

PR 2006/123WA1 - Addendum to Withdrawal - Income tax: Macquarie Almond Investment 2006 - Late Growers (Post 30 June 2006)

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Addendum

Product Ruling

Income tax: Macquarie Almond Investment 2006 - Late Growers (Post 30 June 2006)

This Addendum amends the Notice of Withdrawal to Product Ruling PR 2006/123 to provide information about the consequence for Growers following the sale of the almond orchards.

PR 2006/123 withdrawal is amended as follows:

1. 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 This Product Ruling has been withdrawn in accordance with subsection 358-20(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953), which states the Commissioner may withdraw a public ruling either wholly or to an extent.
2. Product Ruling PR 2006/123 set out the Commissioner's opinion on the tax consequences for persons participating (the Growers) in the Macquarie Almond Investment 2006 – Late Growers (Post 30 June 2006) ('the Project'), a managed investment scheme, entered into for the purpose of establishing and harvesting Almond trees in Australia.
3. Product Ruling PR 2013/19 further set out the Commissioner's opinion on the tax consequences for the Growers in the Project and has also been withdrawn in accordance with subsection 358-20(1) of Schedule 1 to the TAA 1953.
4. Macquarie Alternative Assets Management Ltd (MAAML) (the Responsible Entity) advised that in agreement with the Growers the almond orchards were sold on 17 August 2015 and the Project will be wound up.
5. The past deductions claimed by Growers, as set out in PR 2006/123, will not be denied provided that the Scheme was carried out in the manner described in the ruling up until the date the lease was surrendered.
6. The revenue from the sales of the Almonds from the 2015 Crop will be treated as assessable income by the Growers in a manner consistent with the existing Ruling, in the 2016 income year.

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7. The surrender of the Project lease by MAAML, acting in its capacity as trustee for the Growers, will give rise to a capital gain on the effective date of the lease termination deeds, equal to the entire cash offer amount received by MAAML. The capital gain will be a discount capital gain.

8. Each Grower's share of the capital gain, made by MAAML on trust for the Growers from the lease surrender, is assessable income in the income year in which the CGT event occurs. MAAML will provide each Grower with a statement detailing the calculation of their share of the capital gain and the discount applied, to assist them in meeting their own capital gains tax obligations.

9. As MAAML's capital gain will be a discount capital gain, each Grower will be required to:

- Gross up their share of the discount capital gain from MAAML by multiplying that amount by two
- apply any capital losses from other sources (if any) to the reduce the gain, and
- apply the appropriate discount percentage (if any) to any remaining amount.(under Subdivision 115-C of the *Income Tax Assessment Act 1997* (ITAA 1997).

10. The appropriate percentage for a Grower who is an individual will be a 50% CGT discount, and for a Grower who is a complying superannuation entity it will be a 33^{1/3}% CGT discount (under Subdivision 115-B of the ITAA 1997).

11. Paragraphs 85 to 98 of PR 2006/123 set out how the Growers' participation in the Project constitutes the carrying on of a business of primary production by the Growers. Upon the sale of the almond orchards, on 17 August 2015, all Growers ceased to carry on a business of primary production in this project.

12. Following the surrender of the Leases, if a Grower has an outstanding loan and the interest incurred on the loans was previously deductible, interest expenditure will continue to be deductible (under section 8-1 of the ITAA 1997) even though they have ceased to carry on a business, provided Growers meet certain requirements.

13. These requirements are outlined in Taxation Ruling TR 2004/4.

14. Generally, 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. If you refinance, renegotiate or otherwise alter the purpose of the loan, the connection to the income earning activity may be broken and the interest may no longer be deductible.

2. Page status (page 1 to 4)

Omit the page status from all pages within the header.

3. Related Rulings/Determinations

Omit the references; substitute 'TR 2004/4; PR 2013/19'.

4. Legislative references

Omit the references; substitute:

- ITAA 1997 8-1
- ITAA 1997 Subdiv 115-B
- ITAA 1997 Subdiv 115-C
- TAA 1953 Sch 1 358-20(1)

5. Case references

Omit the references including heading.

This Addendum applies on and from 16 September 2015.

Commissioner of Taxation

16 September 2015

ATO references

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