

PR 2001/159WA1 - Addendum to Withdrawal - Income tax: Timber Capital Plantation Prospectus 1999

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Addendum to Withdrawal

Product Ruling

Income tax: Timber Capital Plantation Prospectus 1999

This Addendum amends Product Ruling PR 2001/159 withdrawal to provide information about the consequence for Growers regarding the amalgamation of the Timber Capital Plantation 1999 Prospectus (the Project) with 4 other Timber Capital Plantation Projects from 1995 to 1999 to form Willmott Forest Projects 1995 - 1999.

PR 2001/159W is amended as follows:

1. Preamble

Omit the preamble.

2. Paragraph 1

Omit the paragraph; substitute:

1. This Product Ruling has been withdrawn in accordance with subsection 358-20(1) of Schedule 1 to the *Taxation Administration Act 1953*, which states the Commissioner may withdraw a public ruling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. The Product Ruling ceases to have effect after 21 December 2011 due to the Project being carried out in a way that is materially different to the arrangement ruled on in Product Ruling PR 2001/159. Thus, the Ruling continues to apply to 21 December 2011 to those persons, who entered into the specified arrangement between 12 May 1999 and 30 June 1999, and who carried out the arrangements without any material change to that set out in PR 2001/159 in respect of the tax law(s) ruled upon.

Overview

2. Willmott Forests Limited (Receivers and Managers Appointed) (In Liquidation), the Responsible Entity of the Project from 30 September 1999 up to 21 December 2011, was placed in receivership and administration on 6 September 2010 and subsequently went into liquidation on 22 March 2011.

Period 22 December 2011 to 25 July 2012

3. At the meeting of Growers held on 21 December 2011, four resolutions were proposed and passed. These included appointing Primary Securities Ltd as the Responsible Entity for the Willmott Forests 1995 - 1999 Project. This officially occurred on 22 December 2011. Under the changes to the Constitution (the Willmott Growers Group (WGG) proposal), the produce from the 1999 Project is to be pooled with Timber Capital Plantation Projects from 1995 to 1999 (Product Rulings PR 1999/20, PR 2002/113, PR 2002/114, PR 2002/115 and PR 2002/116). The individual 1995 to 1999 Projects had separate product rulings issued, however each was issued using the same Australian Registered Scheme Number (089 598 612) which was registered as Willmott Forests 1995 - 1999 Project (the Scheme).

Constitution Changes for the consolidated Scheme

4. Growers in the Project paid a lease fee of \$100 per Hectare per annum and a maintenance fee of \$150 per Hectare per annum. Both fees were to be indexed after 10 years. The Project has been amalgamated with other Timber Capital Plantation projects that paid the lease and maintenance fees at the start of their investments. Growers who were in the Project still remain liable to pay the annual lease fee of \$100 per Hectare per annum indexed. No additional maintenance fees will be payable by Growers in the Project, as they will now pay annual Management Fees and Supplementary Management Fees (as required), as stated in the Consolidated Constitution.

Optional invoice

5. Under the terms of the Consolidated Constitution, the Responsible Entity issued optional invoices to Growers containing an Initial Management Fee of \$300 per Hectare for management services provided from 22 December 2011 up to 30 June 2013, and a Reconstruction Fee of \$400 per Hectare to cover the costs of reconstructing the Scheme. Growers who paid the invoice by the 31 July 2012 (the Election Date) were deemed to Opt In to the Scheme and were called Participating Growers. Growers who chose not to pay the optional invoice were deemed to Opt Out and no longer be a participant in the consolidated Scheme.

Participating Growers

6. The optional invoice of \$700 per Hectare was paid by Participating Growers in respect of services provided by the Responsible Entity for the period from 22 December 2011 to 30 June 2013. The invoice comprised a:

- Reconstruction Fee of \$400 per Hectare which the Responsible Entity was using for capital and not revenue expenditure. It was to reimburse the Responsible Entity's costs incurred in the process of developing the proposal, transferring the role of Responsible Entity from Willmott Forests Limited (receivers and managers appointed)(in Liquidation) to Primary Securities Limited and restructuring the Projects.
- Management Fee of \$300 per Hectare which was to be used for forestry and administration expenses incurred by the Scheme from 22 December 2011 to 30 June 2013, for the purposes of expenditure relating to the earning of income.

7. Management Fees are ongoing and will be invoiced annually in advance at the start of each financial year starting 1 July 2013. A Management Fee of \$160 per Hectare (or \$170 per Hectare if paid in instalments) was issued on 9 August 2013 for management services to be provided for the period 1 July 2013 to 30 June 2014.

8. One or more Supplementary Management Fees may also be levied in addition to the fees paid at the commencement of the year if the actual contributions paid are not sufficient to fund the ongoing costs of the Scheme until 30 June of that year. A Supplementary Management Fee of \$100 was invoiced on 7 January 2014 for management services to be provided for the period 1 July 2013 to 30 June 2014.

9. Additional Supplementary Fees to be used for capital purposes may also be charged. Two additional Supplementary Fees of \$50 each were issued on 9 September 2013 and 1 October 2013 for capital purposes, covering expenses incurred until 30 June 2014.

10. All Participating Growers will also be required to pay on an annual basis a Capital Account Contribution of \$50 per Hectare until full payment to the Opt Out Growers has been made. This is anticipated to take just over 3 years. These payments will commence once the Responsible Entity has been granted permission to transfer the leases into the name of the Responsible Entity on behalf of the Participating Growers and remove the Opt Out Growers from the Growers Register. The amount paid will be used to fund the purchase by the Responsible Entity of the Hectares on behalf of Growers who chose to Opt Out, as well as for any other Hectares purchased by the Responsible Entity for the benefit of Participating Growers. This annual contribution will be capital in nature and not a revenue payment.

Growers who choose to Opt Out of the Project

11. Growers who did not Opt In by paying the optional invoice by the Election Date were deemed to Opt Out of the Project and not be a Participating Grower in the Scheme.

12. The Hectares of the Opt Out Growers are to be acquired by the Responsible Entity on behalf of the Participating Growers in the Scheme. The Responsible Entity will pay an Opt Out Grower in the Project the Agreed Hectare Price of \$151 (unless they had an agreement not to pay rent). Growers in the other Projects are to receive an agreed Hectare Price of \$468 per Hectare. This payment is to be made in instalments and is subject to the Scheme continuing. Subject to all legal and regulatory requirements, the Responsible Entity will transfer the Hectares (Common Hectares) from Growers who opted out to the Responsible Entity, on behalf of Participating Growers, and remove the Opt Out Growers from the Growers' Register. Growers who Opt Out will be considered to dispose of their interest in the Project on the date the Responsible Entity removes them from the Growers' Register, or the date any lease over their Hectares is terminated, whichever first occurs.

Growers Proportional Share

13. Under changes to the Consolidated Constitution for the Scheme, participation in the Scheme will not be dependent on holding an identifiable interest in the land for the full term of the Scheme. A Participating Grower's entitlement to a share in the proceeds of the Scheme will be referable to the number of Hectares held by the Grower in the Scheme (or formerly held if the Grower's lease has been terminated, for example due to damage, or the Grower's Trees have been harvested after 22 December 2011) as a proportion of total Hectares held by all Growers in the Scheme. This is referred to as the Grower's Proportional Share. A Grower will be entitled to their proportional share in the proceeds from the sale of timber and insurance proceeds from their Hectares and all other Growers' Hectares in addition to the proceeds from the sale of timber and insurance proceeds from Common Hectares.

Common Hectares

14. The Hectares the Responsible Entity purchases from Growers who have chosen to Opt Out will be called Common Hectares. These Common Hectares will be held in trust by the Responsible Entity on behalf of all Participating Growers. Participating Growers are liable for the payment of their Growers Proportional Share of fees, costs, expenses, reimbursements and indemnities in relation to all Common Hectares. If any other Hectares are acquired by the Responsible Entity on behalf of Participating Growers they will also become Common Hectares.

Tax outcomes for all Growers***Material difference***

15. As a result of the constitutional changes, the Scheme is being carried out in a way that is materially different from that described in PR 2001/159. Due to the material changes, all Growers in the Project will no longer be covered by PR 2001/159 from 21 December 2011, as outlined in paragraph 1 above.

No longer carrying on a business

16. Under the terms of the original Constitution, the Project Grower's had rights in the form of a lease over an identifiable area of land consistent with the intention to carry on a business of afforestation. In accordance with the changes to the Consolidated Constitution, a Grower may no longer hold an identifiable interest in land for the full term of the Scheme, nor will a Grower's assessable income from the Scheme be derived solely from an identifiable area of land in which that Grower holds an interest. The Commissioner is of the view that Growers will not be considered to be carrying on a business of afforestation from 21 December 2011.

Non-Commercial loss provisions

17. As a consequence of changes to the Consolidated Constitution, the Commissioner's discretion under subsection 35-55(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) has no application from 21 December 2011. Growers will no longer require the Commissioner's discretion after 21 December 2011, as they are not considered to be carrying on a business.

Tax treatment for Growers who chose to Opt Out

18. Growers who have chosen to Opt Out initially participated in the Project with the intention to carry on a business of afforestation and to profit from the sale of the felled trees on their Hectares. Growers were carrying on a business of afforestation up until 21 December 2011. The sale of the Hectares (standing timber) by Growers who chose to Opt Out will happen after the Growers are deemed not to be carrying on a business of afforestation. Proceeds from the sale will be paid in instalments by the Responsible Entity of the Scheme and will be assessable income under section 6-5 of the ITAA 1997 in the year of income in which each instalment is received.

Tax treatment for Participating Growers***Management Fees and Supplementary Management Fees***

19. Management Fees and Supplementary Management Fees that are paid after 21 December 2011 may still be deductible under paragraph 8-1(a) of ITAA 1997. Paragraph 8-1(a) of the ITAA 1997 applies to allow a deduction for losses and outgoings to the extent to which they are incurred in gaining or producing assessable income, but not to the extent that they are capital, private or domestic in nature, incurred in gaining or producing exempt income or non-assessable non-exempt income, or prevented by a provision of the ITAA 1997 or the *Income Tax Assessment Act 1936* (ITAA 1936). Only the portion of the Management Fee that is used for revenue expenses will be deductible. Refer to paragraphs 24 to 26 below to determine if prepaid fees need to be apportioned over two income years.

Reconstruction Fee and Supplementary Fees

20. The Reconstruction Fee and Supplementary Fees will be used by the Responsible Entity for various capital purposes including the reconstruction of the Scheme and legal proceedings. The Reconstruction Fee and Supplementary Fees may form part of the cost base of the right to share in the proceeds from the Scheme, including proceeds from Common Hectares. These amounts are not deductible under section 8-1 or section 40-880 of the ITAA 1997.

Capital Account Contribution

21. The Capital Account Contribution will be paid in instalments of \$50 per Hectare per year, and is anticipated to be paid over approximately 3 years. Capital Account Contributions will only form part of a Participating Growers cost base when paid from the Capital Account to the Opt Out Growers. As these amounts are capital they will not be deductible under section 8-1 or section 40-880 of the ITAA 1997 when paid.

Lease Fee

22. Participants in the original Timber Capital Plantation Prospectus 1999 remain liable to pay a lease fee of \$100 per Hectare per annum. This lease fee will be deductible under paragraph 8-1(a) of ITAA 1997.

Revenue

23. Revenue from the harvest and sale of timber and insurance proceeds (in relation to an event after the Pooling Date) received after the Pooling Date will be distributed to Participating Growers based on the Participating Growers Proportional Interest and will be assessable income under section 6-5 of the ITAA 1997.

Sections 82KZL, 82KZME and 82KZMF of the ITAA 1936

24. The prepayment provisions contained in Subdivision H of Division 3 of Part III of the ITAA 1936 affect the timing of deductions for certain prepaid expenditure. These provisions apply to certain expenditure incurred under an agreement in return for doing of a thing under the agreement (for example, the performance of management services or the leasing of land) that will not be wholly done within the same year of income as the year in which the expenditure is incurred. If expenditure is incurred to cover the provision of services to be provided within the same year, then it is not expenditure to which the prepayment rules apply.

25. Participating Growers in the Scheme were invoiced by the Responsible Entity on 7 January 2012 for Initial Management Fees for management services to be performed from 22 December 2011 up until 30 June 2013. The prepayment provisions in section 82KZL and 82KZME apply to apportion those Initial Management Fees between the financial years ended 30 June 2012 and 30 June 2013, unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000. This will only apply to Growers who have three or less Hectares. The formula for apportionment is contained in section 82KZMF. For example if the Initial Management Fee was \$1,200 for 4 hectares, the period the invoice relates to is from 22 December 2011 to the 30 June 2013, a period of 556 days. The amount that would be deductible in 2012 would be \$412 (191/556 days times the invoice amount of \$1,200, as there were 191 days in the 2012 income year out of the total period the invoice related to). In the 2013 income year \$788 would be deductible.

26. Growers have been invoiced for a Management Fee of \$160 (or \$170 if paid in instalments) and a Supplementary Management Fee of \$100 per Entitlement to cover Management Fees for the period 1 July 2013 to 30 June 2014. These payments of \$160 (or \$170) and \$100 do not need to be apportioned as the period the expense relates to is less than 12 months, and will be deductible under paragraph 8-1(a) of the ITAA 1997. Any additional invoices issued in the future for expenses relating to a period of greater than 12 months will need to be apportioned. Growers may also pay one or more Supplementary Fees and annual fees if required. Any Supplementary Fees or additional fees paid that are for a capital purpose will not be deductible when incurred, and will form part of the cost base of the capital asset.

3. Reference section

Omit all references.

This Addendum applies on and from 22 December 2011.

Commissioner of Taxation

12 February 2014

ATO references

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