



# ***PR 2008/68W - Income tax: Gunns Plantations Woodlot Project 2009 - Option 3***

 This cover sheet is provided for information only. It does not form part of *PR 2008/68W - Income tax: Gunns Plantations Woodlot Project 2009 - Option 3*

 This document has changed over time. This is a consolidated version of the ruling which was published on *20 April 2016*



# Notice of Withdrawal

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## Product Ruling

### Income tax: Gunns Plantations Woodlot Project 2009 – Option 3

Product Ruling PR 2008/68 is withdrawn with effect from today.

1. Product Ruling PR 2008/68 set out the Commissioner's opinion on the tax consequences for persons participating in the Gunns Plantation Woodlot Project 2009 – Option 3 (the Project), a forestry managed investment scheme, entered into for the purpose of the establishment and tending of Pine 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 This Product Ruling has been withdrawn in accordance with subsection 358-20(1) of Schedule 1 to the *Taxation Administration Act 1953*, which states the Commissioner may withdraw a public ruling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.
3. All legislative references in this withdrawal notice are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated.

#### Overview

4. The Responsible Entity, Gunns Plantations Limited (in liquidation) advised that as part of the liquidation process of this entity, the Growers' interests in the Project ('forestry interests') were disposed of, by 11 September 2015.
5. 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

6. For the purposes of section 394-25, the disposal of a Grower's '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.
7. For the purposes of section 6-5, 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.

8. 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.

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

10. Notwithstanding the requirement to return the market value of the forestry interest as assessable income in the year in which the CGT event happened and the requirement to return harvest proceeds and the other amounts referred to in paragraph 7 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.

11. 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'.

## **Deductions**

12. 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.

13. Growers in the Project that continued to hold a 'forestry interest', as defined by Division 394, up until 11 September 2015 were entitled to claim deductions for the expenditure outlined in paragraphs 28 to 36 of Product Ruling PR 2008/68.

14. Any expenditure that a Grower incurred prior to 11 September 2015 but did not actually pay is not deductible, because these amounts have been taken into account in calculating The Net Distribution Amount.

15. From 11 September 2015, Growers in the Project ceased to hold 'forestry interests' 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 paragraph 18.

**Deferral of losses from non-commercial business activities**

16. Division 35 only applies to individuals, alone or in partnership, in income years in which they are carrying on a business activity. In PR 2008/68, 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.

17. 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 year in which the Growers' 'forestry interests' were disposed of, and for later income years.

**Interest**

18. 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 in the year it is incurred, provided the requirements outlined in Taxation Ruling TR 2004/4 are satisfied.

19. 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 16 and 17.

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**Commissioner of Taxation**20 April 2016

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## ATO references

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