



PR 2006/124W - Income tax: Palandri Winegrape Project 2005/2006 - Late Growers

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Product Ruling

Income tax: Palandri Winegrape Project 2005/2006 – Late Growers

1 This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

[Note: This is a consolidated version of this document. Refer to the ATO Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

Withdrawal

1. Product Ruling PR 2006/124 set out the Commissioner's view on the tax consequences for entities who participated as Late Growers in the Palandri Winegrape Project 2005/2006 (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 The Ruling was withdrawn on 1 July 2009 as interests in the Project were no longer being sold.

2. Although withdrawn, the Ruling continues to apply to Growers who were accepted to participate in the Project between 30 August 2006 and 31 October 2006. It therefore could be relied upon subject to there being no material difference in the arrangement, or in the Growers' involvement in the arrangement.

3. PR 2006/124 ruled that Growers 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 2010-11 income year.

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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 2006/124 and meant that Growers were no longer carrying on their own business.

5. For the 2008-09 year, Growers 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 Growers will not be carrying on business after the termination of their agreements, those funding their participation in the Project through loans with Palandri Finance Ltd 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.

Commissioner of Taxation

30 August 2006

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

IT 360; PR 2005/83; PR 2005/107;
PR 2005/109; PR 2006/3; TR 97/11;
TR 98/22; TR 2000/8; TR 2001/14

Subject references:

- borrowing expenses
- carrying on a business
- commencement of business
- fee expenses
- interest expenses
- management fees
- non-commercial losses
- producing assessable income
- product rulings
- public rulings
- tax avoidance
- taxation administration

Legislative references:

- ITAA 1936 82KL
- ITAA 1936 Pt III Div 3 Subdiv H
- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZM
- ITAA 1936 82KZMA
- ITAA 1936 82KZMB
- ITAA 1936 82KZMC
- ITAA 1936 82KZMD
- ITAA 1936 82KZME
- ITAA 1936 82KZME(1)
- ITAA 1936 82KZME(2)
- ITAA 1936 82KZME(3)
- ITAA 1936 82KZME(7)
- ITAA 1936 82KZMF
- ITAA 1936 82KZMF(1)
- ITAA 1936 Pt III Div 6
- ITAA 1936 Pt IVA
- ITAA 1936 177A

- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 17-5
- ITAA 1997 25-25
- ITAA 1997 Div 27
- ITAA 1997 Div 35
- ITAA 1997 35-10
- ITAA 1997 35-10(2)
- ITAA 1997 35-55
- ITAA 1997 35-55(1)(b)
- ITAA 1997 Div 40
- ITAA 1997 Subdiv 40-F
- ITAA 1997 40-515
- ITAA 1997 40-515(1)(a)
- ITAA 1997 40-515(1)(b)
- ITAA 1997 40-520(1)
- ITAA 1997 40-520(2)
- ITAA 1997 40-525(2)
- ITAA 1997 40-525(3)
- ITAA 1997 40-530
- ITAA 1997 40-535
- ITAA 1997 40-540
- ITAA 1997 40-545
- ITAA 1997 40-550
- ITAA 1997 Subdiv 61-J
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- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- IT(TP)A 1997 328-120
- IT(TP)A 1997 328-125
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968
- Corporations Act 2001

Case references:

- Commissioner of Taxation v. Lau (1984) 6 FCR 202; 84 ATC 4929; (1984) 16 ATR 55

ATO references

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