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ATO Loses Test Case on Investments in Agribusiness Managed Investment Scheme

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The Full Federal Court in *Hance v FCT* has ruled that investors in an almond managed investment scheme would be entitled to a deduction for their investment as they would be carrying on a business on their respective almond lots.

The Court considered that the taxpayers continuing financial commitment, the repetitive nature of the work involved in farming each almond lot, and the continuation of the operation over an extended period of time all suggested that the investor was carrying on an ongoing business.

As a result of the Full Federal Court decision, the ATO has withdrawn taxation ruling TR 2007/8 and draft GST ruling GSTR 2008/D1. The ATO had issued TR 2007/8 after reconsidering its position in relation to investments in agribusiness managed investment schemes. According to the ATO's reconsidered view, investor contributions in such schemes were generally of a capital nature and therefore not deductible. The Full Federal Court decision in *Hance* has now caused the ATO to once again reconsider its view.

The ATO has also confirmed that it will not appeal the Full Federal Court's decision to the High Court. As a result this decision stands. It is important to note in *Hance* that, unlike some managed investment schemes, there was no round robin funding or non-recourse financing. Despite the Full Federal Court's decision in *Hance*, taxpayers still need to take care when investing in such schemes.