



# ***PR 2004/113 - Income tax: Olea Australis***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *15 December 2004*



## Product Ruling

### Income tax: Olea Australis

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Potential participants may wish to refer to the Tax Office website at [www.ato.gov.au](http://www.ato.gov.au) or contact the Tax Office directly to confirm the currency of this Product Ruling or any other Product Ruling that the Tax Office has issued.

#### Preamble

The number, subject heading, and the **What this Product Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. Product Ruling PR 1999/95 explains Product Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.

### No guarantee of commercial success

The Tax Office **does not** sanction or guarantee this product. Further, we give 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. This will involve a consideration of important issues such as whether projected returns are realistic, the 'track record' of the management, the level of fees in comparison to similar products and how the product fits an existing portfolio. We recommend 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 arrangement is carried out in accordance with the information we have been given, and have described below in the **Arrangement** part of this document.

If the arrangement is not carried out as described, participants lose the protection of this Product Ruling. Potential participants may wish to seek assurances from the promoter that the arrangement will be carried out as described in this Product Ruling.

Potential participants should be aware that the Tax Office will be undertaking review activities to confirm the arrangement has been implemented as described below and to ensure that the participants in the arrangement include in their income tax returns income derived in those future years.

### Terms of use of this Product Ruling

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

## What this Product Ruling is about

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1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates. In this Ruling this arrangement is sometimes referred to as the Olea Australis Project, or simply as 'the Project'.

### Tax laws

2. The tax law dealt with in this Ruling is Division 35 of the *Income Tax Assessment Act 1997* (ITAA 1997).

### Goods and Services Tax

3. In this Ruling all fees and expenditure referred to include Goods and Services Tax ('GST') where applicable. In order for an entity (referred to in this Ruling as a 'Grower') to be entitled to claim input tax credits for the GST included in its expenditure, it must be registered or required to be registered for GST and hold a valid tax invoice.

### Changes in the Law

4. Although this Ruling deals with the taxation legislation enacted at the time it was issued, later amendments may impact on this Ruling. Any such changes will take precedence over the application of this Ruling and, to that extent, this Ruling will be superseded.

5. Taxpayers participating in the Project 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

6. Product Rulings were introduced for the purpose of providing certainty about tax consequences for participants in projects such as this. In keeping with that intention, the Tax Office suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Ruling is issued.

### Class of persons

7. The class of persons to whom this Ruling applies is the persons who are specifically identified in the Ruling part of Product Ruling PR 2000/32 and who between 5 April 2000 and 8 March 2001 entered into the specified arrangement that is set out in paragraphs 14 to 34 of that Ruling. They will have a purpose of staying in the arrangement until it is completed (that is, being a party to the relevant

Agreements until their term expires) and deriving assessable income from this involvement. In this Ruling these persons are referred to as 'Growers'.

8. The class of persons to whom this Ruling applies does not include persons who have terminated or who intend to terminate their involvement in the arrangement prior to its completion, or who otherwise do not intend to derive assessable income from the Project. Growers who elect to market their own produce are also excluded from the class of persons to whom this Ruling applies.

### **Qualifications**

9. The Commissioner rules on the precise arrangement identified in the Ruling. If the arrangement described in the Ruling is materially different from the arrangement that is actually carried out, the Ruling has no binding effect on the Commissioner. The Ruling will be withdrawn or modified.

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### **Date of effect**

11. This Ruling applies prospectively from 15 December 2004 for Growers who between 5 April 2000 and 8 March 2001 entered into the arrangement that is set out in paragraphs 14 to 34 of Product Ruling PR 2000/32. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

12. If a taxpayer has a more favourable private ruling (which is legally binding), the taxpayer can rely on that private ruling if the income year to which it relates has ended or has commenced but not yet ended. However, if the arrangement covered by the private ruling has not commenced, and the income year to which it relates has not yet commenced, this Ruling applies to the taxpayer to the extent of the inconsistency only (see Taxation Determination TD 93/34).

## Withdrawal

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13. This Product Ruling is withdrawn and ceases to have effect after 30 June 2006. Even following its withdrawal, this Ruling continues to apply, in respect of the tax laws ruled upon, to all persons within the specified class who, between 5 April 2000 and 8 March 2001 entered into the specified arrangement that is set out in paragraphs 14 to 34 of Product Ruling PR 2000/32. This is subject to there being no material difference in the arrangement or in the persons' involvement in the arrangement.

## Arrangement

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14. The arrangement that is the subject of this Ruling is described in paragraphs 14 to 34 of Product Ruling PR 2000/32.

15. In addition to the documents considered in paragraph 14 of Product Ruling PR 2000/32 the following documents have also been considered:

- Application for Product Ruling dated 11 October 2004, and
- Correspondence dated 18 November 2004.

## Ruling

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### **Continuing application of Product Ruling 2000/32**

16. Although now withdrawn, the tax benefits set out in Product Ruling PR 2000/32 continue to apply to participants who are within the specified class of persons to which the Ruling applied and who entered into the specified arrangement between 5 April 2000 and 8 March 2001. This is subject to there being no material difference in the arrangement or in the persons' involvement in the arrangement.

### **Division 35 – Deferral of losses from non-commercial business activities**

#### ***Section 35-55 – Exercise of Commissioner's discretion***

17. A Grower who was an individual accepted into the Project between 5 April 2000 and 8 March 2001 may have losses arising from their participation in the Project that would be deferred to a later income year under section 35-10. Subject to the Project being carried out in the manner described above, the Commissioner will exercise the discretion in paragraph 35-55(1)(b) for these Growers for the income years ending **30 June 2004 to 30 June 2006**. This

conditional exercise of the discretion will allow those losses to be offset against the Grower's other assessable income in the income year in which the losses arise.

## Explanation

### **Division 35 – Deferral of losses from non-commercial business activities**

#### ***Section 35-55 – Exercise of Commissioner's discretion***

18. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for the income years ended **30 June 2004 to 30 June 2006** the Commissioner has applied the principles set out in Taxation Ruling TR 2001/14 *Income tax: Division 35 – non commercial business losses*. Accordingly, based on the evidence supplied, the Commissioner has determined that for those income years ended 30 June 2004 to 30 June 2006:

- it is because of its nature the business activity of a Grower will not satisfy one of the four tests in Division 35;
- there is an objective expectation that within a period that is commercially viable for the viticulture industry, a Grower's business activity will satisfy one of the four tests set out in Division 35 or produce a taxation profit; and
- a Grower who would otherwise be required to defer a loss arising from their participation in the Project under subsection 35-10(2) until a later income year is able to offset that loss against their other assessable income.

19. The exercise of the Commissioner's discretion under paragraph 35-55(1)(b) is conditional on the Project being carried on in the manner described in this Ruling during the income years specified. If the Project is carried out in a materially different way to that described in the Ruling a Grower will need to apply for a private ruling on the application of section 35-55 to those changed circumstances.

## Detailed contents list

20. Below is a detailed contents list for this Product Ruling:

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**Commissioner of Taxation**

15 December 2004

*Previous draft:*

Not previously released in draft form

*Legislative references:*

- ITAA 1997 Div 35
- ITAA 1997 35-10
- ITAA 1997 35-10(2)
- ITAA 1997 35-55
- ITAA 1997 35-55(1)(b)
- TAA 1953 Part IVA
- Copyright Act 1968

*Related Rulings/Determinations:*

PR 1999/95; PR 2000/32;  
 TD 93/94; TR 92/1; TR 92/20;  
 TR 97/16; TR 2001/14;

*Subject references:*

- Commissioner’s discretion
- Non-commercial loss

## ATO References

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