



Information for ruling applicants

Guidance to help you when applying for a product ruling on specific product types.

Agribusiness product rulings (forestry and non-forestry)

Common issues for product ruling applicants for agribusiness projects that are either forestry or non-forestry.

Forestry managed investment schemes

Information for participants and promoters of forestry managed investment schemes.

Non-commercial losses and product rulings

Agribusiness managed investment schemes and the non-commercial loss rules.

Fuel tax credits – telematics technology providers

A checklist and information for telematics technology providers regarding fuel tax credits product rulings.

Forestry managed investment schemes (Division 394)

Information for participants and promoters of forestry managed investment schemes.

Last updated 1 August 2025

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Overview

Rules about deductions for contributions to a forestry managed investment scheme (MIS) where that scheme is a qualifying scheme aim to encourage the expansion of commercial plantation forestry in Australia through the establishment and tending of new plantations for felling.

If you are an initial participant in a qualifying forestry MIS you can deduct amounts in the year of payment.

The treatment of a qualifying forestry MIS also allows for secondary-market trading of interests in such schemes. As a result, there are 2 different types of investors:

- [initial participants](#) – who can claim statutory deductions
- [subsequent participants](#) – who cannot claim a statutory deduction and hold the forestry interest on capital account (unless held as trading stock).

Qualifying schemes

To be considered a qualifying scheme, the forestry manager needs to show both of the following:

- there is a reasonable expectation at least 70% of investor contributions will be spent on direct forestry costs during the life of the project
- the plantation is established as intended within 18 months of the end of the income year in which an amount is first paid under the scheme by an investor.

Notification requirements

Forestry managers need to notify us when they first receive a contribution from an initial participant in a qualifying scheme.

Forestry managers also need to tell us if the plantation is not established as intended within the required 18-month period.

Investigate before you invest


You need to investigate any schemes before you invest – be cautious about schemes that promise substantial tax benefits. If an investment seems too good to be true, it probably is. See also, **Agribusiness managed investment schemes**.

Early termination of an agribusiness (forestry) managed investment scheme

There may be tax consequences if you are a participant in a forestry MIS that is to be terminated or has been wound up early.

If we have previously issued a product ruling on the tax consequences for participants of a forestry MIS, whether it is a Division 394 forestry MIS or not, you can find both specific and general guidance on what you need to do.

You should check the status of your forestry agribusiness by:

- accessing the [Tables of affected schemes \(XLS, 508KB\)](#) 
- searching the **ATO Legal Database** for the product ruling number using the format PR YYYY/NN
- browsing the published **product rulings** by year and name where you do not know the product ruling number.

Initial participants

A forestry MIS can have 2 different types of investors – initial participants and [subsequent participants](#).

You are an initial participant if you meet all of the following conditions:

- the scheme is a qualifying scheme
- you obtained your forestry interest from the forestry manager of the scheme
- the payment you make for your interest results in the establishment of trees.

As an initial participant, you will be able to claim an immediate deduction for your contributions in the year you make them.

If you are a [promoter](#), arranger or manager of a forestry MIS, you cannot be a participant in that scheme.

Before you claim a deduction

You need to make sure your scheme is a qualifying scheme before you can claim a deduction as an initial participant. Contact the forestry manager and check the scheme documentation first.

For many forestry managed investment schemes, we have issued a product ruling that explains the tax consequences of the arrangement. It provides protection to investors as long as the scheme is implemented as described in the product ruling.

To check whether a product ruling has issued for your scheme, you can access the list of published [product rulings](#) on our legal database.

Tax treatment of thinning receipts

As an initial participant of a forestry managed investment scheme, the actual amount you receive from commercial thinning of trees is treated as assessable income in the year in which you receive it.

Tax treatment of sale and harvest receipts

Forestry interest no longer held

You must include the market value of the forestry interest at the time of the CGT event in your assessable income if you:

- cease holding your forestry interest because a CGT event happens (for example, you sold your interest or received harvest proceeds)
- have claimed a deduction, or can claim a deduction, or would be entitled to deduct such amounts, but for a CGT event happening within 4 years after the end of the income year in which you first pay an amount under the forestry managed investment scheme.

Forestry interest still held

You must include the amount by which the market value of the forestry interest was reduced as a result of the CGT event in your assessable income, and not the amount you actually receive. This is if both:

- a CGT event happens because you sold part of your forestry interest or there was a partial harvest and you still hold your interest
- you have claimed a deduction, or can claim a deduction, or would be entitled to deduct such amounts, but for a CGT event happening within 4 years after the end of the income year in which you first pay an amount under the forestry managed investment scheme.

Selling a forestry interest held for less than 4 years

As an initial participant, you can trade your interest in the MIS at any time. However, to continue to be entitled to a deduction for the amount paid for your forestry interest, you must hold that interest for 4 years after the income year in which you first pay an amount under the scheme.

If you do not hold your forestry interest for 4 years, you:

- will no longer be entitled to the deduction for the amount paid for your interest, including an amount you may already have claimed in previous years
- will still be assessed on the [proceeds of the sale](#)
- may be liable to pay interest and penalties on any tax underpaid as a result.

However, if you dispose of your interest because of circumstances outside your control, a deduction will continue to be allowed. This is provided you could not have reasonably foreseen the circumstances of the disposal happening when you first acquired the interest.

Circumstances generally outside your control may include:

- compulsory acquisition
- insolvency of yourself or the forestry manager
- cancellation of the interest due to fire, flood or drought.

Selling a forestry interest held for 4 years or more

If you sell your forestry interest after you've held it for 4 years or more, your right to the deduction for your contributions to the forestry managed investment scheme will be preserved.

Subsequent participants

You are a subsequent participant if you obtain your interest in a forestry MIS through secondary market trading. This means you acquired your forestry interest other than as an initial participant, usually by purchasing that interest from an [initial participant](#) in the scheme.

If you are a [promoter](#), arranger or manager of a forestry MIS, you cannot be a participant in that scheme.

Deductions for subsequent participants

As a subsequent participant, you cannot claim a deduction for the cost of acquiring your forestry interest. In most situations, you will hold that interest on capital account (unless, for example, you hold it as trading stock).

Expenses like lease fees, annual management fees or costs of felling will be deductible to you. However, these deductions will affect calculations relating to capital gains tax (CGT) events for that interest.

Tax treatment of thinning receipts

As a subsequent participant of a forestry MIS an amount you receive from commercial thinning of trees is treated as assessable income for the year in which you receive it.

Tax treatment of sale and harvests receipts

Forestry interest no longer held

If you ceased holding your forestry interest because a CGT event happens (that is, you sold your interest or received harvest proceeds) and you either can deduct or have deducted an amount in relation to the forestry interest or could deduct an amount if you had paid the amount under the forestry MIS in relation to the forestry interest then you must include the lesser of the 2 following amounts in your assessable income:

- the market value of the forestry interest at the time of the CGT event, or
- the amount (if any) by which the total forestry MIS deductions in relation to the forestry interest exceeds the incidental forestry scheme receipts.

This means you must disregard the amount you actually received.

Example: Tax when forestry interest is no longer held

Sam acquires a forestry interest in an forestry MIS as a subsequent participant. The original cost base is \$14,000. Sam later sells his forestry interest at the market value of \$20,000 in the current income year. The sale is a CGT event.

In the time Sam held the forestry interest, he claimed \$4,000 in deductions (the total forestry scheme deductions) for lease fees, and annual management fees paid to the forestry manager.

During an earlier income year, Sam received \$1,500 from thinning proceeds (the incidental forestry scheme receipts).

The market value of the forestry interest (at the time of the CGT event) is \$20,000. The amount by which the total forestry scheme deductions exceed the incidental forestry scheme receipts is \$2,500 (that is, \$4,000 minus \$1,500).

Sam needs to include **\$2,500** in his assessable income. This is the lesser of the 2 amounts above.

CGT notes:

- Sam takes the amount he included in his assessable income into account when working out the amount to include as **Net capital gain**. See *Working out your capital gain or loss*.
- Sam's capital gain is **\$3,500**. That is, capital proceeds of \$20,000 less a cost base of \$16,500. The \$16,500 is made up of \$14,000 plus \$2,500 that was included in his assessable income.

Forestry interest still held

If a CGT event happens because you sold part of your forestry interest, or there was a partial harvest and you still hold your interest, and you either have claimed a deduction or can claim a deduction, or could have deducted an amount if you had paid the amount under the forestry MIS in relation to the forestry interest, then you need to work out the following 2 amounts:

- market value of the forestry interest at the time of the CGT event
- amount (if any) by which the total forestry MIS deductions exceeded the incidental forestry scheme receipts.

Use the lesser of the 2 amounts in the following formula to calculate the amount you must include in your assessable income.

Amount worked out above × (the decrease, if any, in the market value of the forestry interest as a result of the CGT event ÷ The market value of the forestry interest just before the CGT event)

Example: Tax when forestry interest is still held

Sue acquires a forestry interest in a forestry MIS as a subsequent participant. The original cost base is \$14,000. She will receive harvest proceeds over 2 income years. Sue receives the first harvest payment of \$5,000 in the current income year.

The market value of Sue's forestry interest is \$20,000 just before she receives the payment for the first harvest (which is a CGT event). After she receives the first harvest payment, the market value of her forestry interest is reduced to \$15,000.

During the time that Sue has held her interest, she has claimed \$4,000 in deductions (the total forestry scheme deductions) for lease fees, annual management fees and the cost of felling that was paid to the forestry manager. In an earlier income year, Sue received \$1,500 from thinning proceeds (the incidental forestry scheme receipts).

The market value of Sue's forestry interest (at the time of the CGT event) is \$20,000. The amount by which the total forestry scheme deductions exceed the incidental forestry scheme receipts is \$2,500 (that is, \$4,000 minus \$1,500).

Sue calculates the amount she needs to include in her assessable income using the lesser of:

- the market value of the forestry interest (at the time of the CGT event)
- the amount by which the total forestry scheme deductions exceed the incidental forestry scheme receipts.

The lesser value is \$2,500, using the formula immediately above this example:

$$\$2,500 \times \$5,000 \div \$20,000 = \$625$$

Sue needs to include **\$625** in her assessable income.

CGT notes

- As a result of the partial harvest, Sue has disposed of 25% of her forestry interest. So the difference between the market value of her forestry interest before harvest, and the market value of her forestry interest after harvest, is a percentage of the market value before harvest.

- Sue must also calculate the amount that must be included as a net capital gain. See **Working out your capital gain or loss**.
- For current income year, Sue's capital gain is **\$875**. That is, capital proceeds of \$5,000 less apportioned original cost base of \$4,125. The \$4,125 is made up of \$3,500 (25% of \$14,000) plus \$625 that is included in assessable income.

Keeping records

You need to keep records of your involvement in a forestry MIS for either:

- 5 years after you sell your interest
- the year the interest ends.

Information for promoters

As a promoter, you must ensure your forestry MIS meets the requirements of a qualifying scheme. This will allow investors to get the upfront deductions for their acquisition costs and subsequent contributions.

Qualifying scheme requirements

Reasonable expectation test

The scheme will be defined as a qualifying scheme if it can be shown there is a reasonable expectation that direct forestry expenditure (DFE) for the scheme will equal or exceed 70% of contributions by investors at 30 June of the income year in which an investor first makes a contribution to that scheme.

70% direct forestry expenditure rule

DFE is expenditure directly relating to establishing, tending, felling and harvesting of trees.

A qualifying scheme is one where no less than 70% of investor contributions are used for DFE over the life of the project.

Market value is to be substituted for the prices actually used in determining DFE where the transaction is not at arm's length, and the

amount to be paid by the forestry manager under the scheme is, or will be, more or less than the market value of what the amount is for.

Calculating net present value

The amount spent on DFE over the life of the project will be determined in net present value terms. The discount rate used for calculating net present value is the yield on Australian Government Securities that are Treasury bonds with a maturity closest to 10 years (as published by the Reserve Bank of Australia). The forestry manager should use the current quoted rate as a proxy for the rate on 30 June.

If the forestry manager is applying for a product ruling they should use the current quoted rate at the time of the application, however we will use the latest quoted rate. We accept that future costs can be increased by the **consumer price index (CPI)** before calculating the net present value of all costs for the DFE calculation.

See also *PS LA 2008/2 Forestry managed investment schemes* .

18-month establishment rule

To be a qualifying scheme, trees must be established within 18 months of the end of the income year in which an amount is first paid under the scheme by an investor.

If trees are not established within this 18-month period, the forestry manager must provide a statement to us showing why the trees were not established. This statement must be made in the approved **failure to establish notification form**, and submitted within 3 months after the end of the 18-month period.

Starting a scheme

The promoter, arranger or manager of a forestry managed investment scheme must provide a statement to us regarding the initial contributions to the scheme. It must be in the approved **initial contributions notification form**, and submitted within 3 months after the end of the income year in which the forestry manager receives the contributions. See also *PS LA 2008/2 Forestry managed investment schemes*.

Non-commercial losses and product rulings

Agribusiness managed investment schemes and the non-commercial loss rules.

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Overview

Individuals participating in agribusiness managed investment schemes (MIS) covered by an existing product ruling may be affected by the non-commercial loss rules.

These rules cover MIS business losses and whether they can be offset against other assessable income.

Commissioner's discretion

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Product rulings

Generally, if the **non-commercial loss** rules may affect an individual participant in an agribusiness MIS, the responsible entity for the MIS applies to us for a product ruling. They ask us to exercise our discretion to rule that the non-commercial loss rules will not apply to an individual participant in the MIS for a defined period.

If the discretion has been exercised for the MIS, it is generally because of the nature of the activity. That is, there is a lead time, typical for the industry concerned, between the commencement of the business activity and the production of assessable income.

If the discretion has been exercised for the MIS, individual participants are not required to defer any business losses from the MIS for the income years that are specified in the product ruling. These losses can be offset against other assessable income in the income year the loss is incurred.

Next step:

The responsible entity of the MIS, and not the participant, can **apply for a product ruling**. The application must include the [additional information required](#) to consider the non-commercial loss rules and to determine if we can exercise the discretion under those rules.

The specified period

If a product ruling has been issued for an agribusiness MIS and the discretion has been exercised to rule that the non-commercial loss rules will not apply to an individual participant of that MIS, the ruling will specify the income years the discretion applies to.

Only for the income years specified in the product ruling is an individual participant in the MIS:

- not required to defer any business losses from that MIS, and
- allowed to offset any business losses from that MIS against their other assessable income, in the income year the loss is incurred.

For more information see:

- the published **product ruling** for your project
- TR 2007/6 *Income tax: non-commercial business losses: Commissioner's discretion*.

No product ruling

An individual may have entered into an agribusiness MIS for which there is no product ruling. Accordingly, most participants in such an MIS are prevented from claiming the MIS business losses against other assessable income in the year the business losses are incurred unless they meet the income requirement and the MIS business passes one of the **4 tests** in that year.

Instead, participants must defer those losses until either:

- the MIS business makes a profit in a following year, when some or all of the deferred loss can be offset against this profit up to the amount of the profit
- a participant meets the income requirement and the MIS business passes one of the **4 tests** in a following year, when deferred losses can be claimed against other income.

The responsible entity may apply on behalf of participants, or potential participants, in their MIS for a product ruling on the application of the non-commercial loss rules to those participants.

If the MIS has already commenced, we will consider issuing a product ruling on the non-commercial losses provisions. However, the MIS must still be fully described in the application for a product ruling, and we will need to be able to conclude that the deductions in question are otherwise allowable.

For more information see:

- [Participants in an managed investment scheme may apply for a private ruling or to extend the period covered by a ruling](#)
- **Non-commercial losses eligibility** – details the income requirements and the 4 tests.

The responsible entity can email ATO-Product-Rulings@ato.gov.au for further information or assistance.

If the discretion can't be exercised

If we can't exercise the discretion, individual participants of an agribusiness MIS that are carrying on a business activity must **defer losses** from the MIS.

The deferred amount will only be deductible in a subsequent year if the business activity that gave rise to this amount, or one 'of a similar kind', occurs in that subsequent year. If the activity, or one 'of a similar

kind', does not occur again, the entitlement to deduct the amount will be lost.

For more information, see:

- [Additional losses beyond the period covered](#)
- paragraphs 86 to 88 of TR 2001/14 *Income tax: Division 35 - non-commercial business losses* for guidance on business activities of a similar kind.

Additional losses beyond the period covered

If there are additional losses from an agribusiness MIS beyond the period for which we have previously ruled, most individual participants must defer losses from that business activity until either:

- the MIS business makes a profit in a following year, when some or all of the deferred loss can be offset against this profit up to the amount of the profit
- a participant meets the income requirement and the MIS business passes one of the 4 tests in a following year, when deferred losses can be claimed against other income.

We will consider exercising the discretion for a further period in one of 3 scenarios:

1. The MIS is still within the lead time for producing a tax profit ('the lead time'), and there is an objective expectation that it will be profitable within the period that is commercially viable for the industry concerned. A tax profit refers to the requirement for a business activity to produce assessable income, for an income year, greater than the deductions attributable to it, for that year.
2. The MIS is still within the lead time, **special circumstances** have extended the period before the scheme is expected to be profitable, and there is an objective expectation that it will be profitable within the period that is commercially viable for the industry concerned.
3. The MIS is past the lead time and either
 - a. due to special circumstances, the MIS business would have produced a 'tax profit' or,

- b. for participants that meet the income requirement, the MIS business would have passed one of the 4 tests.

The responsible entity of the MIS may apply on behalf of participants for us to exercise discretion under the non-commercial loss rules for a further period.

For more information see:

- *TR 2007/6 Income tax: non-commercial business losses: Commissioner's discretion* – See paragraphs 12 to 15 for special circumstances and paragraphs 16 to 27 for lead time.
- [Participants in an managed investment scheme may apply for a private ruling or to extend the period covered by a ruling](#)
- [If the discretion can't be exercised](#)

The responsible entity can email ATO-Product-Rulings@ato.gov.au for further information or assistance.

Participants in a managed investment scheme may apply for a private ruling or to extend the period covered by a ruling

An individual participant in an agribusiness MIS may apply for a private ruling on the operation of the non-commercial loss rules if the responsible entity of the MIS does not intend to apply.

Alternatively, a group of participants in the MIS may apply for a private ruling, as long as all parties agree in writing to be named as co-rulees.

Next step:

As an individual participant in the MIS you can apply for our discretion, or to extend the period the discretion applies, by lodging a completed **private ruling application** together with the **supporting documentation** set out in the evidentiary checklist.

Additional information required to rule

To apply for the discretion of the non-commercial loss rules for an agribusiness MIS you need to provide information to support your

application. The following are examples of the type of information that should be provided.

Lead time

The following documents can support that (because of the nature of the business activity) there is a lead time before profitability can be expected:

- industry reports
- published industry statistics
- independent expert report on the industry.

Objective expectation

There must be an objective expectation that within a commercially viable period for the industry concerned, the business activity will produce a 'tax profit', or for participants that meet the income requirements, the business will pass one of the 4 tests:

- assessable income test
- profits test
- real property test, or
- other assets test.

The following documents can support an objective expectation:

- independent expert report on the MIS
- MIS business plan
- forecasted cash flows
- actual cash flow
- revised forecasted cash flows.

Special circumstances

You can use the following documents to show that special circumstances have affected the business activity so that it has not produced a 'tax profit' or passed one of the 4 tests:

- independent report on the special circumstances

- independent report on the effect of the special circumstances on the MIS
- published industry reports on the effect of the special circumstances
- published climate and weather reports of the special circumstances (where applicable).

An application based on special circumstances must also demonstrate that there is an [objective expectation](#) that the business activity will make a 'tax profit' or meet one of the tests within a commercially viable period for the industry concerned.

The responsible entity of the MIS can **apply for a product ruling**, including the **supporting information** required to consider the non-commercial loss rules and determine whether we can exercise the discretion under those rules. The entity can email **ATO-Product-Rulings@ato.gov.au** for further information or assistance.

If you are a participant in an MIS and the responsible entity of the MIS does **not** intend to apply for the discretion to be exercised, you can apply by lodging a completed **private ruling application** together with the **supporting documentation** as set out in the evidentiary checklist and given in the above examples of [additional information required to rule](#).

For more information, see:

- Non-commercial losses
- TR 2001/14 *Income tax: Division 35 – non-commercial business losses*
- the published **product ruling** for your project.

QC 16137

Fuel tax credits telematics technology providers

A checklist and information for telematics technology providers regarding fuel tax credits product rulings.

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Overview

Individuals participating in agribusiness managed investment schemes (MIS) covered by an existing product ruling may be affected by the non-commercial loss rules.

These rules cover MIS business losses and whether they can be offset against other assessable income.

Commissioner's discretion

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Product rulings

Generally, if the non-commercial loss rules may affect an individual participant in an agribusiness MIS, the responsible entity for the MIS applies to us for a product ruling. They ask us to exercise our discretion to rule that the non-commercial loss rules will not apply to an individual participant in the MIS for a defined period.

If the discretion has been exercised for the MIS, it is generally because of the nature of the activity. That is, there is a lead time, typical for the industry concerned, between the commencement of the business activity and the production of assessable income.

If the discretion has been exercised for the MIS, individual participants are not required to defer any business losses from the MIS for the income years that are specified in the product ruling. These losses can be offset against other assessable income in the income year the loss is incurred.

Next step:

The responsible entity of the MIS, and not the participant, can **apply for a product ruling**. The application must include the [additional information required](#) to consider the non-commercial loss rules and to determine if we can exercise the discretion under those rules.

The specified period

If a product ruling has been issued for an agribusiness MIS and the discretion has been exercised to rule that the non-commercial loss rules will not apply to an individual participant of that MIS, the ruling will specify the income years the discretion applies to.

Only for the income years specified in the product ruling is an individual participant in the MIS:

- not required to defer any business losses from that MIS, and
- allowed to offset any business losses from that MIS against their other assessable income, in the income year the loss is incurred.

For more information see:

- the published **product ruling** for your project
- TR 2007/6 *Income tax: non-commercial business losses: Commissioner's discretion*

No product ruling

An individual may have entered into an agribusiness MIS for which there is no product ruling. Accordingly, most participants in such an MIS are prevented from claiming the MIS business losses against other assessable income in the year the business losses are incurred unless

they meet the income requirement and the MIS business passes one of the **4 tests** in that year.

Instead, participants must defer those losses until either:

- the MIS business makes a profit in a following year, when some or all of the deferred loss can be offset against this profit up to the amount of the profit
- a participant meets the income requirement and the MIS business passes one of the **4 tests** in a following year, when deferred losses can be claimed against other income.

The responsible entity may apply on behalf of participants, or potential participants, in their MIS for a product ruling on the application of the non-commercial loss rules to those participants.

If the MIS has already commenced, we will consider issuing a product ruling on the non-commercial losses provisions. However, the MIS must still be fully described in the application for a product ruling, and we will need to be able to conclude that the deductions in question are otherwise allowable.

For more information see:

- [Participants in an managed investment scheme may apply for a private ruling or to extend the period covered by a ruling](#)
- **Non-commercial losses eligibility** – details the income requirements and the 4 tests.

The responsible entity can email ATO-Product-Rulings@ato.gov.au for further information or assistance.

If the discretion can't be exercised

If we can't exercise the discretion, individual participants of an agribusiness MIS that are carrying on a business activity must **defer losses** from the MIS.

The deferred amount will only be deductible in a subsequent year if the business activity that gave rise to this amount, or one 'of a similar kind', occurs in that subsequent year. If the activity, or one 'of a similar kind', does not occur again, the entitlement to deduct the amount will be lost.

For more information, see:

- [Additional losses beyond the period covered](#)
- paragraphs 86 to 88 of TR 2001/14 *Income tax: Division 35 - non-commercial business losses* for guidance on business activities of a similar kind.

Additional losses beyond the period covered

If there are additional losses from an agribusiness MIS beyond the period for which we have previously ruled, most individual participants must defer losses from that business activity until either:

- the MIS business makes a profit in a following year, when some or all of the deferred loss can be offset against this profit up to the amount of the profit
- a participant meets the income requirement and the MIS business passes one of the 4 tests in a following year, when deferred losses can be claimed against other income.

We will consider exercising the discretion for a further period in one of 3 scenarios:

1. The MIS is still within the lead time for producing a tax profit ('the **lead time**'), and there is an objective expectation that it will be profitable within the period that is commercially viable for the industry concerned. A tax profit refers to the requirement for a business activity to produce assessable income, for an income year, greater than the deductions attributable to it, for that year.
2. The MIS is still within the lead time, **special circumstances** have extended the period before the scheme is expected to be profitable, and there is an objective expectation that it will be profitable within the period that is commercially viable for the industry concerned.
3. The MIS is past the lead time and either
 - a. due to special circumstances, the MIS business would have produced a 'tax profit' or,
 - b. for participants that meet the income requirement, the MIS business would have passed one of the 4 tests.

The responsible entity of the MIS may apply on behalf of participants for us to exercise discretion under the non-commercial loss rules for a further period.

For more information see:

- *TR 2007/6 Income tax: non-commercial business losses: Commissioner's discretion* – See paragraphs 12 to 15 for special circumstances and paragraphs 16 to 27 for lead time.
- [Participants in a managed investment scheme may apply for a private ruling or to extend the period covered by a ruling](#)
- [If the discretion can't be exercised](#)

The responsible entity can email ATO-Product-Rulings@ato.gov.au for further information or assistance.

Participants in a managed investment scheme may apply for a private ruling or to extend the period covered by a ruling

An individual participant in an agribusiness MIS may apply for a private ruling on the operation of the non-commercial loss rules if the responsible entity of the MIS does not intend to apply.

Alternatively, a group of participants in the MIS may apply for a private ruling, as long as all parties agree in writing to be named as co-rulees.

Next step:

As an individual participant in the MIS you can apply for our discretion, or to extend the period the discretion applies, by lodging a completed private ruling application together with the supporting documentation set out in the evidentiary checklist.

Additional information required to rule

To apply for the discretion of the non-commercial loss rules for an agribusiness MIS you need to provide information to support your application. The following are examples of the type of information that should be provided.

Lead time

The following documents can support that (because of the nature of the business activity) there is a lead time before profitability can be expected:

- industry reports
- published industry statistics
- independent expert report on the industry.

Objective expectation

There must be an objective expectation that within a commercially viable period for the industry concerned, the business activity will produce a 'tax profit', or for participants that meet the income requirements, the business will pass one of the 4 tests:

- assessable income test
- profits test
- real property test, or
- other assets test.

The following documents can support an objective expectation:

- independent expert report on the MIS
- MIS business plan
- forecasted cash flows
- actual cash flow
- revised forecasted cash flows

Special circumstances

You can use the following documents to show that special circumstances have affected the business activity so that it has not produced a 'tax profit' or passed one of the 4 tests:

- independent report on the special circumstances
- independent report on the effect of the special circumstances on the MIS
- published industry reports on the effect of the special circumstances

- published climate and weather reports of the special circumstances (where applicable).

An application based on special circumstances must also demonstrate that there is an [objective expectation](#) that the business activity will make a 'tax profit' or meet one of the tests within a commercially viable period for the industry concerned.

The responsible entity of the MIS can **apply for a product ruling**, including the **supporting information** required to consider the non-commercial loss rules and determine whether we can exercise the discretion under those rules. The entity can email **ATO-Product-Rulings@ato.gov.au** for further information or assistance.

If you are a participant in an MIS and the responsible entity of the MIS does **not** intend to apply for the discretion to be exercised, you can apply by lodging a completed **private ruling application** together with the **supporting documentation** as set out in the evidentiary checklist and given in the above examples of [additional information required to rule](#).

For more information, see:

- Non-commercial losses
- TR 2001/14 *Income tax: Division 35 – non-commercial business losses*
- the published **product ruling** for your project.

QC 65034

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We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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