PR 2008/69W - Income tax: Gunns Plantations Woodlot Project 2009 - Blended Option

Notice of Withdrawal

Product Ruling

Income tax: Gunns Plantations Woodlot Project 2009 – Blended Option

Product Ruling PR 2008/69 is withdrawn with effect from today.

1. PR 2008/69 sets out the Commissioner's opinion on the tax consequences for persons participating in the Gunns Plantations Woodlot Project 2009 – Blended Option ('the Project'), a forestry managed investment scheme, entered into for the purpose of the establishment and tending of Eucalypt and Pine trees for felling in Australia.

Overview

2. 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.

3. 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

4. For the purposes of section 394-25[1], 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.

5. 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.

6. 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.

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

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

8. 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 5 of this withdrawal 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.

9. 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 rights, titles and interest in the Project.

Deductions

10. 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.

11. Growers in the Project that continued to hold a 'forestry interest', as defined by Division 394, up until the date they receive the final Net Distribution Amount, were entitled to claim deductions for the expenditure outlined in paragraphs 28, 30 to 31 and 35 to 39 of PR 2008/69.

12. Any expenditure that a Grower incurred prior to the date they receive the final Net Distribution Amount but did not actually pay is not deductible, because these amounts have been taken into account in calculating the Net Distribution Amount.

13. From the date they receive the final Net Distribution Amount, Growers in the Project ceased to hold 'forestry interests' and ceased 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 16 and 17 of this withdrawal notice.

Deferral of losses from non-commercial business activities

14. Division 35 only applies to individuals, alone or in partnership, in income years in which they are carrying on a business activity. In PR 2008/69, the Commissioner conditionally undertook to exercise his discretion under paragraphs 35-55(1)(b) to allow losses incurred

by Growers to be offset against other assessable income in the income year in which the losses arose, for the relevant income years.

15. The Commissioner's discretion under paragraphs 35-55(1)(b) 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

16. 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 *Income tax: deductions for interest incurred prior to the commencement of, or following the cessation of, relevant income earning activities* are satisfied.

17. 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 14 and 15 of this withdrawal notice.

Commissioner of Taxation
3 April 2019

ATO references
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