



# Addendum to Withdrawal

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## Product Ruling

### Income tax: Forestry Bond Project 2002

This Addendum amends Product Ruling PR 2002/81W to provide information about the consequences of the termination of Growers' interests in the Project land and standing timber.

#### **PR 2002/81W 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 This Product Ruling has been withdrawn in accordance with subsection 358-20(1) of Schedule 1 to the *Taxation Administration Act 1953*, which states the Commissioner may withdraw a public ruling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 2002/81. 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 2002/81, the termination does not disturb the tax treatment of Growers' previous outgoings as set out in PR 2002/81. 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, Bunbury 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. Land for the Project was ultimately sourced from the Albany and the Green Triangle regions and Tasmania. In accordance with paragraph 19 of PR 2002/81, the Responsible Entity had obtained a leasehold, profit à prendre and licence or forestry rights (interest in land) 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 or a profit à prendre on execution of the Forestry Management Agreement (paragraph 26 of PR 2002/81).
6. The interests of Growers with sub-leases over land in Tasmania are not subject to the Transaction. Any sales proceeds received by Growers will be taxed under different tax provisions depending on whether the Growers' interests are located in the Albany and/or Green Triangle regions or Tasmania.

### **Tax outcomes for non-Tasmanian interests**

7. Per paragraph 49 of PR 2002/81, the Grower's 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. The termination of the Growers' interest in land constitutes a CGT event for the purposes of section 82KZMGB of the *Income Tax Assessment Act 1936* (ITAA 1936).

9. Pursuant to subsection 82KZMGB(2) of the ITAA 1936, Growers will be required to include either the market value, or the decrease in market value of their interest in the Project, in their assessable income in the year of income in which the CGT event occurs.

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.

#### **Tax outcomes for Tasmanian interests**

11. Proceeds from the sale of standing timber located in the Albany and Green Triangle regions will be deposited into the Proceeds Fund and distributed to all Growers in accordance with the Project Constitution. The proceeds received for Tasmanian interests will be assessable income under section 6-5 of the ITAA 1997.

#### **Tax outcomes for Growers with interests in both Tasmania and the Albany or Green Triangle regions**

12. Tax outcomes for Growers with interests in both Tasmania and the Albany or Green Triangle regions will be as outlined in paragraphs 7 to 11 above.

This Addendum applies on and from 22 August 2012.

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**Commissioner of Taxation**

22 August 2012

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ATO references

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