



PR 2007/62W - Income tax: Great Southern Plantations 2007 Project - Post 30 June Growers

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 This document has changed over time. This is a consolidated version of the ruling which was published on *6 June 2012*



Notice of Withdrawal

Product Ruling

Income tax: Great Southern Plantations 2007 Project – Post 30 June Growers

Product Ruling PR 2007/62 is withdrawn with effect from today.

1. Product Ruling PR 2007/62 sets out the Commissioner's opinion on the tax consequences for persons participating in the Great Southern Plantations 2007 Project ('the Project') by entering into a Land and Management Agreement (LMA) for the purpose of carrying on a commercial forestry project.
2. This Product Ruling has been withdrawn in accordance with subsection 358-20(1) of Schedule 1 to the *Taxation Administration Act 1953*, which states the Commissioner may withdraw a public ruling either wholly or to an extent. Where the scheme described in the ruling is materially different from the scheme actually carried out, the ruling does not have, and never had any binding effect on the Commissioner, as the scheme entered into is not the scheme ruled upon.
3. The Project was carried out in a materially different way from that described in PR 2007/62. All Head Leases associated with the Project were terminated by 20 September 2010. As a result, the Project could not be carried out to completion and PR 2007/62 has no application after 20 September 2010.

Head Land Interest

4. Under paragraphs 44 to 46 of PR 2007/62 the Responsible Entity (RE) leased Project Land under a 'Head Lease' for the purposes of carrying on the Project.
5. The 'Head Land Interests' set out the terms and conditions under which the Lessor or Grantor, would lease or grant the Project Land to the RE for the purpose of planting, tending and harvesting a plantation of Hardwoods for commercial production.

Land Interest

6. Under paragraph 47 of PR 2007/62 Growers were, pursuant to the terms of the LMA, granted an interest in a Woodlot or Woodlots by the RE to use their Woodlot(s) for the purpose of conducting their commercial forestry business for a term of approximately 12 years.

Carrying on a business

7. Under paragraph 19 of PR 2007/62 the Grower's business of primary production (business activity) commenced at the time of execution of their LMA, provided the Project was carried out as described in PR 2007/62.

8. Upon termination of the final Head Lease, all Growers ceased to have an interest in a Woodlot and therefore ceased to be carrying on a business activity.

Deferral of losses from non-commercial business activities

9. Division 35 of the *Income Tax Assessment Act 1997* (ITAA 1997) applies only to individuals, alone or in partnership, who are carrying on a business activity. Under paragraph 26 of PR 2007/62, the Commissioner conditionally undertook to exercise his discretion to allow losses incurred by individual Growers to be offset against other assessable income in the income year in which the losses arise for each income year ending 30 June 2008 to 30 June 2018.

10. The effect of the material difference identified is that a Grower ceased to be carrying on a business on 20 September 2010 and in accordance with subsection 35-5(2) of the ITAA 1997 the Commissioner's conditional exercising of his discretion does not apply for the income years ending 30 June 2012 to 30 June 2018.

Interest Deductibility

11. Paragraphs 72 to 80 of PR 2007/62 ruled on the finance options for a Grower's investment in the Project if the loan was between the Grower and the Financier or Preferred Financier. Interest expenses incurred following the material difference will continue to be deductible upon meeting the requirements outlined in *Taxation Ruling TR 2004/4 Income Tax: deductions for interest incurred prior to the commencement of, or following the cessation of, relevant income earning activities*.

Borrowing Expenses

12. Note (iv) of the table at paragraph 25 of PR 2007/62 ruled on the deductibility of the Loan Establishment Fee for Growers who used the Financier or Preferred Financier.

13. On the date the material difference occurred, an Investor may have had a balance of undeducted borrowing costs. Applying the principles in *FC of T v. Brown* 99 ATC 4600; (1999) 43 ATR 1 and *FC of T v. Jones* 2002 ATC 4135; (2002) 49 ATR 188, the borrowing costs will continue to be deductible.

Change of Responsible Entity

14. On 22 December 2010, a meeting of Growers removed the Project's original RE and appointed a replacement RE. *Taxation Determination TD 2010/7 Income tax: does a change of Responsible Entity of a registered agricultural managed investment scheme affect the tax outcomes for participants if the arrangement continues to be implemented in accordance with the relevant product ruling?* does not have application to PR 2007/62 given the material difference discussed above.

Fees paid to the replacement RE

15. Information provided to Growers from the replacement RE stated that fees paid to the replacement RE were used for the purpose of attempting to have the Head Leases reinstated.

16. A Grower was not carrying on a business at the time the fees were incurred and the fees related to a structural rather than an operational purpose. As such, the fees are considered to be capital in nature and are not deductible under section 8-1 of the ITAA 1997 (paragraph 8-1(2)(a) of the ITAA 1997).

Business related costs

17. Section 40-880 of the ITAA 1997 allows certain business capital expenditure to be deductible over 5 years if it is not otherwise deductible and if it relates to a business that is, was or is proposed to be carried on for a taxable purpose provided the deduction is not denied by some other provision.

18. Fees paid to the replacement RE to reinstate the Head Leases are considered capital in nature. However, paragraph 40-880(5)(d) of the ITAA 1997 specifically excludes a deduction under this provision where the fees incurred relate to a lease or other legal or equitable right, therefore fees paid to the replacement RE are not deductible under section 40-880 of the ITAA 1997.

CGT event

19. The fees paid to the replacement RE as discussed above are not deductible against ordinary income as they are considered to be capital in nature. The Project is a registered MIS for the purposes of the *Corporations Act 2001*.

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20. The fees paid to the replacement RE will represent the fifth element of the cost base of a CGT asset (subsection 110-25(6) of the ITAA 1997). CGT event C2 in section 104-25 of the ITAA 1997 will happen on termination of a Grower's interest in the MIS and a capital loss may arise to the Grower. The termination will need to be in accordance with the Project Constitution and the Corporations Act.

Commissioner of Taxation

6 June 2012

ATO references

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