PR 2008/21WA1 - Addendum to Withdrawal - Income tax: Barossa Vines Project 2007 - Applicant Group 2

Addendum to Withdrawal

Product Ruling

Income tax: Barossa Vines Project 2007 – Applicant Group 2

This addendum amends Product Ruling PR 2008/21W to provide an explanation to Growers of the tax consequences from the termination of the Growers business.

PR 2008/21W is amended as follows:

1. Paragraph 2

After the paragraph, insert:

> 2A. All legislative references in this withdrawal notice are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated.
>
> **Cessation of business**
>
> 2B. On 25 October 2011, Barossa Vines Ltd surrendered the leases over the land on which the Growers vineyard businesses had been established. The growers business ceased as a result of the surrender of the leases on that date.

2. Paragraph 6

(a) At the end of the paragraph, omit 'of the *Income Tax Assessment Act 1997*'.

(b) After the paragraph, insert:

> 7. The losses from the individual's business activity will not have to be deferred:
>
> - under paragraph 35-10(2) for the income year ending 30 June 2008 and later income years, if the individual meets at least one of the four business activity tests in Division 35 that apply to the business activity, and
> - for the income year ending 30 June 2010 and later income years the individual meets the income requirement test in subsection 35-10(2E) or the individual comes within the exception in subsection 35-10(4).

8. Amounts deferred under subsection 35-10(2) for the income year ending 30 June 2008 and later income years will only be deductible in a subsequent year if the business activity that gave rise to this amount, or one 'of a similar kind', is carried on in that subsequent year. For more information regarding 'Business activities of a similar kind' see paragraphs 49 to 54 of Taxation Ruling TR 2001/14 *Income tax: Division 35 - non-commercial business losses*.

9. If the activity, or one 'of a similar kind', is never carried on again, the entitlement to deduct the amount will be lost.

10. Deductions deferred under the non-commercial business activities provisions do not form part of the cost base of any asset associated with the business. They are not taken into account when calculating any capital gain or loss on the cessation of the business.

Costs after business activity ceases

11. Amounts incurred after the business activity ceased on 25 October 2011, for example, interest (refer to paragraph 13 of this ruling), may still be deductible if incurred after 25 October 2011 as such deductions are not subject to Division 35.

Deductions for Management fees, Vineyard Operating Costs, and Licence Fees

12. The Table and Notes at paragraph 25 of PR 2008/21 set out the fees and expenses on a per Vineyard Lot basis for the income year ending 30 June 2008 to 30 June 2010. As outlined in paragraph 6, Growers relying on the non-commercial loss discretion are not entitled to immediate deductions for the income year ending 30 June 2008 and later income years and losses from the Project in these years must be deferred under subsection 35-10(2), subject to the exceptions in paragraph 7 and 8 above.

Interest on loans with the Preferred Financier

13. Growers funding their participation in the Project with the Preferred Financier, as specified in paragraphs 93 to 99 of PR 2008/21, may incur interest expenses. As outlined in paragraph 6 above, Growers relying on the non-commercial loss discretion are not entitled to immediate deductions for interest expenses incurred prior to 25 October 2011 (the date the business ceased). Interest expenses from the Project incurred during this period must be deferred under subsection 35-10(2), subject to the exceptions in paragraphs 8 and 9 above. Interest expenditure incurred after the business ceased on 25 October 2011 will be deductible under section 8-1 provided growers meet certain requirements outlined in TR 2004/4 *Income tax: deductions for interest incurred prior to the commencement of, or following the cessation of, relevant income earning activities.*

Deductions for capital expenditure on Trellising, Irrigation and Establishment of Grapevines

14. The Table and Notes at paragraph 26 of PR 2008/21 set out the deductions a Grower may claim for capital expenses on a per Vineyard Lot basis for the income years ending 30 June 2008 to 30 June 2010.

15. As outlined in paragraph 6 Growers relying on the non-commercial loss discretion are not entitled to offset any loss as a result of capital expenses for the income year ending 30 June 2008 and future income years and losses from the Project in these years must be deferred under subsection 35-10(2), subject to the exceptions in paragraphs 7 and 8 above.

16. PR 2008/21 ruled generally on deductions for capital expenditure but did not specifically rule for Growers who were eligible to be small business entities and qualified for the small business concessions available. A Grower who qualified as a 'small business entity' and was entitled to claim deductions for capital expenditure under the small business concessions should seek advice regarding the tax consequences of ceasing to hold an interest in the trellising, irrigation and grapevines following the surrender of the leases.

17. Growers should refer to the Table and Notes at paragraph 26 of PR 2008/21 to determine how they originally claimed a tax deduction for the capital expense.

Trellising

18. Growers incurred capital expenditure of $358 per Vineyard Lot which is attributable to the installation of trellising. The trellising is a 'depreciating asset'. Growers stopped holding the depreciating asset when the Project leases were surrendered.

19. Growers who calculated the decline in value of the asset by using the formula in either subsection 40-70(1) or subsection 70-75(1) will need to calculate a balancing adjustment on disposal of the asset pursuant to section 40-285. Growers who allocated the asset to low value pool will need to calculate a balancing adjustment to the closing pool balance pursuant to section 40-445.

20. A capital gain or capital loss made from a CGT event (that is also a balancing adjustment event) that happens to a depreciating asset is disregarded for CGT purposes (subsection 118-24(1)) if the asset was an asset held by an individual, or if a partner, an asset of the partnership, where the decline in value of the asset was worked out under Division 40 (the decline in value of a depreciating asset).

Irrigation

21. Growers incurred capital expenditure of $302 per Vineyard Lot which is attributable to the installation of irrigation. Growers stopped holding the asset when the Project leases were surrendered.

22. Growers who claimed a deduction for the irrigation under Subdivision 40-F will need to determine whether they have a capital loss or capital gain from the disposal of the asset. A capital gain or loss from the disposal of the irrigation system is not disregarded from the application of CGT rules if it relates to a depreciating asset for which the taxpayer or another entity has deducted, or can deduct, under Subdivision 40-F (subsection 118-24(2)).

Grapevines

23. Growers who entered into the Project incurred capital expenditure of $121 per Vineyard Lot which is attributable to the establishment of the grapevines. Growers were originally entitled to claim a deduction for the decline in value of the grapevines from the time the grapevines enter their first commercial season (section 40-530, item 20). However, the grapevines did not enter into their first commercial season before the Project leases were surrendered and therefore, there is no entitlement for growers to claim a deduction for the decline in value of the grapevines.

24. Horticultural plant is a CGT asset (section 104-5). Growers disposed of the CGT asset when the leases over the land were surrendered (subsection 104-10(2)). Growers will need to calculate whether they had made a capital gain or capital loss from the disposal of the horticultural plant.

Shares

26. Shares in Barossa Vines Landholding Ltd are CGT assets (section 108-5). An amount paid by a Grower to acquire the shares is an outgoing of capital and not allowable as a deduction. The amounts paid for each share will represent the first element of the cost base of the share (subsection 110-25(2)). Any disposal of the shares by a Grower will be a CGT event and may give rise to a capital gain or loss.

Commissioner of Taxation
2 April 2014

ATO references

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