

PR 1999/41A - Addendum - Income tax: Chateau Xanadu Vineyards Project

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Addendum

Income tax: Chateau Xanadu Vineyards Project

Product Ruling PR 1999/41 is amended with effect from today.

Add to paragraph 2 in the Tax law(s) part of the Product Ruling:

- Division 35 of the ITAA 1997.

Add to the Ruling part of the Product Ruling:

Division 35 – Deferral of losses from non-commercial business activities

Section 35-55 – Commissioner’s discretion

35.1 For a Grower who is an individual and who entered the Project between 26 May 1999 and 14 May 2000 the rule in section 35-10 may apply to the business activity comprised by their involvement in this Project. Under paragraph 35-55(1)(b) the Commissioner has decided for the income years ended 30 June 2001 to 30 June 2002 that the rule in section 35-10 does not apply to this business activity provided that the Project has been, and continues to be, carried on in a manner that is not materially different to the arrangement described in this Ruling.

35.2 This exercise of the discretion in subsection 35-55(1) will not be required where, for any year in question:

- the exception in subsection 35-10(4) applies;
- a Grower’s business activity satisfies one of the tests in sections 35-30, 35-35, 35-40 or 35-45;
- the Grower’s business activity produces assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsection 35-10(2)); or
- the Commissioner is precluded from exercising the discretion under paragraph 35-55(1)(b) because of subsection 35-55(2).

35.3 Where the exception in subsection 35-10(4) applies, the Grower’s business activity satisfies one of the tests, or the discretion in subsection 35-55(1) is exercised, section 35-10 will not apply. This

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means that a Grower will not be required to defer any excess of deductions attributable to their business activity in excess of any assessable income from that activity, i.e., any 'loss' from that activity, to a later year. Instead, this 'loss' can be offset against other assessable income for the year in which it arises.

35.4 Growers should not see the Commissioner's decision to exercise the discretion in paragraph 35-55(1)(b) as an indication that the Tax Office sanctions or guarantees the Project or the product to be a commercially viable investment. An assessment of the Project or the product from such a perspective has not been made.

Commissioner of Taxation

14 November 2001

ATO references:

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