



# ***PR 2000/105 - Income tax: Norfolk Ridge Vineyards Project - Stage 3B***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *4 October 2000*



## Product Ruling

### Income tax: Norfolk Ridge Vineyards Project – Stage 3B

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Potential investors may wish to refer to the ATO's Internet site at <http://www.ato.gov.au> or contact the ATO directly to confirm the currency of this Product Ruling or any other Product Ruling that the ATO has issued.

#### *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 1999/95 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.*

#### **No guarantee of commercial success**

The Australian Taxation Office (ATO) **does not** sanction or guarantee this product as an investment. Further, we give no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential investors must form their own view about the commercial and financial viability of the product. This will involve a consideration of important issues such as whether projected returns are realistic, the 'track record' of the management, the level of fees in comparison to similar products, how the investment fits an existing portfolio, etc. We recommend a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential investors by confirming that the tax benefits set out below in the **Ruling** part of this document are available, **provided that** the arrangement is carried out in accordance with the information we have been given, and have described below in the **Arrangement** part of this document.

If the arrangement is not carried out as described below, investors lose the protection of this Product Ruling. Potential investors may wish to seek assurances from the promoter that the arrangement will be carried out as described in this Product Ruling.

Potential investors should be aware that the ATO will be undertaking review activities to confirm the arrangement has been implemented as described below and to ensure that the participants in the arrangement include in their income tax returns income derived in those future years.

#### **Terms of Use of this Product Ruling**

This Product Ruling has been given on the basis that the person(s) who applied for the Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Ruling.

## **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 Norfolk Ridge Vineyards Project - Stage 3B, or just simply as 'the Project'.

### **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 17-5 (ITAA 1997);
- Div 27 (ITAA 1997);
- Div 35 (ITAA 1997);
- section 42-15 (ITAA 1997);
- section 42-125 (ITAA 1997);
- section 387-55 (ITAA 1997);
- section 387-125 (ITAA 1997);
- section 387-165 (ITAA 1997);
- section 82KL of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 82KZM and 82KZMB - 82KZMD (ITAA 1936); and
- Part IVA (ITAA 1936).

### **Goods and Services Tax**

3. In this Ruling all fees and expenditure referred to include Goods and Services Tax ('GST') where applicable. In order for an entity (referred to in this Ruling as a 'Grower') to be entitled to claim input tax credits for the GST included in its expenditure, it must be registered, or required to be registered, for GST and hold a valid tax invoice.

**Business Tax Reform**

4. The Government is currently evaluating further changes to the tax system in response to the Ralph *Review of Business Taxation* and continuing business tax reform is expected to be implemented over a number of years. Although this Ruling deals with the laws enacted at the time it was issued, future tax changes may affect the operation of those laws and, in particular, the tax deductions that are allowable. Where tax laws change, those changes will take precedence over the application of this Ruling and, to that extent, this Ruling will be superseded.

5. Taxpayers who are considering investing in the Project are advised to confirm with their taxation adviser that changes in the law have not affected this Product Ruling since it was issued.

**Note to promoters and advisers**

6. Product Rulings were introduced for the purpose of providing certainty about tax consequences for investors in projects such as this. In keeping with that intention, the Tax Office suggests that promoters and advisers ensure that potential investors are fully informed of any changes in tax laws that take place after the Ruling is issued. Such action should minimise suggestions that potential investors have been negligently or otherwise misled.

**Class of persons**

7. 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'.

8. 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**

9. The Commissioner rules on the precise arrangement identified in the Ruling. If the arrangements described in the Ruling are materially different from the arrangements that are actually carried out:

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

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## **Date of effect**

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11. This Ruling applies prospectively from 4 October 2000, the date the 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).

12. 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**

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13. This Product Ruling is withdrawn and ceases to have effect after 30 June 2003. 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, who entered into the specified arrangement 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**

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14. The arrangement that is the subject of this Ruling is described below. This description incorporates the following documents:

- Application for Product Ruling dated 31 July 2000;
- The Norfolk Ridge Vineyards Project Draft Offer Information Statement (O.I.S.), undated;
- **Draft Lease and Management Agreement between Norfolk Ridge Vineyards Ltd (the Responsible Entity), Norfolk Ridge Ltd (the ‘Lessor’), and the Grower, undated;**
- Constitution between Norfolk Ridge Vineyards Ltd, Charters Securities Ltd and Norfolk Ridge Ltd; and
- Additional correspondence dated 18 February 2000, 6 April 2000 and 15 September 2000.

**Note: certain information received from Norfolk Ridge Vineyards Ltd has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.**

15. The documents highlighted are those the Growers enter into. 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 a party to, with the exception of finance agreements, to which paragraphs 43 and 44 apply. The effect of these agreements is summarised as follows.

### **Overview**

16. This arrangement is called the Norfolk Ridge Vineyards Project - Stage 3B.

Location	South West Region of Western Australia, near Mt Barker.
Type of business each participant is carrying on	A long term commercial viticulture business.
Number of hectares under cultivation	68.5 hectares
Name used to describe the product	Norfolk Ridge Vineyards - Stage 3B
Size of each Leased Area	0.16 hectares
Number of vines per hectare	1,850
Expected production	12 tonnes/hectare
The term of the investment in years	13 years
Initial cost	\$9,020
Initial cost per hectare	\$56,375
Ongoing costs	Annual Management Fees and Rent.

17. Growers applying under the Offer Information Statement, undated, enter into a Lease and Management Agreement. The arrangements are set out in the Constitution for the Project. The Lease and Management Agreement gives a Grower a lease over an identifiable area of land called a 'Leased Area' until the Project is terminated on 31 December 2013. The term of the Project is expected to be 13 years. Each Leased Area is 0.16 hectares in size.

18. The Project Land is situated in the South West Region of Western Australia, near Mt Barker. Norfolk Ridge Ltd owns the land.

19. Norfolk Ridge Ltd will lease the Leased Area to the Grower for the purpose of carrying on a long term commercial viticulture project.

20. There is no minimum subscription. Each investor may subscribe for a minimum of one Leased Area. The Responsible Entity will plant approximately 296 vines per Vinelot (1,850 per hectare) during the period up to 31 March 2001 following the execution of the Lease and Management Agreement.

21. Possible projected returns for Growers are outlined at pages 10 and 11 of the Draft Offer Information Statement. The Responsible Entity does not guarantee the success of the vineyard. Investors will be exposed to the usual business risks and agricultural risks inherent in primary production due to matters beyond the control of the Responsible Entity such as adverse weather conditions, insect attacks and variable market conditions. The projected returns are subject to the inherent risks of the long term nature of the venture. Norfolk

Ridge Vineyards Ltd has outlined these risks in the Draft Offer Information Statement for the Project. Based on the example set out in pages 10 and 11 of the Draft Offer Information Statement, a Grower could expect to achieve a pre-tax internal rate of return of 14.8% per Leased Area.

22. Growers will execute a Power of Attorney enabling the Responsible Entity, Norfolk Ridge Vineyards Ltd, to act on their behalf as required when they make an application for a Leased Area.

### **Constitution**

23. The Constitution for the Project sets out the terms and conditions under which the Responsible Entity agrees to act for the Growers and to manage the Project. The Responsible Entity will keep a register of Growers. Growers are entitled to assign their Grower's Interest in certain circumstances. The Lease and Management Agreement will be executed on behalf of a Grower following them signing the Application and a Power of Attorney Form attached to the Offer Information Statement. Growers are bound by the Constitution and the Lease and Management Agreement by virtue of their participation in the Project.

### **Interest in land**

24. A lease is granted by the Land Owner to each Grower under the terms of the Lease and Management Agreement (cl. 3.1). Growers are granted an interest in land in the form of a lease to use their Leased Area for the purpose of long term viticulture and the Project (cl. 5.2). Growers must pay rent annually to the Lessor for the term of the lease which is from the Commencement Date until 31 December 2013.

### **Lease and Management Agreement**

25. Each Grower enters into a Lease and Management Agreement with the Responsible Entity. The termination of the Project is the date on which the last of the Growers has been advised that the grape produce of the 2012/2013 crop from each leased area which is leased by the Grower has been harvested and that the relevant Lease and Management Agreement has been terminated, but in any event, is not later than 31 December 2013 (Cl. 42 of Constitution). Growers contract with the Responsible Entity to plant, develop, manage and maintain the vines. Growers pay an Initial Management Fee on application and annual Management Fees thereafter.

26. The Responsible Entity will carry out the following services under this agreement:

- Plant suitable callused cuttings or vine rootlings on the leased area;
- Cultivate, tend, train, prune, fertilise, spray, and otherwise care for the vines as when required;
- Use all reasonable measures to keep the leased area free from vermin, noxious weeds, pests and diseases;
- Maintain the leased area according to good viticultural practices; and
- Replace any vines that fail to establish or that die during the first three years of the project.

27. A Grower may elect to collect and market their own collectable produce. However, where no election is made, the Responsible Entity will harvest (cl. 17) from the date of the first commercially harvestable grape crop the grape produce grown on the vineyard at such time or times as, in the opinion of the Responsible Entity, will maximise the price receivable for such grape produce for the purpose of making quality wines. The Responsible Entity will be responsible for paying for the annual cost of public liability insurance on the Leased Area (cl. 21.1). The Grower will be responsible for additional insurances as required by the Grower such as vine and crop protection (cl. 21.2).

28. Applications for Leased Areas will not be accepted after 31 March 2001.

29. Under the Lease and Management Agreement, each Grower agrees to pay to the Responsible Entity a bonus equivalent to 50% of the value of grape produce received each year in excess of the projected total returns per Leased Area set out in the Offer Information Statement (cl. 22.1.3).

30. If the Grower elects to pay reduced management fees in years 6 and onwards, the bonus payable to the Responsible Entity is 100% of the value of grape produce received each year in excess of the projected total returns per Leased Area set out in the Offer Information Statement.

### **Fees**

31. The initial amount payable on application under the Lease and Management Agreement for the Project is \$9,020 per Leased Area. This amount includes the Management Fee deposit of \$6,050 which is payable in two instalments. The first instalment of \$550 is payable on application and the second instalment of \$5,500 is payable on

application or 31 January 2001, whichever is the later. The balance of the amount payable on application is made up of the costs of establishing and planting Rootlings of \$220, Irrigation costs of \$1,210, Trellising expenses of \$1,320 and Rent of \$220 (schedule to the Lease and Management Agreement). The services included in these fees will be provided by 30 June 2001.

32. A Management Fee of \$1,980 is payable for services to be carried out in each of the periods 1 July 2001 to 30 June 2002, 1 July 2002 to 30 June 2003 and 1 July 2003 to 30 June 2004 and is payable on 30 September in each relevant year.

33. Commencing on 1 July 2004, an indexed Management Fee is payable annually for the period 1 July to 30 June of each year, payable on 30 September in the relevant year. The amount of the annual Fee will be the amount for the immediately preceding year, increased by the greater of 3% or the percentage increase in the Consumer Price Index between the March quarter in the year of payment and the March quarter in the immediately preceding year.

34. A Grower grants and agrees to pay a bonus to the Responsible Entity equivalent to 50% of the value of grape produce received each year in excess of the projected total returns per leased area set out in the Offer Information Statement.

35. A Grower may in each year after Year 6 (2006) of the arrangement, elect to pay a reduced management fee equivalent to 50% of the management fee and in consideration grant and agree to pay an additional bonus to the Responsible Entity equivalent to 50% of the value of grape produce received each year in excess of the projected total returns per leased area set out in the Offer Information Statement.

36. Rent of \$220 is payable by the Grower on application or 31 January 2001, whichever is the later, for the period ended 30 June 2001.

37. Rent of \$220 per year, indexed annually from 1 July 2002, is payable by the Grower on 30 September each year. The amount of the annual Rent will be the amount for the immediately preceding year, increased by the greater of 3% or the percentage increase in the Consumer Price Index between the March quarter in the year of payment and the March quarter in the immediately preceding year.

38. The Viticulturist's report for the previous stages of this Project states that with appropriate establishment procedures and sound management, this Project can achieve its aims and objectives.

39. The Subscription Monies will be held in the Trust Account by the Responsible Entity under the Project's Constitution (cl. 9.6).

**Planting**

40. During the period up to 31 March 2001, the Responsible Entity will be responsible for planting suitable callused cuttings or vine rootlings on the leased area. After 30 June 2001, the Responsible Entity will maintain the lease area according to good viticultural practices. The services to be provided by the Responsible Entity over the term of the project are outlined in the Lease and Management Agreement (Item 9 of schedule).

**Harvesting**

41. The Responsible Entity will be responsible for the harvesting of the grape produce grown on the vineyard. The Harvest will commence from the date of the first commercially harvestable grape crop from the vineyard at such time or times as, in the opinion of the Responsible Entity, will maximise the price receivable for such grape produce for the purpose of making quality wines.

42. The Receipts from the sale of any grape produce sold by the Responsible Entity on behalf of Growers who have not elected to collect and market their collectable produce will be paid into one or more produce funds established by the Responsible Entity. Receipts received by the Responsible Entity are to be distributed in the following order of priority:

- any annual contributions payable by a non-electing grower that are due and unpaid (cl 20.3.1 of Lease and Management Agreement);
- payment of the portion of the Responsible Entity's bonus payable under clause 20.3.2 of Lease and Management Agreement;
- payment of the Responsible Entity's Additional Bonus; (cl. 20.3.3)
- any amount payable by a non-electing grower to the Responsible Entity under the Lease and Management Agreement; and
- to the non-electing Grower in proportion to their respective proportional interest in the net sales proceeds (cl. 20.3.5 of Lease and Management Agreement).

**Finance**

43. All Growers are required to fund their investment in the Project themselves or borrow from an independent lender.

44. This Ruling does not apply if a Grower enters into a finance agreement that includes or has any of the following features:

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' are or will be granted to the borrowers for the purpose of section 82KL or the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;
- the loan or rate of interest is non-arm's length;
- repayments of the principal and payments of interest are linked to the derivation of income from the Project;
- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender, or any associate of the lender;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- entities associated with the Project are involved or become involved in the provision of finance to Growers for the Project.

## **Ruling**

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### **Assessable income**

45. A Grower's share of the gross sales proceeds from the Project, less any GST payable on these proceeds, will be assessable income under section 6-5 ITAA 1997. Section 17-5 ITAA 1997 excludes from assessable income an amount relating to GST payable on a taxable supply.

### **Deductions where a Grower is not registered nor required to be registered for GST**

46. A Grower may claim tax deductions using the methods and Tables in paragraphs 46 and 47 where the Grower:

- participates in the Project by 30 June 2001 to carry on the business of growing grapes;

- incurs the fees shown in paragraphs 31 - 37; and
- is not registered nor is required to be registered for GST.

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<b>Fee type</b>	<b>ITAA 1997 section</b>	<b>Year 1 deductions</b>	<b>Year 2 deductions</b>	<b>Year 3 deductions</b>
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