual value of the unit at the end of the income year by the number of whole years in the effective life of the unit as at the beginning of the year. The residual value of a unit is determined in accordance with section 124S and the effective life of a unit, being a copyright subsisting in an Australian film, is determined in accordance with section 124UA.

Residual value

84. Residual value is determined under section 124S. Generally speaking, the residual value, as per subsection 124S(1), is the cost of the unit to the owner less the sum of:

(a) the deductions (if any) allowed or allowable to that person in respect of the unit in previous years; and

(b) any consideration receivable by the owner in respect of any earlier part disposal of the unit.

Effective life of a unit

85. The effective life of a unit to which section 124UA applies, that is a copyright subsisting in an Australian film, will commence at the commencement of the year of income during which it is first used by the owner for the purpose of producing assessable income and shall end at the conclusion of the next succeeding year of income, or, where the unit was acquired for a specified period, the end of the year of income in which that specified period ends, whichever first occurs. Effectively this means that the cost of the unit is written off over two years except in circumstances where the unit is acquired for a specified period which expires within the same year of income in which the unit was acquired, in which case the capital cost of the unit will be fully deductible in that year.

86. Subsection 124UA(2) gives an owner of a unit of industrial property that relates to a copyright in an Australian film the right to elect to have the effective life of the unit determined under section 124U. If the owner makes such an election, the deductions allowable in respect of the cost to the owner will be determined under the general basis provided for in Division 10B of Part III, that is, by way of annual deductions over 25 years or any shorter effective life as determined in accordance with section 124U.

87. The Producer will assign up to 97% of the Program Copyright in the Program to the Investors. The residual value for an Investor will be the capital expenditure incurred by that Investor to acquire their Program Copyright interest in the Program on or before 30 June 2006.

88. On the assumption that no election in terms of subsection 124UA(2) will be made, the effective life of the Program Copyright in the Program is two years. Consequently, the deduction available to an Investor in the year in which the Program Copyright is first used by the investors to produce assessable income is 50% of the capital expenditure incurred by that Investor to acquire his or her interest in the Program Copyright.

89. The deduction available in the following year will be the residual value of the Program Copyright in the Program at that time, being the cost of the unit to the owner less the deductions allowed in previous years (assuming that no consideration was received by the investors tax law partnership or the Investors when the Agent or the Producer, on behalf of the Investors, enters into the Investor Distribution Agreement and FTA Licence Agreement). The deduction available is therefore the remaining 50% being, the capital expenditure incurred (cost of unit) less the 50% deduction allowed in the previous year.

Section 8-1 – Acceptance Fee, Bill Discount and Rollover Fee

90. An approved Investor will use the Commercial Bill Line to obtain funds from the Financier to acquire their Copyright interest in the Program for the purpose of producing assessable income. The Acceptance Fee, Bill Discount and Rollover Fee will be incurred at each rollover date of the commercial bill. These expenses are deductible under section 8-1 of the ITAA 1997. Refer Taxation Ruling TR 93/21 which deals with the timing of deductions for discounts on commercial bills with a term of less than 12 months.

Section 25-25 – Borrowing Expenses

91. The Establishment Fee is payable on application for the Commercial Bill Line. This fee is considered to be capital in nature and not deductible under section 8-1 of the ITAA 1997. The Establishment Fee is incurred in securing the Commercial Bill Line which will be used by the approved Investor for the purpose of producing assessable income and will therefore be deductible under section 25-25 of the ITAA 1997 as a borrowing expense.

92. A borrowing expense is spread over the period of the loan, except where the loan exceeds 5 years the period will be deemed to be 5 years (subsection 25-25(5) of the ITAA 1997). As the Commercial Bill Line is for a period exceeding 5 years the Establishment Fee will be deductible over 5 years. The amount deductible each year is obtained by dividing the undeducted borrowing expense by the number of days remaining in the 5 year period and multiplying the result by the number of days the Commercial Bill Line existed in the income year.

Partnership for income tax purposes

93. The Investors who acquire up to 97% of the Program Copyright in the Program will comprise a partnership for income tax purposes as they are in receipt of ordinary income or statutory income jointly (see the definition of 'partnership' in section 995-1 of the ITAA 1997). Division 5 of Part III of the ITAA 1936 applies so that the assessable income of a partner includes so much of the individual interest of the partner in the net income of the partnership or, in the case of a partnership loss, a partner is entitled to a deduction for so much of his or her individual interest in any loss of the partnership. It should be noted that the partnerships are not common law partnerships and consist only of the persons who receive income jointly from the exploitation of the Program Copyright in the Program.

94. The tax law partnership will receive passive income from the exploitation of the Program Copyright in the Program.

95. As the Investors' between them hold up to 97% of the Program Copyright in the Program, the Investors' tax law partnership is entitled to the Investors share of income under the Investor Distribution Agreement and the FTA Licence Agreement.

96. A partnership return will be required to be furnished for each year of income as required by section 91. The Investors will be required to disclose their share of the partnership net income in their returns of income as required by section 92.

Division 40

97. Division 40 of the ITAA 1997 does not apply to the Program Copyright as it is excluded by the operation of subsection 40-45(5) of the ITAA 1997 where the relevant depreciating asset is a copyright in an Australian film and the Investor is entitled to a deduction under Division 10B of Part III of the ITAA 1936.

Section 79D

98. Section 79D does not apply where there are no 'foreign income deductions' (as defined in subsection 160AFD(9)).

99. The transactions covered by the arrangement do not give rise to 'foreign income deductions' because the deductions under Division 10B of Part III do not relate to any 'assessable foreign income' (as defined in subsection 160AFD(9)). The income derived by the Investors under the Investor Distribution Agreement and FTA Licence Agreement will have an Australian source and will not be 'assessable foreign income'.

Section 82KL – recouped expenditure

100. The operation of section 82KL depends, among other things, on the identification of a certain quantum of 'additional benefits'. Insufficient 'additional benefits' will be provided in respect of this project, to trigger the application of section 82KL. It will not apply to deny the deductions otherwise allowable under section 124M.

Part IVA

101. For Part IVA to apply, there must be a 'scheme' (section 177A); a 'tax benefit' (section 177C); and a dominant purpose of entering into the scheme to obtain a tax benefit (section 177D). The arrangement subject to this Ruling will be a 'scheme'. The Investors will obtain, for example, a 'tax benefit' from entering into the scheme, in the form of a deduction allowable under the provisions in Division 10B of Part III, that would not have been obtained but for the scheme. However, it is not possible to conclude, from the arrangement outlined in this Ruling, that the scheme will be entered into or carried out with the dominant purpose of obtaining a tax benefit.

102. An Investor to whom this Ruling applies intends to stay in the scheme for its full term and derive assessable income from the exploitation of the Program Copyright in the Program. Further, there are no features of the Project, as described in the said arrangement, that suggest that the Project is so 'tax driven' and 'so designed to produce a tax deduction of a certain magnitude', that the operation of Part IVA is attracted.

Appendix 2 – Detailed contents list

103. The following is a detailed contents list for this Ruling:

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 93/21; TR 98/22

Subject references:

- Australian films
- film income
- film industry
- product rulings
- schemes and shams
- tax administration
- tax avoidance

Legislative references:

- ITAA 1936 79D
- ITAA 1936 82KL
- ITAA 1936 Pt III Div 5
- ITAA 1936 90
- ITAA 1936 91
- ITAA 1936 92
- ITAA 1936 Pt III Div 10B
- ITAA 1936 124K(1)
- ITAA 1936 124L
- ITAA 1936 124L(1)
- ITAA 1936 124L(1)(b)
- ITAA 1936 124M
- ITAA 1936 124R
- ITAA 1936 124S
- ITAA 1936 124S(1)
- ITAA 1936 124U
- ITAA 1936 124UA
- ITAA 1936 124UA(1)
- ITAA 1936 124UA(2)
- ITAA 1936 160AFD(9)
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 318
- ITAA 1997 8-1
- ITAA 1997 25-25
- ITAA 1997 25-25(5)
- ITAA 1997 Div 27
- ITAA 1997 Div 40
- ITAA 1997 40-45(5)
- ITAA 1997 995-1
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- ANTS(GST)A 1999
- ANTS(GST)A 1999 Div 11
- Copyright Act 1968
- Copyright Act 1968 86
- Corporations Act 2001 761G

ATO references

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