

PR 2001/110WA1 - Addendum to Withdrawal - Income tax: Great Southern Plantations 1998

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Notice of Addendum

Product Ruling

Income tax: Great Southern Plantations 1998

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Product Ruling PR 2001/110W to provide information about the consequence for Growers following the disposal of the Growers' rights, titles and interests in the Project.

PR 2001/110W is amended as follows:

1. Preamble

Omit the preamble.

2. Paragraph 1

Omit the paragraph, substitute:

1. Product Ruling PR 2001/110 set out the Commissioner's opinion on the tax consequences for persons participating in the Great Southern Plantations 1998 (the Project), a forestry managed investment scheme, entered into for the purpose of the establishment and tending of Eucalypt trees for felling in Australia.

2. This Product Ruling has been withdrawn in accordance with subsection 358-20(1) of Schedule 1 to the *Taxation Administration Act 1953*, which states the Commissioner may withdraw a public ruling either wholly or to an extent.

3. All legislative references in this withdrawal notice are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated.

Overview

4. The Responsible Entity, Gunns Plantations Limited (in liquidation) advised that as part of the liquidation process of this entity, the Growers' rights, titles and interests in the Project were disposed of by 17 December 2013.

5. This withdrawal notice sets out the tax outcomes for Growers or their associates arising as a consequence of the disposal.

Assessable Income

6. The proceeds from the sale of their rights, titles and interests in the Project is in respect of the Growers' interest in the standing timber as the other associated rights, titles and interests are considered to have no value.

7. The sale of standing timber under the liquidation process is the disposal of trading stock outside the ordinary course of business. The treatment of assessable income on disposal of trading stock outside the ordinary course of business is described in section 70-90.

8. By way of section 70-90, Growers are required to include the market value of that trading stock on the day of disposal in their assessable income for the year of that disposal.

9. For the purposes of section 6-5, Growers are required to include their share of the harvest proceeds and other amounts payable to the Growers under the liquidation process, in their assessable income in the year they are derived.

10. The final amount to be distributed to the Growers by the liquidator (The Net Distribution Amount) will not be known until just prior to the distribution. This will occur when all costs and competing claims have been finalised as part of the liquidation process.

11. As a consequence, there was no simple way for Growers to determine the market value of their interest in the trading stock at the time of disposal.

12. Notwithstanding the requirement to return the market value of their interest in the trading stock as assessable income in the year in which the disposal happened, and the requirement to return harvest proceeds and the other amounts referred to in paragraph 9 in the year in which they are derived, the Commissioner will accept that Growers in the Project can:

- treat The Net Distribution Amount as the amount required to be returned as assessable income, and
- return The Net Distribution Amount, in their assessable income in the income tax year in which the distribution is received.

13. Class Ruling CR 2016/19 *Income tax: liquidation – Great Southern Plantation and Gunns Plantations Limited Woodlot Schemes*, sets out the tax outcomes for Growers or their associates arising as a consequence of the disposal of their rights, titles and interest in the Project.

Deductions

14. Paragraph 46 of PR 2001/110 explains how the Growers' participation in the Project constitutes the carrying on of a business of primary production by the Growers.
15. Growers that continued to have an interest in the Project up until 17 December 2013 were entitled to claim deductions for the expenditure outlined in paragraph 17 of Product Ruling PR 2001/110.
16. Any expenditure that a Grower incurred prior to 17 December 2013 but did not actually pay is not deductible, because these amounts have been taken into account in calculating The Net Distribution Amount.
17. From 17 December 2013, Growers in the Project ceased carrying on a business of primary production, and are no longer entitled to claim deductions, with the exception of interest which may continue to be deductible. See paragraph 20.

Deferral of losses from non-commercial business activities

18. Division 35 only applies to individuals, alone or in partnership, in income years in which they are carrying on a business activity. In Product Ruling PR 2001/110, the Commissioner conditionally undertook to exercise his discretion under paragraphs 35-55(1)(b) or 35-55(1)(c), to allow losses incurred by Growers to be offset against other assessable income in the income year in which the losses arose, for the relevant income years.
19. The Commissioner's discretion under paragraphs 35-55(1)(b) and 35-55(1)(c) is no longer required in respect to the Project for the year in which the Growers' interests in the Project were disposed of, and for later income years.

Interest

20. Where Growers have used loans to finance their participation in the Project, any interest incurred on the loan will continue to be deductible under section 8-1 in the year it is incurred, provided the requirements outlined in Taxation Ruling TR 2004/4 are satisfied.
21. The deductibility of interest on such loans is unaffected by the loss deferral rules in Division 35, from the year in which the Growers dispose of their interests in the Project, and for later income years. See paragraphs 18 and 19.

PR 2001/110W

3. Related Rulings/Determinations

Omit the references; substitute 'TR 2004/4; CR 2016/19'.

4. Subject references

Omit the references.

5. Legislative references

Omit the references; substitute:

- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 Div 35
- ITAA 1997 35-55(1)(b)
- ITAA 1997 35-55(1)(c)
- ITAA 1997 70-90
- TAA 1953 Sch 1 358-20(1)

This Addendum applies on and from 17 December 2013.

Commissioner of Taxation

20 April 2016

ATO references

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