


# ***PR 2002/16W - Income tax: Plantation Forestry Managers Limited, Hardwood Project No 2 1999***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *29 May 2013*



# Notice of Withdrawal

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## Product Ruling

### Income tax: Plantation Forestry Managers Limited, Hardwood Project No 2 1999

1. Product Ruling PR 2002/16 sets out the Commissioner's opinion on the tax consequences under Division 35 of the *Income Tax Assessment Act 1997* (ITAA 1997) for a defined class of entities (Growers) participating in an arrangement known as 'Plantation Forestry Hardwood Project No 2' (the Project), as set out in paragraphs 12 to 30 of Product Ruling PR 1999/63. The Project is a forestry managed investment scheme with the purpose of establishing and tending to Tasmanian Blue Gum trees for sale in Australia.

2. PR 2002/16 has been withdrawn in accordance with subsection 358-20(1) of Schedule 1 to the Taxation Administration Act 1953, which states the Commissioner may withdraw a public ruling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. Where the scheme described in the ruling is materially different from the scheme actually carried out, the ruling does not have any binding effect on the Commissioner.

All legislative references in this Notice of Withdrawal are to the ITAA 1997 unless otherwise indicated.

#### Overview

3. The Commissioner issued PR 2002/16 for Plantation Forestry Hardwood Project No 2 on 20 February 2002. Each Grower participating in the arrangement was required to enter into a Licence and Management Agreement for the Project.

4. On 14 October 2005, each individual Licence and Management Agreement was replaced with a single Consolidated Licence and Management Agreement (CLMA) between Australian Growth Managers Limited (the Responsible Entity at the time), formerly known as Plantation Forestry Managers Limited, and each several Grower.

5. On 22 December 2011, Primary Securities Ltd replaced Australian Growth Managers Limited as the Responsible Entity for the Project, pursuant to section 601FL of the *Corporations Act 2001* (Corporations Act).

6. On 29 November 2012, a meeting of Growers was held to discuss the viability and possible early termination of the Project. In this meeting, the Growers present voted in favour of terminating the Project.

7. On 7 January 2013, Primary Securities Ltd notified the Australian Securities and Investments Commission (ASIC) of the impending commencement of the winding up of the Project in accordance with subsection 601NC(2) of the Corporations Act. Primary Securities Ltd has advised the Australian Taxation Office (ATO) that the Project commenced winding up on 9 January 2013 and is expected to be deregistered in or around May 2013.
8. Primary Securities Ltd has advised the ATO that the CLMA was terminated on 9 January 2013. The termination of the CLMA has resulted in the Project being carried on in a materially different way to how it is described in paragraphs 12 to 30 of PR 1999/63 and has therefore been carried on in a materially different way to the arrangement covered by PR 2002/16. PR 2002/16 is no longer binding on the Commissioner from 9 January 2013.
9. Provided that up to the date of termination of the CLMA, the Project was carried out as described in paragraphs 12 to 30 of PR 1999/63, the termination does not disturb the tax treatment of previous Growers' outgoings as set out in PR 2002/16.
10. This Notice of Withdrawal sets out the tax outcomes for Growers under Division 35 which arises as a consequence of the termination of the CLMA.
11. Refer to the Notice of Withdrawal for PR 1999/63 for other tax outcomes for Growers which arise as a consequence of the termination.

## **Carrying on a business**

12. Paragraphs 12 to 30 of PR 1999/63 set out how Growers have an interest in the Project. Paragraphs 35 to 45 of PR 1999/63 explain how the Growers' participation in the Project constitutes the carrying on of a business of afforestation by the Growers. PR 2002/16 only applies to Growers while they are carrying on a business of afforestation as set out in PR 1999/63. Upon termination of the CLMA, on 9 January 2013, all Growers ceased to have an interest in each of their Woodlots and therefore ceased to carry on the business of afforestation.

## **Deferral of losses from non-commercial business activities**

13. Division 35 only applies to individuals, alone or in partnership, in income years in which they are carrying on a business activity. Under paragraph 16 of PR 2002/16, the Commissioner conditionally undertook to exercise his discretion under paragraph 35-55(1)(b), to allow losses incurred by Growers, who are individuals that entered into the Project between 16 June 1999 and 18 June 2000, to be offset against other assessable income in the income year in which the losses arise, for the income years ended 30 June 2001 to 30 June 2009.

14. As the Commissioner has not exercised his discretion for the income year ended 30 June 2010 and subsequent income years, any losses from the individual's business activity for the period 1 July 2009 to 9 January 2013 (the date the business activity ceased) will be deferred under subsection 35-10(2) unless, for each income year within that period (or part thereof), the individual:

- meets the income requirement test in subsection 35-10(2E), and the business activity meets at least one of the four business activity tests in Division 35; or
- comes within the exception in subsection 35-10(4).

15. Amounts deferred under subsection 35-10(2) as outlined in paragraph 15 will only be deductible in a subsequent year if the business activity that gave rise to this amount or a business activity 'of a similar kind' is carried on in that subsequent year. If the business activity, or a business activity that is 'of a similar kind', is never carried on again, the entitlement to deduct the amount will be lost. For more information regarding 'business activity of a similar kind' see paragraphs 49 to 54 of Taxation Ruling TR 2001/14 Income tax: Division 35 – non-commercial business losses.

16. Division 35 does not apply to amounts incurred from the Grower's business activity following the cessation of the business activity on 9 January 2013.

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**Commissioner of Taxation**20 February 2002

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## ATO references

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