PR 2008/60W - Income tax: 2009 Willmott Forests Premium Forestry Blend Project

Notice of Withdrawal

Product Ruling

Income tax: 2009 Willmott Forests Premium Forestry Blend Project

The second addendum to Product Ruling PR 2008/60 (PR 2008/60A2), which issued in error on 11 April 2012, is withdrawn with effect from today.

1. Product Ruling PR 2008/60 sets out the Commissioner's view on the tax consequences for entities participating as Growers in the 2009 Willmott Forests Premium Forestry Blend Project (the Project) which is a forestry managed investment scheme with the purpose of establishing and tending Radiata Pine, She-oak and Silky Oak Trees for felling in Australia.

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 This Product Ruling has been withdrawn in accordance with subsection 358-20(1) of Schedule 1 to the Taxation Administration Act 1953, which states the Commissioner may withdraw a public ruling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. The Project was carried out in a materially different way from how it was described in the Product Ruling PR 2008/60, due to the fact that all trees were not planted. 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. Paragraph 26 of the Product Ruling required that all of the trees be established within 18 months of the end of the income year in which the first participant is accepted in the Project. The date the trees had to be established by was 31 December 2010. The ATO has been advised that all of the trees were not established by this date. Given this, Growers are not entitled to claim a deduction under section 394-10 of the *Income Tax Assessment Act 1997* (ITAA 1997): see subsection 394-10(4) of the ITAA 1997.

4. Paragraph 24A of Product Ruling PR 2008/60 determined that Growers were carrying on a business of primary production. Whilst a deduction is not available under Division 394 of the ITAA 1997, Growers are able to claim a deduction under section 8-1 of the ITAA 1997. Their deductions however will be subject to the prepayment rules set out in Subdivision H of Division 3 of Part III of the *Income Tax Assessment Act 1936*. For more information refer to Taxation Determination TD 2010/15.

5. Paragraphs 36 and 37 of PR 2008/60 ruled that Investors can claim deductions for interest incurred on a loan to fund their

investment in the Project if the loan was between the Investor and Commonwealth Bank of Australia. Interest expenses incurred following this withdrawal will continue to be deductible provided 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 are met.*

6. On termination, an Investor may have 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.

Commissioner of Taxation
23 May 2012

ATO references
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