



# ***PR 2002/144W - Income tax: Palandri America Wine Business - 2003***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *12 January 2011*

## **Product Ruling**

### **Income tax: Palandri America Wine Business - 2003**

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#### ***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**, **Previous Ruling**, **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.*

*[Note: This is a consolidated version of this document. Refer to the ATO Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]*

## **Withdrawal**

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1. Product Ruling PR 2002/144 set out the Commissioner’s view on the tax consequences for entities participating in the Palandri America Wine Business – 2003 (the Project) by entering into a Lease and Management Agreement for the purpose of carrying on a commercial viticulture and wine production business. The Ruling was withdrawn on 1 July 2006 as interests in the Project were no longer being sold.

2. Although withdrawn, the Ruling continues to apply to Members who were accepted to participate in the Project between 18 December 2002 and 19 December 2003. It may therefore be relied upon subject to there being no material difference in the arrangement, or in the Members’ involvement in the arrangement.

3. PR 2002/144 ruled that Members could claim deductions for rent, management fees and interest on loans from Palandri Finance Ltd, although the deductibility of losses was subject to the non-commercial loss rules in Division 35 of the *Income Tax Assessment Act 1997* (Division 35). The Commissioner exercised his discretion to allow losses to be offset against other assessable income until the 2004-05 income year. Losses incurred in later years were required to be deferred unless certain conditions were met (see paragraphs 64 to 66 of PR 2002/144).

4. On 24 September 2008 the Supreme Court of Western Australia ordered that the scheme be wound up. The termination of the Project's Agreements on 19 March 2009 meant that Growers were no longer carrying on their own business and, although no further Project fees were incurred, losses after that date are not subject to Division 35.

5. Whilst Members will not be carrying on business after the termination of their agreements, those taking the 10 year loan option to fund their participation in the Project may have incurred interest expenses after 19 March 2009. Where a business activity has ceased, ongoing interest will continue to be deductible unless an event or circumstance occurs to break the connection between the loan and the business activity. Where a loan is refinanced, renegotiated or the purpose of the loan is otherwise altered, the connection to the income earning activity may be broken and the interest may no longer be deductible. For more information refer to paragraph 50 of Taxation Ruling TR 2004/4 which provides guidance on what needs to be considered to determine if the necessary connection still exists following the cessation of relevant income earning activities.

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## Commissioner of Taxation

18 December 2002

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### *Previous draft:*

Not previously issued in draft form

### *Related Rulings/Determinations:*

TR 2000/8; PR 1999/95; TR 92/1;  
TR 92/20; TR 97/11; TR 97/16;  
TD 93/34; TR 98/22; IT 360

### *Subject references:*

- carrying on a business
- commencement of business
- primary production
- primary production expenses
- management fee expenses
- producing assessable income
- product rulings
- public rulings
- schemes and shams
- taxation administration
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters

### *Legislative references:*

- ITAA 1997 2-25
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 17-5
- ITAA 1997 Division 27
- ITAA 1997 Division 35
- ITAA 1997 35-10
- ITAA 1997 35-10(2)
- ITAA 1997 35-10(3)
- ITAA 1997 35-10(4)
- ITAA 1997 35-30
- ITAA 1997 35-35
- ITAA 1997 35-40
- ITAA 1997 35-45
- ITAA 1997 35-55
- ITAA 1997 35-55(1)
- ITAA 1997 35-55(1)(a)
- ITAA 1997 35-55(1)(b)
- ITAA 1997 Div 70
- ITAA 1997 70-35
- ITAA 1997 Div 328
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- ITAA 1997 328-105

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|-------------------------------|----------------------------------|
| - ITAA 1997 328-105(1)(a)     | - ITAA 1936 82KZMF               |
| - ITAA 1997 328-105(1)(b)     | - ITAA 1936 82KZMF(1)            |
| - ITAA 1997 328-285           | - ITAA 1936 Pt IVA               |
| - ITAA 1997 328-285(1)        | - ITAA 1936 177A                 |
| - ITAA 1997 328-285(2)        | - ITAA 1936 177C                 |
| - ITAA 1936 Div 3 of Part III | - ITAA 1936 177D                 |
| - ITAA 1936 82KL              | - ITAA 1936 177D(b)              |
| - ITAA 1936 82KZL             | - TAA 1953 Pt IVAA               |
| - ITAA 1936 82KZL(1)          | - Copyright Act 1968             |
| - ITAA 1936 82KZME            |                                  |
| - ITAA 1936 82KZME(2)         | <i>Case references:</i>          |
| - ITAA 1936 82KZME(3)         | - FCT v. Lau 84 ATC 4929; (1984) |
| - ITAA 1936 82KZME(4)         | 15 ATR 932                       |
| - ITAA 1936 82KZME(7)         |                                  |
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ATO references:

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