

PR 1999/6WA1 - Addendum to Withdrawal - Income tax: ITC Eucalypts 1999 West Australian Project

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Addendum to Withdrawal

Product Ruling

Income tax: ITC Eucalypts 1999 West Australian Project

This Addendum amends Product Ruling PR 1999/6W to provide information about the consequences of the termination of Growers' interests in the Project land and standing timber.

PR 1999/6W is amended as follows:

1. Preamble

Omit the preamble.

2. Paragraph 1

Omit the paragraph; substitute:

1. This Product Ruling has been withdrawn in accordance with subsection 358-20(1) of Schedule 1 to the *Taxation Administration Act 1953*, which states the Commissioner may withdraw a public ruling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. Elders Forestry Management Limited (the Responsible Entity) has advised that Elders Limited has entered into a transaction which has potentially resulted in the Project being carried out in a materially different way from how it was described in Product Ruling PR 1999/6. Provided that up until the date of termination of Growers' interests in the Project land and standing timber, the Project was carried out as described in PR 1999/6, the termination does not disturb the tax treatment of Growers' previous outgoings as set out in PR 1999/6. This Withdrawal Notice sets out the tax outcomes for Growers arising as a consequence of the termination of Growers' interests in the Project land and standing timber.

2. On 18 April 2012, Elders Limited announced it had signed a conditional agreement for the sale of freehold land, assets and standing timber in the Albany and Green Triangle regions (the Transaction). The sale included forestry land and the Growers' standing timber.

3. On 4 June 2012, the Supreme Court of Victoria confirmed that the Responsible Entity was justified in amending the Project Constitution pursuant to paragraph 601GC(1)(b) of the *Corporations Act 2001* to enable the Transaction to proceed.
4. The Responsible Entity has provided the following documents to the ATO in relation to the Transaction:
 - Affidavits of Mr Kenneth Andrew Serls dated 24 April 2012 and 3 May 2012;
 - Affidavit of Mr Samuel James Davies McClure dated 24 April 2012;
 - Draft Deed of surrender of Subleases;
 - Independent expert's report and Financial Services Guide dated 24 April 2012;
 - Grower Circular dated 3 May 2012; and
 - Orders of the Supreme Court of Victoria dated 4 June 2012.
5. In accordance with paragraph 14 of PR 1999/6, the Responsible Entity had entered into a Lease over the Project land for the purpose of the scheme. The Responsible Entity had then granted each Grower an interest in land in the form of a sub-lease on execution of the Lease and Management Agreement (paragraph 16 of PR 1999/6).
6. The Transaction has resulted in the termination of the Growers' interest in land and standing timber during the year ending 30 June 2013.
7. Per paragraph 39 of PR 1999/6, the Growers' participation in the Project constitutes the carrying on of a business of primary production. This business activity ceased on the termination of the Growers' interest in Project land. As a consequence, the Commissioner's discretion under paragraph 35-55(1)(b) of the *Income Tax Assessment Act 1997* (ITAA 1997) has no application for the year ending 30 June 2013 and subsequent income years.
8. As the Growers' afforestation activities constituted the carrying on of a business, the standing timber on the land previously held by the Grower is considered to be trading stock of the Grower as per section 70-85 of the ITAA 1997.
9. The Growers' loss of interest in the trees planted for sale results in the disposal of trading stock outside of the ordinary course of business under subsection 70-90(1) of the ITAA 1997. Where this occurs a Grower is required by that provision to include in their assessable income (for the year ending 30 June 2013) the market value of that trading stock on the day of disposal.

10. The Responsible Entity has agreed to provide information to Growers to assist them determine the market value of standing timber for the purposes of these provisions.

This Addendum applies on and from 22 August 2012.

Commissioner of Taxation
22 August 2012

ATO references

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