Product Ruling

Income tax: the tax consequences of entering into a Non-Entity Joint Venture Agreement with Tremplin Limited relating to participation in the National Rental Affordability Scheme (NRAS)

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This publication 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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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 Commissioner **does not** sanction or guarantee this product. Further, the Commissioner gives 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. The Commissioner recommends 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.

Terms of use of this Product Ruling

This Product Ruling has been given on the basis that the entity(s) who applied for the Product 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 Product Ruling.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified in the Ruling part apply to the defined class of entities who participate in the scheme to which this Product Ruling relates. In the Product Ruling this scheme is referred to as the Tremplin Non-Entity Joint Venture Agreement (NEJV Agreement) or simply as 'the scheme'.

2. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated. Where used in this Product Ruling, the word 'associate' has the meaning given in section 318 of the *Income Tax Assessment Act 1936* (ITAA 1936). In this Product Ruling, terms defined in the NEJV Agreement have been capitalised.

3. This Product Ruling does not address:

- the Investor's tax obligations and benefits in relation to the acquisition and sale of a Dwelling; and
- the tax consequences of an assignment of the Investor's rights and obligations under the NEJV Agreement.

Class of entities

4. This part of the Product Ruling specifies which entities can rely on the Ruling section of this Product Ruling and which entities cannot rely on the Ruling section. In this Product Ruling, those entities that can rely on the Ruling section are referred to as the Investor.

5. The class of entities who can rely on the Ruling section of this Product Ruling consists of those entities who enter into the scheme described in paragraphs 16 to 20 of this Product Ruling and execute the NEJV Agreement mentioned in paragraph 16 of this Product Ruling on or after the date this Product Ruling is published, being 15 January 2014, and on or before 30 June 2016.

6. The class of entities that can rely on the Ruling section of this Product Ruling does **not** include entities that:

- are accepted to participate in the scheme specified below and who execute the NEJV Agreement mentioned in paragraph 16 of this Product Ruling before this Ruling is published or after 30 June 2016; or
- participate in the scheme through documents other than the NEJV Agreement, or who enter into an undisclosed arrangement with the promoter or a promoter associate, or an independent adviser that is interdependent with scheme obligations and/or scheme benefits (which may include tax benefits) in any way.

Superannuation Industry (Supervision) Act 1993

7. This Product Ruling does not address the provisions of the *Superannuation Industry (Supervision) Act 1993* (SISA). The Commissioner gives no assurance that the scheme is an appropriate investment for a superannuation fund. The trustees of superannuation funds are advised that no consideration has been given in this Product Ruling as to whether investment in this scheme may contravene the provisions of SISA.

Qualifications

8. The class of entities defined in this Product Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 16 to 20 of this Ruling.

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

- this Product 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 Product Ruling may be withdrawn or modified.

Date of effect

10. This Product Ruling applies prospectively from 15 January 2014, the date it is published. It therefore applies to the specified class of entities that enter into the scheme from 15 January 2014 to 30 June 2016, being its period of application. This Product Ruling will continue to apply to those entities even after its period of application has ended for the scheme entered into during the period of application.

11. However, the Product Ruling only applies to the extent that there is no change in the scheme or in the entity's involvement in the scheme.

Changes in the law

12. Although this Product Ruling deals with the income tax laws enacted at the time it was issued, later amendments may impact on this Product Ruling. Any such changes will take precedence over the application of the Ruling and, to that extent, this Product Ruling will have no effect.

13. Entities who are considering participating in the scheme 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

14. Product Rulings were introduced for the purpose of providing certainty about tax consequences for entities in schemes such as this. In keeping with that intention the Commissioner suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Product Ruling has issued.

Ruling

15. Subject to paragraph 3 and the assumptions in paragraph 20 of this Ruling:

(a) The NEJV Agreement creates a 'non-entity joint venture' (NEJV) between the Investor and Tremplin Limited (Tremplin) in accordance with the definition in subsection 995-1(1) and, for the purposes of Division 380, establishes an 'NRAS consortium' in accordance with its definition in subsection 995-1(1).

(b) The Investor will be entitled to a tax offset for an income year pursuant to subsection 380-10(1) equal to an amount calculated under subsection 380-10(2).

(c) Any cash payment made to the Investor (directly or indirectly) by the relevant State or Territory Government in relation to their participation in the NRAS will not be assessable income and will not be exempt income under section 380-35.

(d) Any NRAS Rent derived by the Investor from an Eligible Tenant is assessable income under section 6-5.

(e) The Property Management Fees payable by the Investor under the NEJV Agreement are not deductible under section 8-1 to the extent that they are incurred in relation to gaining or producing non-assessable non-exempt income (NANE income): paragraph 8-1(2)(c). Accordingly, they must be apportioned on a reasonable basis, limiting a claim for any deduction to the portion of costs relating to the derivation of assessable income in the form of NRAS Rent.

(f) All other deductible expenses incurred by the Investor in gaining or producing assessable income, being the rent derived from the NRAS properties, for the purposes of subsection 8-1(1) must also be apportioned on a reasonable basis, limiting a claim for any deduction to the portion of costs relating to the derivation of assessable income in the form of NRAS Rent.

(g) With respect to any borrowing costs incurred by an Investor, the borrowed money is used partly for a non-income producing purpose as the NRAS properties will be used to derive the non assessable State Incentive payment as well as assessable rental income. The allowable deduction for borrowing expenses under section 25-25 must therefore be apportioned on a reasonable basis.

(h) To the extent depreciating assets held by an Investor during an income year relate to their investment in the NRAS rental properties, those assets are in part used to produce NANE income. As a result, the use of those depreciating assets is partially attributable to a purpose other than a taxable purpose and therefore the deduction must be reduced (subsection 40-25(2)). To the extent that the depreciating assets are used to derive amounts of NANE income, the deduction claimed must be apportioned on a reasonable basis. Note: A capital gain or capital loss from the disposal of a depreciating asset will only arise to the extent that the asset has been used for a non-taxable purpose.

(i) A depreciating asset that relates to a NRAS rental property in respect of which a decline in value deduction has been allowed under Division 40 is taken to be a separate CGT asset from the property. When a CGT event happens to an Investor's NRAS rental properties, the capital gain or loss must be worked out for each CGT asset separately (or balancing adjustment in the case of depreciating assets sold with the property).

(j) To the extent that an Investor's construction expenditure, as defined in subsection 43-115(2) and subsection 43-85(1), relates to their NRAS rental properties, it will be taken to be used partly for the purposes of producing assessable income and partly for the purposes of deriving NANE income. Any capital expenditure incurred in relation to the properties will be included in the formula in section 43-210. The deduction for capital works must be reduced under section 43-210 to the extent the investment in the NRAS properties produces NANE income. Note: An Investor must exclude from the cost base (or reduced cost base) of a CGT asset (including a building, structure or other capital improvement to land that is treated as a separate asset for CGT purposes) the amount of construction expenditure for which an Investor is allowed a capital works deduction under Division 43.

(k) Certain amounts that are not deductible under a provision of the Tax Act as a result of the apportionment approach outlined in this Ruling may form part of the cost base of a CGT asset under Division 110.

(l) All of the elements (except the third one) of the *reduced cost base* of a CGT asset are the same as those for the cost base (subsection 110-55(2)). Under subsection 110-55(3) the third element of the reduced cost base includes certain amounts included in assessable income because of a balancing adjustment and therefore will not include the costs listed in the third element of the cost base in subsection 110-25(4). Therefore, while these amounts do form part of the cost base they are not included in the reduced cost base.

(m) The Compliance Management Fees payable by the Investor under the NEJV Agreement are not deductible under section 8-1 as they are not incurred in gaining or producing assessable income.

(n) Provided the scheme ruled on is entered into and carried out as described in this Ruling, the anti-avoidance provisions in Part IVA of the ITAA 1936 will not apply to an Investor.

Scheme

16. The scheme that is the subject of this Ruling is identified and described in the following documents:

- application for a ruling as constituted by documents and correspondence received on 17 April 2013; and

- Tremplin Non-Entity Joint Venture Agreement received on 17 April 2013 setting out the terms of agreement between Tremplin and the Investor in regard to the services relating to the Investor's participation in the NRAS.

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

17. For the purposes of describing the scheme to which this Product 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.

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

Overview

19. Following is a summary of the scheme.

(a) Tremplin will allow the Investor to participate in the NRAS by entering into a NEJV Agreement with Tremplin for a period of 10 years (the Incentive Period).

(b) Tremplin is, or will be, an 'approved participant' for the purposes of the *National Rental Affordability Scheme Regulations 2008* (the Regulations). The Approved Participant is solely entitled to receive the Incentive Payment under the NRAS.

(c) The Investor is an individual, a corporate tax entity or a superannuation fund and will provide a newly constructed Dwelling for rent (NRAS Rent) to an Eligible Tenant (approved under Regulation 19) through Tremplin or an appointed Property Manager at 80% of the market value rent.

(d) The Investor will ensure the Dwelling meets the requirements of the NRAS (an 'approved rental dwelling' within the meaning of the Regulations) and is constructed in accordance with the plans and specifications approved by Tremplin.

(e) Tremplin will provide property and tenancy management services either directly with the Investor or through a Property Manager and where applicable, charge the Investor Property Management Fees for those services as listed in Schedule 2, Item 1 of the NEJV Agreement. Property and tenancy management services include:

- advertising for prospective tenants, interviewing and recommending prospective tenants to the Investor;
- reporting and remittance to the Investor of all NRAS Rent collected and Incentive Payments received in respect of the Dwelling, less any deductions authorised by the NEJV Agreement;
- property inspections; and
- provision of information and reports regarding the Dwelling and Eligible Tenant for compliance with NRAS.

(f) Tremplin will provide compliance management services to the Investor in relation to the requirements of the NRAS and charge the Investor Compliance Management Fees for those services as listed in Schedule 2, Item 2 of the NEJV Agreement. Compliance management services include:

- allocation of the Incentive onto the Dwelling;
- delivery of the Dwelling;
- setting of the NRAS Rent for the Dwelling;
- tenancy of the Dwelling with an Eligible Tenant; and
- provision of the annual Incentive Payment to the Investor.

(g) Following the tenancy of the Dwelling and acceptance of the annual Statement of Compliance by the Commonwealth Government Department of Social Services (DSS), Tremplin will provide the Investor:

- a Refundable Tax Offset certificate from the Federal Government upon receipt; and
- a cash payment from the relevant State or Territory Government upon receipt.

(h) The Investor can exit from the NEJV Agreement by ceasing their participation in the NRAS or selling the Dwelling with 90 days notice to Tremplin, with no exit fees payable.

Assumptions

20. This Ruling is made on the basis of the following assumptions:

(a) the Investor is an Australian resident for taxation purposes;

(b) the NRAS certificate issued, or to be issued, to Tremplin, as the NRAS approved participant of an NRAS consortium, by the Housing Secretary in relation to an NRAS year will not be withdrawn, revoked or otherwise cease to apply to the Dwelling;

(c) the income year for the Investor begins on 1 July and ends on 30 June each year;

(d) all dealings between the Investor, Tremplin and the Property Manager will be at arm's length; and

(e) the scheme will be executed in the manner described in the Scheme section of this Ruling and the NEJV Agreement referred to in paragraph 16 of this Ruling.

Commissioner of Taxation

15 January 2014

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.

Is the Investor a member of an NRAS consortium?

21. An NRAS consortium is defined in subsection 995-1(1) to mean a consortium, joint venture or NEJV:

(a) established by one or more contractual *arrangements, the purpose of which are to facilitate the leasing of *NRAS dwellings; and

(b) that is not a *corporate tax entity, a *superannuation fund, a trust or a partnership.

22. A NEJV is defined in subsection 995-1(1) to mean an arrangement that the Commissioner is satisfied is a contractual arrangement:

(a) under which 2 or more parties undertake an economic activity that is subject to the joint control of the parties; and

(b) that is entered into to obtain individual benefits for the parties, in the form of a share of the output of the arrangement rather than joint or collective profits for all the parties.

23. The relevant economic activity undertaken by the Investor and Tremplin under the NEJV Agreement (a contractual arrangement) is the collective leasing of the Dwelling in an NRAS compliant manner to obtain both rent and 'incentives' (defined in the *National Rental Affordability Scheme Act 2008* (NRAS Act) to mean a National Rental Affordability Scheme Tax Offset or an amount payable for an NRAS year). As stipulated in the NEJV Agreement, Tremplin is responsible for the management of a Dwelling being leased and the Investor is responsible for providing a Dwelling that meets the requirements of the NRAS and maintaining the Dwelling in a condition reasonably fit for residential occupation.

24. The Investor solely derives NRAS Rent in relation to their Dwelling and is entitled to a tax offset (as per paragraph 15(b) of this Product Ruling) which is realised through their tax return. The NRAS certificate which creates the entitlement to the tax offset is, or will be, issued to Tremplin as the NRAS approved participant. The Investor will also receive from Tremplin the cash payment(s) received from the relevant State or Territory Government in respect of the Dwelling.

25. The benefits received by Tremplin as a consequence of its participation under the arrangement are payments from the Investor in the form of Property Management Fees and Compliance Management Fees.

26. For the reasons set out in paragraphs 23 to 25 of this Product Ruling, the Commissioner is satisfied that the NEJV Agreement creates a NEJV in accordance with the definition in subsection 995-1(1). As a NEJV that is not a corporate tax entity, a superannuation fund, a trust or a partnership, and a NEJV that is established by a contractual arrangement with the purpose of facilitating the leasing of an 'approved NRAS dwelling' (within the meaning of the Regulations), the NEJV between Tremplin and the Investor constitutes an NRAS consortium in respect of which the provisions of Division 380 may apply.

Section 380-10: Members of NRAS consortiums – individuals, corporate tax entities and superannuation funds

27. Subdivision 380-A sets out the conditions under which a taxpayer may be entitled to a tax offset under NRAS. In particular, subsection 380-10(1) provides that a member of an NRAS consortium is entitled to a tax offset for an income year where:

(a) the *Housing Secretary issues an *NRAS certificate in relation to an *NRAS year to the *NRAS approved participant of the NRAS consortium; and

(b) the income year commences in the NRAS year; and

(c) the member is an individual, a *corporate tax entity or a *superannuation fund.

28. As the NRAS approved participant of an NRAS Consortium, Tremplin has, or will be, issued with an NRAS certificate from the Housing Secretary in relation to an NRAS year (thus satisfying the requirement of paragraph 380-10(1)(a)).

29. Pursuant to the assumption at paragraph 20(c)of this Product Ruling, the income year for the Investor will begin on 1 July and end on 30 June each year. Each income year of the Investor, being the income year in which entitlement to a tax offset arises, will therefore begin in a corresponding NRAS year, defined in the NRAS Act to be the year beginning on 1 May (thus satisfying the requirement of paragraph 380-10(1)(b)).

30. As an individual, corporate tax entity or superannuation fund, the Investor also satisfies the requirement of paragraph 380-10(1)(c). Having satisfied each of the requirements set out in subsection 380-10(1), the Investor will be entitled to a tax offset for each relevant income year equal to an amount calculated in accordance with the formula in subsection 380-10(2).

Section 380-35: Payments made in relation to the NRAS

31. Pursuant to section 380-35, a cash payment made to the Investor indirectly through the NRAS consortium of which they are a member by a Department of a State or Territory in relation to the Investor's participation in the NRAS will be NANE income of the Investor (section 380-35).

NRAS Rent assessable as ordinary income under section 6-5

32. Section 6-5 includes income according to ordinary concepts (ordinary income) in assessable income. Whether or not a particular amount is income according to ordinary concepts depends on the nature and character of the receipt in the hands of the taxpayer.

33. Typically, the receipt of rent is ordinary income. Accordingly, the NRAS Rent derived by the Investor from an Eligible Tenant under the NRAS consortium is ordinary income, assessable under section 6-5 in the income year of receipt.

Property Management Fees

34. Section 8-1 allows a deduction for losses and outgoings to the extent to which they are incurred in gaining or producing assessable income or necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income. However paragraph 8-1(2)(c) states you cannot deduct a loss or outgoing to the extent it is incurred in relation to gaining or producing NANE income.

35. The Property Management Fees incurred by the Investor under the NEJV Agreement in respect of the Dwelling are generally considered to be incurred in gaining or producing assessable income (the NRAS Rent) and, subject to the operation of subsection 8-1(2), are therefore deductible pursuant to subsection 8-1(1).

36. While derivation of assessable income by way of rent is one objective achieved by participation in the NRAS, the receipt of the Government cash payment as NANE income may be another. The extent to which deriving NANE income is an object of participating in the NRAS requires an examination of the Investor's subjective purpose, motive or intention in incurring the loss or outgoing. This analysis may also have regard to those who advised or acted on behalf of the taxpayer (*Fletcher & Ors v. FC of T* 92 ATC 2045).

37. To participate in the NRAS the Investor, through Tremplin, must meet certain requirements. In order to receive the Government cash payment, the Dwelling must be rented out at 20% less than the market value rent for the Dwelling. The disproportion between the market value rent and the relevant assessable NRAS Rent derived can in part be explained by reference to the Investor's pursuit of another objective, to derive NANE income.

38. If the Property Management Fees related to the Dwelling had been incurred solely for the purpose of gaining assessable NRAS Rent, they would be wholly deductible, but as the fees were incurred in part for that purpose, and in part for the pursuit of NANE income, the expenditure must be apportioned between the pursuit of assessable income and other purposes: see *Fletcher & Ors v. FC of T* at 91 ATC 4957-8 and *Ronpibon Tin NL and Tongkah Compound NL v. FC of T* at 8 ATD 431.

39. Expenses are not deductible to the extent they are incurred in relation to gaining or producing NANE income (paragraph 8-1(2)(c)). Accordingly, Property Management Fees incurred by the Investor in respect of the Dwelling must be apportioned on a reasonable basis, limiting a claim for any deduction to the portion of costs relating to the derivation of assessable income.

40. Similarly, all other expenses incurred by the Investor in gaining or producing assessable income, being the rent derived from the NRAS properties, for the purposes of subsection 8-1(1) must also be apportioned on a reasonable basis, limiting a claim for any deduction to the portion of costs relating to the derivation of assessable income in the form of NRAS Rent.

Section 25-25

41. Subsection 25-25(1) provides that you can deduct expenditure you incur for borrowing money, to the extent that you use the money for the purpose of producing assessable income. In most cases the deduction is spread over the period of the loan.

42. Subsection 995-1 provides that something is done for the 'purpose of producing assessable income' if it is done for the purpose of gaining or producing assessable income, or in carrying on a business for the purpose of gaining or producing assessable income.

43. The Explanatory Memorandum to the *Tax Law Improvement Act 1997* (121 of 1997) notes that the words 'to the extent that' in section 25-25 of the ITAA 1997 refers to the 'use' to which the borrowed money is put. Where the borrowed money is used partly for a non-income producing purpose, it is necessary to apportion the deduction claimed for the borrowing expenses (*Ure v. F.C of T* 81 ATC 4100 (*Ure*)).

44. With respect to any borrowing costs incurred by an Investor, the borrowed money is used partly for a non-income producing purpose as the NRAS properties will be used to derive the non assessable State Incentive payment as well as assessable rental income. The allowable deduction for borrowing expenses under section 25-25 must therefore be apportioned on a reasonable basis.

Division 40

45. Under subsection 40-30(1) a depreciating asset is an asset that has a limited effective life and can reasonably be expected to decline in value over the time it is used, however, the following items are not depreciating assets:

(a) land; or

(b) an item of trading stock; or

(c) an intangible asset, unless it is mentioned in subsection 40-30(2) of the ITAA 1997.

46. Under subsection 40-25(1) you can deduct an amount equal to the decline in value for an income year (as worked out under the rules in Division 40) of a depreciating asset that you held for any time during the year. You must reduce the deduction by any part of the asset's decline in value that is attributable to your use of the asset, or you having it installed ready for use, for a purpose other than a taxable purpose: subsection 40-25(2). The meaning of the term 'taxable purpose' is given in subsection 40-25(7), and includes 'the *purpose of producing assessable income.'

47. To the extent depreciating assets held by an Investor during an income year relate to their investment in the NRAS rental properties, those assets are in part used to produce NANE income. As a result, the use of those depreciating assets is partially attributable to a purpose other than a taxable purpose and therefore the deduction must be reduced (subsection 40-25(2)). To the extent that the depreciating assets are used to derive amounts of NANE income, the deduction claimed must be apportioned on a reasonable basis. Note: A capital gain or capital loss from the disposal of a depreciating asset will only arise to the extent that the asset has been used for a non-taxable purpose.

48. A depreciating asset that relates to a NRAS rental property in respect of which a decline in value deduction has been allowed under Division 40 is taken to be a separate CGT asset from the property. When a CGT event happens to an Investor's NRAS rental properties, the capital gain or loss must be worked out for each CGT asset separately (or balancing adjustment in the case of depreciating assets sold with the property).

Division 43

49. To deduct an amount for capital works the area to which an Investor's construction expenditure relates must be used for the purpose of producing assessable income or conducting research and development (R&D) activities (subsection 43-140(1)). For the purposes of the Tax Act something is done for the 'purpose of producing assessable income' if it is done for the purpose of gaining or producing assessable income, or in carrying on a business for the purpose of gaining or producing assessable income (subsection 995-1(1)).

50. Taxation Ruling TR 97/25 discusses where the deduction allowable for capital works expenditure is subject to apportionment and provides that where capital works expenditure is wholly attributable to a construction expenditure area that is used partly in a deductible way then apportionment of the allowable deduction for capital works will be necessary.

51. To the extent that an Investor's construction expenditure, as defined in subsection 43-115(2) and subsection 43-85(1), relates to their NRAS rental properties, it will be taken to be used partly for the purposes of producing assessable income and partly for the purposes of deriving NANE income. Any capital expenditure incurred in relation to the properties will be included in the formula in section 43-210. The deduction for capital works must be reduced under section 43-210 to the extent the investment in the NRAS properties produces NANE income. Note: An Investor must exclude from the cost base (or reduced cost base) of a CGT asset (including a building, structure or other capital improvement to land that is treated as a separate asset for CGT purposes) the amount of construction expenditure for which an Investor is allowed a capital works deduction under Division 43.

Compliance Management Fees

52. Under the NEJV Agreement, Tremplin will provide compliance management services to ensure that compliance with the NRAS is maintained at all times. Compliance with the NRAS is maintained to ensure the Investor is eligible to receive the cash payment from the relevant State or Territory Government. The Government cash payment is NANE income under section 380-35 (see paragraph 15(c) of this Product Ruling).

53. Under section 8-1 expenses are deductible to the extent they are incurred in relation to gaining or producing assessable income. As the Government cash payment is not assessable income, Compliance Management Fees incurred in respect of the Dwelling are not deductible under subsection 8-1(1).

Cost Base (other than Reduced Cost Base)

54. Certain amounts that are not deductible under a provision of the Tax Act as a result of the apportionment approach outlined in this Ruling may form part of the cost base of a CGT asset under Division 110.

55. Amounts specifically referred to earlier in this ruling as not being deductible will be included in the cost base of the asset in question.

56. In addition subsection 110-25(4) also includes in cost base the costs of owning the CGT asset that you have incurred. Costs that are included in cost base are:

(a) interest on money you borrowed to acquire the asset; and

(b) costs of maintaining, repairing or insuring it; and

(c) rates or land tax, if the asset is land; and

(d) interest on money you borrowed to refinance the money you borrowed to acquire the asset; and

(e) interest on money you borrowed to finance the capital expenditure you incurred to increase the asset's value

Reduced cost base

57. All of the elements (except the third one) of the *reduced cost base* of a CGT asset are the same as those for the cost base (subsection 110-55(2)). Under subsection 110-55(3) the third element of the reduced cost base includes certain amounts included in assessable income because of a balancing adjustment and therefore will not include the costs listed in the third element of the cost base in subsection 110-25(4). Therefore, while these amounts do form part of the cost base they are not included in the reduced cost base.

Part IVA

58. Provided that the scheme ruled on is entered into and carried out in the manner described in the NEJV Agreement and in the Scheme section of this Ruling (see paragraphs 16 to 20 of this Ruling), it is accepted that the scheme is an ordinary commercial transaction and that Part IVA of the ITAA 1936 will not apply.

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Subject References:

- financial products
- NRAS
- product rulings
- public rulings
- taxation administration

Legislative References:

- ITAA 1936 Pt IVA
- ITAA 1936 318
- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 8-1(1)
- ITAA 1997 8-1(2)
- ITAA 1997 8-1(2)(c)
- ITAA 1997 Div 380
- ITAA 1997 Subdiv 380-A
- ITAA 1997 380-10
- ITAA 1997 380-10(1)
- ITAA 1997 380-10(1)(a)
- ITAA 1997 380-10(1)(b)
- ITAA 1997 380-10(1)(c)
- ITAA 1997 380-10(2)
- ITAA 1997 380-35
- ITAA 1997 995-1(1)
- SISA 1993
- TAA 1953
- NRASA
- NRASR 19

Case references:

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