

# ***PR 2004/47WA1 - Addendum to Withdrawal - Income tax: Palandri America Wine Business - 2004***

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## Addendum

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### Product Ruling

### Income tax: Palandri America Wine Business – 2004

This Addendum amends the Notice of Withdrawal for Product Ruling PR 2004/47 which issued on 1 July 2006.

#### **The withdrawal notice for PR 2004/47 is amended as follows:**

##### **1. Paragraph 1**

Omit the paragraph, substitute:

1. Product Ruling PR 2004/47 set out the Commissioner's view on the tax consequences for entities participating in the Palandri America Wine Business – 2004 (the Project) by entering into a Lease and Management Agreement for the purpose of carrying on a commercial viticulture and wine production business. The Ruling was withdrawn on 1 July 2006 as interests in the Project were no longer being sold.
2. Although withdrawn, the Ruling continues to apply to Members who were accepted to participate in the Project between 28 April 2004 and 15 June 2004 or between 1 July 2004 and 31 March 2005. It may therefore be relied upon subject to there being no material difference in the arrangement, or in the Members' involvement in the arrangement.
3. PR 2004/47 ruled that Members could claim deductions for rent, management fees and interest on loans from Palandri Finance Ltd, although the deductibility of losses was subject to the non-commercial loss rules in Division 35 of the *Income Tax Assessment Act 1997* (Division 35). The Commissioner exercised his discretion to allow losses to be offset against other assessable income until the 2005-06 income year. Losses incurred in later years were required to be deferred unless certain conditions were met (see paragraph 65 of PR 2004/47).
4. On 24 September 2008 the Supreme Court of Western Australia ordered that the scheme be wound up. The termination of the Project's Agreements on 19 March 2009 meant that Growers were no longer carrying on their own business and, although no further Project fees were incurred, losses after that date are not subject to Division 35.

# PR 2004/47W

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5. Whilst Members will not be carrying on business after the termination of their agreements, those taking the 10 year loan option to fund their participation in the Project may have incurred interest expenses after 19 March 2009. Where a business activity has ceased, ongoing interest will continue to be deductible unless an event or circumstance occurs to break the connection between the loan and the business activity. Where a loan is refinanced, renegotiated or the purpose of the loan is otherwise altered, the connection to the income earning activity may be broken and the interest may no longer be deductible. For more information refer to paragraph 50 of Taxation Ruling TR 2004/4 which provides guidance on what needs to be considered to determine if the necessary connection still exists following the cessation of relevant income earning activities.

This Addendum applies on and from 19 March 2009.

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**Commissioner of Taxation**

12 January 2011

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ATO references

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