



PR 1999/24 - Income tax: Murtagh of Rutherglen No 3

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Product Ruling

Income tax: Murtagh of Rutherglen No 3

Preamble

*The number, subject heading, and the **What this Product Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a ‘public ruling’ in terms of Part IVAAA of the **Taxation Administration Act 1953**. Product Ruling PR 98/1 explains Product Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Product Ruling is about

1. This Ruling sets out the Commissioner’s opinion on the way in which the ‘tax law(s)’ identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates. In this Ruling this arrangement is sometimes referred to as the Murtagh of Rutherglen No 3 Project, or just simply as ‘the Project’ or the ‘product’.

Tax law(s)

2. The tax law(s) dealt with in this Ruling are:

- section 6-5 of the *Income Tax Assessment Act 1997* (‘ITAA 1997’);
- section 8-1 (ITAA 1997);
- section 42-15 (ITAA 1997);
- section 387-125 (ITAA 1997);
- section 387-165 (ITAA 1997);
- Part 2-25 (ITAA 1997);
- Part 3-1 (ITAA 1997);
- section 82KL of the *Income Tax Assessment Act 1936* (‘ITAA 1936’);
- section 82KZM (ITAA 1936); and
- Part IVA (ITAA 1936).

Class of persons

3. The class of persons to whom this Ruling applies is those who enter into the arrangement described below on or after the date this Ruling is made. They will have a purpose of staying in the arrangement until it is completed (i.e., being a party to the relevant agreements until their term expires), and deriving assessable income from this involvement as set out in the description of the arrangement. In this Ruling these persons are referred to as ‘Growers’.

4. The class of persons to whom this Ruling applies does not include persons who intend to terminate their involvement in the arrangement prior to its completion, or who otherwise do not intend to derive assessable income from it.

Qualifications

5. The Ruling provides this specified class of persons with a binding ruling as to the tax consequences of this product. The Commissioner accepts no responsibility in relation to the commercial viability of this product, and gives no assurance the prices charged for the product are reasonable, appropriate, or represent industry norms. A financial (or other) adviser should be consulted for such information.

6. The Commissioner rules on the precise arrangement identified in the Ruling.

7. The class of persons defined in the Ruling may rely on its contents, provided the arrangement (described below at paragraphs 12 to 25) is carried out in accordance with details described in the Ruling. If the arrangement described in the Ruling is materially different from the arrangement that is actually carried out:

- the Ruling has no binding effect on the Commissioner, as the arrangement entered into is not the arrangement ruled upon; and
- the Ruling will be withdrawn or modified.

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Date of effect

9. This Ruling applies prospectively from 12 May 1999, the date this Ruling is made. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

10. If a taxpayer has a more favourable private ruling (which is legally binding), the taxpayer can rely on the private ruling if the income year to which the private ruling relates has ended, or has commenced but not yet ended. However, if the arrangement covered by the private ruling has not begun to be carried out, and the income year to which it relates has not yet commenced, the Product Ruling applies to the taxpayer to the extent of the inconsistency only (see Taxation Determination TD 93/34).

Withdrawal

11. This Product Ruling is withdrawn and ceases to have effect after 30 June 2002. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons within the specified class who enter into the specified arrangement during the term of the Ruling. Thus, the Ruling continues to apply to those persons, even following its withdrawal, for arrangements entered into prior to withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the persons' involvement in the arrangement.

Arrangement

12. The arrangement that is the subject of this Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- Draft Murtagh of Rutherglen Prospectus No 3 to be issued by MRV Management Ltd ('the Manager') and Rutherglen Vineyard Holdings Ltd ('the Lessor');
- Murtagh of Rutherglen 1999 Lease and Management Agreement entered into by the Grower, the Manager, the Lessor and Charters Securities Ltd ('the Trustee');

- Product Ruling application received from the applicant dated 12 March 1999; and
- additional correspondence received from the applicant dated 1, 9, 21 and 23 April 1999.

Note: certain information provided by the applicant has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

13. For the purpose of describing the arrangement to which this Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower, or any associate of the Grower, will be party to. The effect of these agreements is summarised as follows.

Overview

14. This arrangement is called the 'Murtagh of Rutherglen No 3 Project'. A vineyard comprising some 170 hectares, located near Rutherglen in the North Eastern wine growing region of Victoria, has been in operation since 1997. A further 144 hectares of land adjoining the original holding was purchased in 1998 by the Manager who assigned the contract to the Lessor. Of the total holding of 314 hectares, 166 hectares representing 415 leased areas have been previously allotted under earlier prospectuses.

15. A further 133 leased areas are proposed to be offered for subscription in 1999. Growers entering into this phase of the Project will sublease land from the Lessor for a period of 12 years. The Growers purchase the vines, irrigation and trellising system that is on their leased area. Growers contract with the Manager for the management and harvesting of the vines. The minimum individual holding is one leased area, being an allotment of 0.40 hectares of land planted with an average of 666 vines. The Growers' leased areas are separately identified and a plan is attached to the Lease and Management Agreement. Growers may also subscribe for shares in Rutherglen Vineyard Holdings Ltd.

16. Growers will enter into a contract with the Manager for the purchase and establishment of vines, the establishment of an irrigation and trellising system and the management of their leased area. Growers will have an option to take possession of their grapes after harvest and be responsible for marketing and selling the grapes themselves. Where Growers do not make this election, the Manager will be authorised to consolidate their grapes on their leased areas for the purposes of marketing and sale.

Lease and Management Agreement

17. Under the Lease and Management Agreement Growers make payments for lease rental, management fees, irrigation costs, trellising and vines. Growers may also, at their option and cost, take out additional insurance for their leased areas. The Agreement is to be executed by 30 June 1999.

18. The Lessor grants the Growers a lease of a leased area (identified on the plan of the vineyard attached to the Lease and Management Agreement) and the Growers:

- will not use or permit any other person to use the leased area for any purpose other than that of commercial viticulture and the Project;
- will not erect any building or construction (whether temporary or permanent) on the leased area, except with the approval of the Lessor and for the purpose of commercial viticulture and the Project;
- will not use or permit any other person to use the leased area for residential, recreational or tourist purposes; and
- with the Lessor, consent to the Manager performing the services on the leased area on behalf of the Grower.

19. In return, the Growers have the right to pass over the leased area at any time and the Growers will at all times have full right, title and interest in the Growers' grapes produced from the leased area. At the expiration of the term, the Growers will peaceably surrender and yield up to the Lessor the leased area free and clear of rubbish and in good and substantial repair, order and condition. The trellising remains the property of the Growers.

20. The Growers appoint the Manager to plant, develop, manage and maintain the vines on the leased area and to harvest the grape produce from the leased area. The Manager accepts the appointment upon the terms and conditions contained in the Agreement and undertakes to provide the services on behalf of the Growers.

21. Unless the Growers elect to collect and market the collectable produce, the Manager is authorised to enter into a contract as agent for the Growers to collect and market the produce on their leased areas.

Fees

22. The Growers will make the following payments per leased area for the first year of the Project:

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- a management fee of \$11,814 to the Manager for the management of the vineyard for the period 30 June 1999 to 30 June 2000;
- a lease fee of \$139 to the Lessor for lease of the Growers' leased area of the vineyard for the period 30 June 1999 to 30 June 2000;
- purchase cost of \$2,030 for an automated trickle irrigation system to the Manager or its contractors and suppliers;
- a deposit for purchase and establishment of vines of \$800 to the Manager;
- purchase and installation of trellising systems of \$2,459 payable to the Manager by 31 July 1999; and
- cost of subscribing for 450 shares of \$1,575 in the Lessor, should Growers choose to do so.

23. The Growers will make the following payments per leased area in subsequent years until completion of the 12 year project period:

- a management fee to the Manager of \$3,125 for year 2 of the Project and \$2,920 in year 3. This last fee will be increased yearly by the greater of three percent or the percentage increase in the Consumer Price Index Australia (All Groups) from the immediately preceding year;
- a lease fee of \$143 to the Lessor for the leased area, thereafter increased annually by a fixed amount of three percent;
- vine establishment costs of \$2,400 payable to the Manager in three instalments of \$800 by 31 July 2000, 31 July 2001 and 31 July 2002; and
- premiums for insurance against damage to the leased area, where the Growers choose to take out such insurance.

24. A bonus will be payable to the Manager in relation to the harvest of grapes, equivalent to 50 percent of any net profit received from the sale of annual grape produce from leased areas in excess of the projected net profit predicted and set out on page 25 of the Draft Prospectus.

Finance

25. Growers can fund the investments themselves or borrow from an unassociated lending body. No entity involved in the Project is involved in the provision of financing for the Project. Nor are there any 'preferred lenders' being promoted by MRV Management Ltd or any other entity associated with the Project. MRV Management Ltd has provided an undertaking that it will not provide any financial support, nor will it have any association or involvement with any financier providing financial support, to investors wishing to participate in the Project.

Ruling

26. For Growers who invest in the Murtagh of Rutherglen No 3 Project the following deductions will be available:

- management fees paid for the services outlined in the Lease and Management Agreement will be allowable deductions to the Growers in the year incurred (section 8-1);
- rent paid by the Growers in relation to the leased area will be an allowable deduction in the year incurred (section 8-1);
- expenses incurred on irrigation will constitute allowable deductions to Growers in the year incurred and the next two years at the rate of 33.3% per annum (section 387-125);
- a deduction for the cost of vine establishment at a rate of 13% per annum will be allowable to Growers, calculated from the income year that the vines first become commercially productive (section 387-165);
- depreciation of trellising will be an allowable deduction to Growers at a rate of 20% per annum diminishing value or 13% per annum on a prime cost basis (section 42-15);
- a deduction for insurance premiums paid for the leased area covering fire, public risk or loss of profits (section 8-1); and
- a deduction for any bonus payments payable to the Manager based on harvest proceeds in the year incurred (section 8-1).

Sections 82KZM and 82KL; Part IVA

27. For Growers who invest in the Project the following provisions of the ITAA 1936 have application as indicated:

- the expenditure by Growers does not fall within the scope of section 82KZM;
- section 82KL does not apply to deny the deductions otherwise allowable to the Growers; and
- the provisions in Part IVA will not be applied to the arrangement described in this Ruling.

Purchase of shares in the Lessor

28. Where Growers elect to subscribe for shares in the Lessor, the subscription fee will not constitute an allowable deduction but will form part of the cost base of the shares and will be taken into account in determining the Growers' assessable profit, or capital gain or loss, if any, on the ultimate disposal of the shares.

Capital gains tax

29. Acquisition by Growers of the interest in the leased area and associated contractual rights, together with the acquisition of other property by the Growers under the Agreement entered into by the Growers, will constitute the acquisition of an asset to which Part 3-1 of the ITAA 97 may apply.

30. An assignment of the Growers' interest under the Agreement may result in a capital gain or loss to the Growers.

Assessability of income from the Project

31. Growers who invest in the Project will be assessable on their share of the gross proceeds arising from the Project (section 6-5).

32. Any dividends received by Growers who elect to subscribe for shares in the Lessor will be assessable to the Growers (section 6-5).

Explanations

Section 8-1: lease and management fees

33. Consideration of whether lease and management fees are deductible under section 8-1 begins with paragraph 8-1(1)(a). This view proceeds on the following basis:

- the outgoing in question must have a sufficient connection with the operations or activities that directly gain or produce the taxpayer's assessable income;
- the outgoing is not deductible under paragraph 8-1(1)(b) if it is incurred when the business has not commenced; and
- where a taxpayer contractually commits themselves to a venture that may not turn out to be a business, there can be no doubt about whether the relevant business has commenced, and hence, whether paragraph 8-1(1)(b) applies. However, that does not preclude the application of paragraph 8-1(1)(a) in determining whether the outgoing in question would have a sufficient connection with activities to produce assessable income of the taxpayer.

34. A vineyard project can constitute the carrying on of a business. Where there is a business, or a future business, the gross sale proceeds from grapes from the scheme will constitute gross assessable income in their own right. The generation of 'business income' from such a business, or future business, provides the backdrop against which to judge whether the outgoings in question have the requisite connection with the operations that more directly gain or produce this income. These operations will be the planting, tending and maintenance of vines and harvesting of the grapes.

35. Growers will be considered to be carrying on a business of a vineyard where:

- the Growers have an identifiable interest in specific growing vines coupled with a right to harvest and sell the grape produce;
- the viticultural activities are carried out on the Growers' behalf; and
- the weight and influence of the general indicators of a business, as used by the Courts, point to the carrying on of a business.

36. Under the Lease and Management Agreement, Growers have rights in the form of a lease over an identifiable area of land consistent with the intention to carry on a business of a commercial vineyard. Under the Lease and Management Agreement, Growers appoint the Manager to provide services such as planting. The Agreement gives Growers full right, title and interest in the grapes produced and the right to have the grapes sold for their benefit.

37. Under the Agreement, Growers appoint the Manager to provide services such as preplanting and planting of grape vines, the

installation of trellising and irrigation, and all operations necessary to develop and maintain mature fruit bearing vines. The Manager is also responsible for harvesting and selling the grapes.

38. The Lease and Management Agreement gives Growers an identifiable interest in specific vines and a legal interest in the land by virtue of a Lease. Growers have the right personally to market the produce attributed to their lease area, or they can elect to use the Manager to market the produce for them.

39. Growers have the right to use the land in question for horticultural purposes and to have the Manager come onto the land to carry out its obligations under the Agreement. The Growers' degree of control over the Manager, as evidenced by the Agreement and supplemented by the Corporations Law, is sufficient. Under the Project, Growers are entitled to receive regular progress reports on the Manager's activities. Growers are able to terminate arrangements with the Manager in certain instances, such as cases of default or neglect. The activities described in the Agreement are carried out on the Growers' behalf.

40. The general indicators of a business, as used by the Courts, are described in Taxation Ruling TR 97/11. Positive findings can be made from the arrangement's description for all the indicators. The independent viticulturist's report considers that the Project is realistic and commercially viable. Growers to whom this Ruling applies intend to derive assessable income from the Project. This intention is related to projections contained in the Draft Prospectus that suggest the Project should return a 'before-tax' profit to the Growers, that is, a 'profit' in cash terms that does not depend in its calculation, on the fees in question being allowed as a deduction.

41. Growers will engage the professional services of a Manager with appropriate credentials. There is a means to identify which vines Growers have an interest in. The services are based on accepted viticulture practices and are of the type ordinarily found in viticulture activities that would commonly be said to be businesses.

42. Growers have a continuing interest in the vines from the time they are acquired until the end of the Project. The vineyard activities, and hence the fees associated with their procurement, are consistent with an intention to commence regular activities that have an 'air of permanence' about them. The Growers' vineyard activities will constitute the carrying on of a business.

43. The management fees incurred in the first year of the Project associated with the vineyard activities will relate to the gaining of income from this business, and hence have a sufficient connection to the operations by which this income is to be gained from this business. They will be deductible under paragraph 8-1(1)(a). Further, no 'non-income producing' purpose in incurring the fees is identifiable from

the arrangement. No capital component is identifiable. The tests of deductibility under paragraph 8-1(1)(a) are met. The exclusions of subsection 8-1(2) do not apply.

44. Lease and management fees are pre-paid. Taxation Ruling TR 94/25 states that the facts in *Coles Myer Finance Ltd v. Federal Commissioner of Taxation* (1993) 176 CLR 640; 93 ATC 4124; (1993) 25 ATR 95 were fundamentally different from those of a prepayment and that the decision did not affect the deductibility of pre-paid expenses. The lease and management fees will be incurred in the year of payment.

Expenditure of a capital nature

45. Any part of the expenditure of Growers entering into a horticultural business that is attributable to acquiring an asset or advantage of an enduring kind is generally capital or capital in nature and will not be an allowable deduction under section 8-1. In this Project the costs of establishing the vines, irrigation and trellising are considered to be capital in nature. The fees for these expenditures are not deductible under section 8-1. However, expenditure of this nature can fall for consideration under specific capital write-off provisions of the ITAA 1997.

46. The Manager has identified the relevant expenditures that are of a capital nature. Growers entering into the Project incur and pay a separate amount to the Manager for these items amounting to \$9,264. These amounts are identified at paragraphs 22 and 23 of this Ruling.

Section 42-15: trellising expenditure

47. Growers accepted into the Project incur expenditure on trellising upon which the vines are attached and are to be used on their behalf in the operation of the vineyard business. This is attached to the land as a fixture. This expenditure is of a capital nature.

48. Under section 42-15, a taxpayer can deduct an amount for depreciation of a unit of plant used for the purpose or purposes of producing assessable income where they are the owner or quasi-owner of that plant. However, where an item is affixed to land so that it becomes a fixture, at common law it becomes part of the land and is legally, absolutely owned by the owner of the land.

49. However, it is accepted in certain circumstances that a lessee is entitled to claim depreciation where they are considered to be the owner of those improvements. Taxation Ruling IT 175 sets out the Australian Taxation Office's (ATO's) views on this issue. Where a lessee is considered to own the improvements under a state law, as detailed in the Ruling, or where they have a right to remove the fixture

or are entitled to receive compensation for the value of the fixture, the ATO accepts the lessee is entitled to claim depreciation for the fixture.

50. A Grower accepted into the Project enters into a licence for a right to occupy certain land upon which they are entitled to grow vines to conduct a business of a vineyard. Subject to the terms and conditions of the Lease and Management Agreement, they have a right to remove the trellising at the end of the Project.

51. The Manager will advise Growers of the date when the trellising is installed and begins to be used for the purpose of producing assessable income. Therefore, the cost that relates to the acquisition and installation of trellises on the land will be eligible for a depreciation deduction by the Growers under section 42-125 at a rate of 13% prime cost or 20% diminishing value from this date.

Section 387-125: irrigation expenditure

52. Section 387-125 allows a taxpayer, who is carrying on a business of primary production on land in Australia, to claim a deduction for capital expenditure on conserving or conveying water. The deduction is allowed over a three year period and applies to plant or a structural improvement primarily or principally used for the purpose of conserving or conveying water for use in a primary production business. Irrigation systems of the kind proposed would be covered by this Subdivision.

53. As the taxpayer who can claim the deduction does not have to actually own the land but can be a tenant or lessee, a deduction would be available to the Growers in the Project at a rate of 33.3% per annum for the cost of the irrigation system.

Section 387-165: horticulture expenditure

54. Section 387-165 allows capital expenditure on establishing horticultural plants for use in a horticultural business to be written off for tax purposes. Under subsection 387-170(3), the definition of 'horticulture' includes the cultivation of grapevines. For the purpose of this Subdivision, a lessee or licensee of land carrying on a business of horticulture is treated as owning the plants growing on that land rather than the actual owner of the land.

55. The write-off commences from the time the vines are used or held ready for use for the purpose of producing assessable income in commercial horticulture. The write-off deductions will commence when the vines enter their first commercial season. The Manager will advise the Growers of this event.

56. Under this Subdivision, if the effective life of the plant is more than 3 years, an annual deduction is allowable on a prime cost basis during the plant's maximum write-off period.

57. The effective life of a plant is to be determined objectively and should take into account all relevant circumstances. It is estimated that the vines will have an effective life in excess of 13 years. The write-off rate for horticultural plants with an effective life of 13 to 30 years is 13% (section 387-185).

Alternative view

58. The applicant has indicated disagreement with the view that the grapevines do not commence to be used for the purpose of producing assessable income in a horticultural business until their first commercial season, and has submitted an alternative view that the grapevines commence to be so used immediately after their establishment. This view is submitted by the applicant to be more consistent with the inclusion of propagation and cultivation within the meaning of 'horticulture' under the relevant provisions, the timing aspects of other distinctions drawn between capital and revenue costs, and the acceptance of the use of the trellises for income producing purposes from the earlier time.

Section 82KZM: prepaid expenditure

59. Section 82KZM operates to spread over more than one income year a deduction for prepaid expenditure that would otherwise be immediately deductible, in full, under section 8-1. The section applies if certain expenditure incurred under an agreement is in return for the doing of a thing under the agreement that is not wholly done within 13 months after the day on which the expenditure is incurred.

60. Under the Lease and Management Agreement, the management fee of \$11,814 per holding will be incurred on execution of the Agreement. This fee is charged for providing services to a Grower only for the period of 13 months from the execution of the Agreement. For this Ruling's purposes, no explicit conclusion can be drawn from the arrangement's description that the fee had been inflated to result in reduced fees being payable for subsequent years. The fee is expressly stated to be for a number of specified services. There is evidence this fee is for services to be provided within 13 months of incurring the expenditure in question.

61. For the purposes of this Ruling, it is accepted that no part of the fee of \$11,814 is for the Manager to do 'things' that are not to be wholly done within 13 months of the fee being incurred. On this basis, the basic precondition for the operation of section 82KZM is not

satisfied and it will not apply to the expenditure by Growers of \$11,814 per leased area.

Section 82KL

62. Section 82KL is a specific anti-avoidance provision that operates to deny an otherwise allowable deduction for certain expenditure incurred, but effectively recouped, by the taxpayer. Under subsection 82KL(1), a deduction for certain expenditure is disallowed where the sum of the 'additional benefit' plus the 'expected tax saving' in relation to that expenditure equals or exceeds the 'eligible relevant expenditure'.

63. 'Additional benefit' (see the definition of 'additional benefit' at subsection 82KH(1) and paragraph 82KH(1F)(b)) is, broadly speaking, a benefit that is additional to the benefit for which the expenditure is ostensibly incurred. The 'expected tax saving' is essentially the tax saved if a deduction is allowed for the relevant expenditure.

64. Section 82KL's operation depends, among other things, on the identification of a certain quantum of 'additional benefit(s)'. Insufficient 'additional benefits' will be provided to trigger the application of section 82KL. It will not apply to deny the deduction otherwise allowable under section 8-1.

Part IVA: general tax avoidance provision

65. For Part IVA to apply there must be a 'scheme' (section 177A); a 'tax benefit' (section 177C); and a dominant purpose of entering into or carrying out the scheme to enable the relevant taxpayer to obtain a tax benefit in connection with the scheme (section 177D).

66. The Project will be a 'scheme'. The Growers will obtain a 'tax benefit' from entering into the scheme, in the form of the tax deductions per leased area that would not have been obtained but for the scheme. However, it is not possible to conclude that the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

67. Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the sale of the grapes from the vines. Further, there are no features of the Project, such as the payment of excessive management fees and non-recourse loan financing by any entity associated with the Project that might suggest the Project was so 'tax driven', and so designed to produce a tax deduction of a certain magnitude that it would attract the operation of Part IVA. No ruling is given out on the application of Part IVA to

financing arrangements entered into between investors and other financiers in respect of lending arrangements to invest in the Project.

Section 6-5: assessable income

68. Gross sale proceeds derived from the sale of grapes harvested from the Project will be assessable income of the Growers, under section 6-5.

69. Once harvested, the Growers' grapes will in most circumstances be trading stock of the Growers. As a consequence, if grapes are on hand at the end of the income year, the Grower will need to account for that trading stock in accordance with the trading stock provisions contained in Part 2-5 of the ITAA 1997. In Taxation Ruling IT 2001, it is accepted that costs associated with the establishment of a vineyard do not form part of the trading stock ultimately produced by the vineyard.

70. Any dividend income received from the Growers' shares in the Lessor, if such shares are acquired, will also form part of the Growers' assessable income under section 6-5.

Section 8-1: insurance deductibility

71. Under the terms of the Lease and Management Agreement a Grower may elect to take out additional insurance in respect of their portion of the vineyard. Insurance premiums for fire, public risk or loss of profits are deductible. Therefore, where a Grower takes out insurance to cover these events the premium will be deductible under section 8-1.

Part 3-1: capital gains tax

72. Acquisition by the Growers of the lease interest in the land and associated contractual rights, together with the acquisition of other property under the various agreements entered into by the Growers, will constitute the acquisition of an asset to which Part 3-1 may apply. Accordingly, the expiration of the lease will constitute the disposal of those assets.

73. Unless any shares in the Lessor are trading stock of the Growers or otherwise assessable on revenue account to the Growers, a capital gain or loss will arise on the disposal of those shares.

74. In the event that the Lessor is liquidated at the conclusion of the Project, further taxation considerations arise for the Growers holding shares in the Lessor. Any distribution made to the Growers on liquidation of the Lessor would be deemed to be a dividend to the Growers, to the extent of the undistributed profits of the Lessor. This

dividend would be assessable as a normal dividend and may have franking credits attached. Further, a capital gain or loss could arise, based on the difference between the Growers' indexed cost base and the amount distributed.

Detailed contents list

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Commissioner of Taxation

12 May 1999

Previous draft:

No draft issued

Related Rulings/Determinations:

IT 175; IT 2001; PR 98/1; TD 93/34;
 TR 92/1; TR 92/20; TR 94/25;
 TR 97/11; TR 97/16

Subject references:

- capital gains tax
- carrying on a business
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Legislative references:

- ITAA 1936 82KH(1)
- ITAA 1936 82KH(1F)(b)
- ITAA 1936 82KL
- ITAA 1936 82KL(1)
- ITAA 1936 82KZM
- ITAA 1936 Pt IVA
- ITAA 1936 177A
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- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 8-1(1)(a)
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- ITAA 1997 42-15
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- ITAA 1997 Subdiv 387-B
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- ITAA 1997 Subdiv 387-C
- ITAA 1997 387-165
- ITAA 1997 387-170(3)
- ITAA 1997 387-185

Case references:

- Coles Myer Finance Ltd v. Federal Commissioner of Taxation (1993) 176 CLR 640; 93 ATC 4124; (1993) 25 ATR 95

ATO references:

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