

# ***PR 1999/92A - Addendum - Income tax: Mt Barker Vineyards Fig Tree Lane Vineyard Project***

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## Addendum

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### Income tax: Mt Barker Vineyards Fig Tree Lane Vineyard Project

#### At paragraph 12:

Delete:

- additional correspondence received from Ernst and Young dated 26 March 1999, 14, 22, 29 April 1999 and 21 July 1999; and

Replace with:

- additional correspondence received from Ernst and Young dated 26 March 1999, 14, 22, 29 April 1999 and 21 July 1999 and 12 December 2000; and

Add to the **Ruling** part of the Product Ruling after paragraph 44:

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

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

44.1. For a Grower who is an individual and who entered the Project on or after 8 September 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 year ended 30 June 2000 to 30 June 2004 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.

44.2. 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.

44.3. 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

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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.

44.4. Growers are reminded of the important statement made on Page 1 of this Product Ruling. Therefore, 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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