


# ***PR 1999/47A - Addendum - Income tax: The Koorian Olives Project***

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## Addendum

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### Income tax: The Koorian Olives Project

The Applicant has provided additional information regarding the manner in which the Arrangement is to be carried out. A Supplementary Prospectus, Second Supplementary Prospectus, Third Supplementary Prospectus and Fourth Supplementary Prospectus have been issued by the Responsible Entity.

In addition, the Responsible Entity has applied for the Commissioner to rule on the operation of paragraph 35-55(1)(b) of *the Income Tax Assessment Act 1997* in relation to the Project.

#### At paragraph 12, after:

- Draft Prospectus prepared for Koorian Olives;

#### Insert:

- Supplementary Prospectus for Koorian Olives prepared and issued by Moltoni Agricultural Ltd and Koorian Land Co Ltd dated 28 September 1999;
- Second Supplementary Prospectus for Koorian Olives prepared and issued by Moltoni Agricultural Ltd and Koorian Land Co Ltd dated 20 October 1999;
- Third Supplementary Prospectus for Koorian Olives prepared and issued by Moltoni Agricultural Ltd and Koorian Land Co Ltd dated 26 May 2000;
- Fourth Supplementary Prospectus for Koorian Olives prepared and issued by Moltoni Agricultural Ltd and Koorian Land Co Ltd dated 19 June 2001;

#### At paragraph 12, delete:

- additional correspondence received from the applicant dated 12, 13, 17 and 20 May 1999.

**and replace with:**

- additional correspondence received from the applicant dated 12 May 1999, 13 May 1999, 17 May 1999, 20 May 1999, 12 December 2000 and 14 June 2001.

**At paragraph 17, delete:**

The Agreement is to be executed by 30 June 1999.

**At paragraph 23, after:**

- premiums for insurance against damage to the leased area, where the Growers choose to take out such insurance.

**Insert:**

Growers who invest in the project on or after 21 September 1999 may elect a payment option whereby the annual contribution payable in respect of a relevant year is discounted. The election of an option containing a discount will apply to reduce the subsequent years management, rent and administration fee by the relevant discount amount.

**Add to the Ruling part of the Product Ruling at paragraph 25:**

**Division 35 – deferral of losses from non-commercial business activities**

**Section 35-55 – Commissioner’s discretion**

25.1 For a Grower who is an individual and who entered the Project on or after 2 June 1999 and prior to any withdrawal of this Product Ruling 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.

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

- a Grower’s business activity satisfies one of the objective tests in sections 35-30, 35-35, 35-40 or 35-45;  
or

- the 'Exception' in subsection 35-10(4) applies.

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

25.4 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.

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**Commissioner of Taxation**27 June 2001

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ATO references:

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