

PR 2008/67W - Income tax: Gunns Plantations Woodlot Project 2009 - Option 2



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Notice of Withdrawal

Product Ruling

Income tax: Gunns Plantations Woodlot Project 2009 – Option 2

Product Ruling PR 2008/67 is withdrawn with effect from 30 June 2015.

1. Product Ruling PR 2008/67 sets out the Commissioner's opinion on the tax consequences for persons participating in the Gunns Plantations Woodlot Project 2009 – Option 2 ('the Project'), a forestry managed investment scheme, entered into for the purpose of the establishment and tending of Eucalypt 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 This Product Ruling has been withdrawn in accordance with subsection 358-20(1) of Schedule 1 to the *Taxation Administration Act 1953*, which states the Commissioner may withdraw a public ruling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.

Overview

3. The Responsible Entity, Gunns Plantations Limited (in liquidation) advised that as part of the liquidation process of this entity, the Growers' interest in the Project ('forestry interest') were disposed of, by 30 June 2015.
4. This withdrawal notice sets out the tax outcomes for Growers or their associates arising as a consequence of the disposal of their 'forestry interest'.

Assessable Income

5. For the purposes of section 394-25¹, the disposal of the Growers' 'forestry interest' is a Capital Gains Tax (CGT) event. Growers are required to declare the market value of their 'forestry interest' at the time of the CGT event in their assessable income.
6. For the purposes of section 6-5 of the ITAA 1997, Growers' are required to include their share of the harvest proceeds and other amounts payable to the Growers under the liquidation process, in their assessable income in the year they are derived.

¹ All legislative references in this withdrawal notice are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated.

7. The final amount to be distributed to the Growers by the liquidator (the Net Distribution Amount) will not be known until just prior to the distribution. This will occur when all costs and competing claims have been finalised as part of the liquidation process.

8. As a consequence, there was no simple way for Growers to determine the market value of their 'forestry interest', at the time of disposal.

9. Notwithstanding the requirement to return the market value of the forestry interest, in the assessable income year in which the CGT event happened and the requirement to return harvest proceeds and the other amounts referred to in paragraph 6 of this notice in the year in which they are derived, the Commissioner will accept that Growers in the Project, can:

- treat the Net Distribution Amount as the amount required to be returned as assessable income, and
- return the Net Distribution Amount, in their assessable income in the income tax year in which the distribution is received.

10. Class Ruling CR 2016/19 *Income tax: liquidation – Great Southern Plantation and Gunns Plantations Limited Woodlot Schemes*, sets out the tax outcomes for Growers or their associates arising as a consequence of the disposal of their 'forestry interest', in more detail.

Deductions

11. Although not relevant for the purposes of Division 394, a Grower that had intended to stay in the Project until it was completed was considered to be carrying on a business of primary production.

12. Growers in the Project that continued to hold a 'forestry interest' as defined by Division 394 up until 30 June 2015, were entitled to claim deductions for the expenditure outlined in paragraphs 28 to 31 and 35 to 38 of PR 2008/67.

13. Any expenditure that a Grower incurred prior to 30 June 2015 but did not actually pay is not deductible, because these amounts have been taken into account in calculating the Net Distribution Amount.

14. From 30 June 2015, Growers in the Project ceased to hold a 'forestry interest' and ceased to be carrying on a business of primary production, and are no longer entitled to claim deductions, with the exception of interest which may continue to be deductible. See paragraphs 17 and 18 of this notice.

Deferral of losses from non-commercial business activities

15. Division 35 only applies to individuals, alone or in partnership, in income years in which they are carrying on a business activity. In

PR 2008/67, the Commissioner conditionally undertook to exercise his discretion under paragraphs 35-55(1)(b) or 35-55(1)(c), to allow losses incurred by Growers to be offset against other assessable income in the income year in which the losses arise, for the relevant income years.

16. The Commissioner's discretion under paragraphs 35-55(1)(b) and 35-55(1)(c) is no longer required in respect to the Projects for the income year in which the Growers' interest in the Project ('forestry interest') was disposed of, and for later income years.

Interest

17. Where Growers have used loans to finance their participation in the Project, any interest incurred on the loan will continue to be deductible under section 8-1 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 satisfied.

18. The deductibility of interest on such loans is unaffected by the loss deferral rules in Division 35, from the year in which the Growers dispose of their interests in the Project, and for later income years. See paragraphs 15 and 16 of this notice.

Commissioner of Taxation

22 February 2017

References

Related Rulings/Determinations:

TR 2004/4; CR 2016/19

(1988) 19 FCR 234; 88 ATC 4627;
(1988) 19 ATR 1575

- Ronpibon Tin NL v. Federal Commissioner of Taxation (1949) 78 CLR 47; (1949) 8 ATD 431
- Fletcher & Ors v. Federal Commissioner of Taxation (1991) 173 CLR 1; 91 ATC 4950; (1991) 22 ATR 613
- Federal Commissioner of Taxation v. Roberts (1992) 37 FCR 246; 92 ATC 4380; (1992) 23 ATR 494
- Hance v. FC of T; Hannebery v. FC of T [2008] FCAFC 196; 2008 ATC 20-085
- Steele v. Federal Commissioner of Taxation (1999) 197 CLR 459; 99 ATC 4242; (1999) 41 ATR 139

Legislative references:

- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 Div 35
- ITAA 1997 35-55(1)(b)
- ITAA 1997 35-55(1)(c)
- ITAA 1997 Div 394
- ITAA 1997 394-25
- TAA 1953
- TAA 1953 Sch 1 358-20(1)

Case references:

- Australian National Hotels Ltd v. Federal Commissioner of Taxation

ATO references

NO: 1-7MS5QJG
ISSN: 2205-6114

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