


# ***TR 2000/8A2 - Addendum - Income tax: investment schemes***

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# Addendum

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## Taxation Ruling

### Income tax: investment schemes

This Addendum amends Taxation Ruling TR 2000/8 to take into account the introduction of Divisions 357, 358 and 359 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) and the simultaneous repeal of Part IVAA and Part IVAAA of the TAA. The new laws took effect from 1 January 2006. See further *Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005* (No. 161 of 2005).

#### **Taxation Ruling TR 2000/8 is amended as follows:**

##### **1. Paragraph 78**

Omit the first sentence; substitute:

An application for a private ruling needs to:

- identify the relevant provisions\* of Acts and regulations of which the Commissioner has the general administration, that are relevant for the ruling; and
- provide sufficient information relating to the issues raised by those relevant provisions. This will include copies of all agreements that the investor has entered into, or proposes to enter into, a copy of any prospectus and, if available, a copy of any trust deed or compliance plan for that scheme.<sup>7A</sup>

##### **2. Paragraph 79**

Omit the paragraph; substitute:

79. If an investor is unable to furnish the information required in paragraphs 211 to 212 of this Ruling, the Commissioner will not provide a private ruling to that investor (refer former section 14ZAM and former paragraph 14ZAN(i) of Part IVAA of the TAA, and refer section 357-105 of Schedule 1 to the TAA).

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<sup>7A</sup> The relevant provisions are explained in section 357-55 of Schedule 1 to the *Taxation Administration Act 1953*. These include provisions about income tax, Medicare levy, fringe benefits tax, and the administration or collection of those taxes.

### 3. Paragraph 205

Omit the paragraph; substitute:

205. An investor or potential investor in an afforestation scheme may apply to the Commissioner for a private ruling on how, in the Commissioner's opinion, a 'relevant provision' applies in relation to the investor and the scheme for a particular year of income (former section 14ZAF of the TAA and sections 359-5 and 359-10(1) of Schedule 1 to the TAA). Alternatively, the investor's agent or legal personal representative may apply to the Commissioner on the investor's behalf (former section 14ZAG of the TAA and section 359-10 of Schedule 1 to the TAA).

### 4. Paragraph 206

Omit the paragraph; substitute:

206. An application for a private ruling, where no written consent is held for any particular entity, does not meet the requirements for a valid application. For example, the promoters of a scheme cannot seek a private ruling on the way in which the Commissioner considers a relevant provision applies or would apply to investors generally. Nor will an advance opinion be provided to promoters in respect of this matter.

### 5. Paragraph 207

Omit the paragraph; substitute:

207. The 'arrangement' must be 'seriously contemplated' by the person to whom the Ruling is to apply (former paragraph 14ZAN(h) of the TAA, paragraph 359-35(2)(a) of Schedule 1 to the TAA and paragraph 3.83 of the Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 2) 2005). That is, the application should show that the person, for whom the private ruling is sought, seriously intends to be a party to the arrangement.

### 6. Paragraph 208

Omit the paragraph.

**7. Paragraph 209**

Omit the paragraph; substitute:

209. A private ruling may deal with anything involved in the application of a relevant provision, including issues relating to liability, administration, procedure and collection, and ultimate conclusions of fact (subsection 359-5(2) of Schedule 1 to the TAA). For example, a private ruling can be obtained on whether an investor is carrying on, or will commence to carry on, a business of afforestation for the purposes of a relevant provision. A taxpayer may also apply for a private ruling as to whether the taxpayer is a resident under a particular tax provision. Often, a private ruling can be progressed on the basis of the taxpayer's assertion that he or she will, in fact, be carrying on a business (but see paragraph 214 of this Ruling).

**8. Paragraph 210**

Omit the paragraph; substitute:

210. If the Commissioner considers that a private ruling cannot be made without further information, he must ask the entity who applied for the private ruling to provide that information (former section 14ZAM of the TAA and subsection 357-105(1) of Schedule 1 to the TAA). The Commissioner is not required to comply with the application if, thereafter, there is still insufficient information (see former paragraph 14ZAN(i) of the TAA and see subsection 357-105(2) of Schedule 1 to the TAA).

**9. Paragraph 213**

Omit the paragraph; substitute:

213. We do not consent to private rulings being published in prospectuses as if they were 'expert opinions' for the purposes of the *Corporations Law*. Nevertheless, a private ruling is legally binding on the Commissioner for the entity to whom it applies and in respect of the scheme described in the notice of private ruling.

**10. Legislative references**

Insert:

- TAA 1953 Sch 1 Div 357
- TAA 1953 Sch 1 357-55
- TAA 1953 Sch 1 357-105
- TAA 1953 Sch 1 357-105(1)
- TAA 1953 Sch 1 357-105(2)
- TAA 1953 Sch 1 358-20
- TAA 1953 Sch 1 Div 359
- TAA 1953 Sch 1 359-5(2)

- TAA 1953 Sch 1 359-10(1)
- TAA 1953 Sch 1 359-35
- TAA 1953 Sch 1 359-35(2)(a)
- Tax Laws Amendment (Improvements to Self-Assessment) Act (No. 2) 2005

## 11. Other references

Insert:

- Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 2) 2005

This Addendum applies on and from 1 January 2006.

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**Commissioner of Taxation**

1 November 2006

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ATO references

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