

PR 2005/83WA1 - Addendum to Withdrawal - Income tax: Palandri Winegrape Project 2005

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Addendum

Product Ruling

Income tax: Palandri Winegrape Project 2005

This Addendum amends the Notice of Withdrawal for Product Ruling PR 2005/83 which issued on 1 July 2007.

The withdrawal notice for PR 2005/83 is amended as follows:

1. Paragraph 1

Omit the paragraph, substitute:

1. Product Ruling PR 2005/83 set out the Commissioner's view on the tax consequences for entities who participated in the Palandri Winegrape Project 2005 (the Project) by entering into a Lease and Management Agreement for the purpose of carrying on a commercial viticulture business. The Ruling was withdrawn on 1 July 2007 as interests in the Project were no longer being sold.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 Although withdrawn, the Ruling continues to apply to Members who were accepted to participate in the Project between 25 May 2005 and 15 June 2005. It therefore could be relied upon subject to there being no material difference in the arrangement, or in the Members' involvement in the arrangement.
3. PR 2005/83 ruled that Members could claim deductions for specified Project expenses 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 2008-09 income year.
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 constituted a material difference to the scheme described in PR 2005/83 and meant that Members were no longer carrying on their own business.

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5. For the 2008-09 year, Members may offset any losses incurred from the Project until 19 March 2009, the date the agreements were terminated. After that date, losses are no longer subject to Division 35, although no further Project fees were incurred from that date.

6. Whilst Members will not be carrying on business after the termination of their agreements, those taking the 7 or 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.

Commissioner of Taxation

12 January 2011

ATO references

NO: 1-2FUJNPT

ISSN: 1441-1172

ATOlaw topic: Income Tax ~~ Product Ruling ~~ vineyards & wineries