



# ***PR 2004/47W - Income tax: Palandri America Wine Business - 2004***

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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*



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## Product Ruling

### Income tax: Palandri America Wine Business – 2004

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#### **Preamble**

*The number, subject heading, **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.*

*[**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 2004/47 set out the Commissioner's view on the tax consequences for entities participating in the Palandri America Wine Business – 2004 (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 The Ruling was withdrawn on 1 July 2006 as interests in the Project were no longer being sold.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 Although withdrawn, the Ruling continues to apply to Members who were accepted to participate in the Project between 28 April 2004 and 15 June 2004 or between 1 July 2004 and 31 March 2005. 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 2004/47 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 2005-06 income year. Losses incurred in later years were required to be deferred unless certain conditions were met (see paragraph 65 of PR 2004/47).

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**28 April 2004

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<i>Previous draft:</i>	<i>Legislative references:</i>
Not previously issued in draft form	- ITAA 1936 Pt III – Div 3
	- ITAA 1936 82KL
	- ITAA 1936 82KZL
<i>Related Rulings/Determinations:</i>	- ITAA 1936 82KZL(1)
PR 1999/95; TR 92/1; TR 92/20;	- ITAA 1936 82KZME
TR 97/11; TR 97/16; TD 93/34;	- ITAA 1936 82KZME(1)
TR 98/22; TR 2000/8;	- ITAA 1936 82KZME(2)
TR 2001/14; IT 360	- ITAA 1936 82KZME(3)
	- ITAA 1936 82KZME(4)
<i>Subject references:</i>	- ITAA 1936 82KZME(7)
- carrying on a business	- ITAA 1936 82KZMF
- commencement of business	- ITAA 1936 82KZMF(1)
- non-commercial losses	- ITAA 1936 Pt IVA
- primary production	- ITAA 1936 177A
- primary production expenses	- ITAA 1936 177C
- management fee expenses	- ITAA 1936 177D
- producing assessable income	- ITAA 1936 177D(b)
- product rulings	- ITAA 1997 Pt 2-25
- public rulings	- ITAA 1997 6-5
- schemes and shams	- ITAA 1997 8-1
- taxation administration	- ITAA 1997 17-5
- tax avoidance	- ITAA 1997 Div 27
- tax benefits under tax avoidance	- ITAA 1997 Div 35
- schemes	- ITAA 1997 35-10
- tax shelters	- ITAA 1997 35-10(2)
	- ITAA 1997 35-55

- ITAA 1997 35-55(1)(b)
- ITAA 1997 40-535
- ITAA 1997 Div 70
- ITAA 1997 70-35
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- ITAA 1997 328-105
- ITAA 1997 328-105(1)(a)
- ITAA 1997 328-105(1)(b)
- ITAA 1997 328-285(1)
- ITAA 1997 328-285(2)

- TAA 1953 Pt IVA
- Copyright Act 1968
- Corporations Act 2001

*Case references:*

- Commissioner of Taxation v. Lau (1984) 6 FCR 202; 84 ATC 4929; (1984) 16 ATR 55

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ATO references:

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