



# ***PR 2004/52W - Income tax: ITC Pulpwood Project 2004***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *5 September 2012*



## Product Ruling

### Income tax: ITC Pulpwood Project 2004

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*[Note: This is a consolidated version of this document. Refer to the 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. This Product Ruling has been withdrawn in accordance with subsection 358-20(1) of Schedule 1 to the *Taxation Administration Act 1953*, which states the Commissioner may withdraw a public ruling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 2004/52.
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. For this Transaction, Growers with interests in the Albany region whose interests are sold are referred to as 'Participating Growers'.
4. All other Growers are referred to as 'Non-Participating Growers'.
5. Provided that up until the date of sale of Growers' interests in the Project land and standing timber, the Project was carried out as described in PR 2004/52, the sale does not disturb the tax treatment of Growers' previous outgoing as set out in PR 2004/52. This Withdrawal Notice sets out the tax outcomes for all Growers arising as a consequence of the sale of Project land and standing timber in the Albany region.
6. 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.
7. The Responsible Entity has provided the following documents to the Australian Taxation Office (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.

8. In accordance with paragraph 19 of PR 2004/52, the Responsible Entity entered into a Lease over the Project land for the purpose of the scheme. The Responsible Entity then granted each Grower an interest in the land in the form of a sub-lease on execution of the Land Agreement (paragraph 31 of PR 2004/52).

9. The interests of Non-Participating Growers are not subject to the Transaction. Any sales proceeds received by Growers will be taxed under different tax provisions depending on whether they are Participating or Non-Participating Growers.

#### **Tax outcomes for Participating Growers**

10. The sale of the Growers' interest in standing timber constitutes a CGT event for the purposes of section 82KZMGB of the *Income Tax Assessment Act 1936* (ITAA 1936).

11. 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 for their interest in the Project, in their assessable income in the year of income in which the CGT event occurs.

12. 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 Non-Participating Growers**

13. Proceeds from the sale of standing timber under the Transaction will be deposited into the Proceeds Fund and distributed to all Growers in accordance with the Project Constitution. The proceeds received by Non-Participating Growers will be assessable income under section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997).

**Tax outcomes for all Growers**

14. Proceeds from the sale of standing or harvested timber that are not part of the Transaction will be deposited into the Proceeds Fund and distributed to all Growers in accordance with the Project Constitution. The proceeds received by both Participating and Non-Participating Growers will be assessable income under section 6-5 of the ITAA 1997.

15. In accordance with the changes to the Constitution for PR 2004/52, the Grower's business activity has ceased and continuing participation in the Project does not constitute the carrying on of a business of primary production. As a consequence, the Commissioner's discretion under subsection 35-55(1) of the ITAA 1997 has no application for the year ending 30 June 2013 and subsequent income years.

16. Paragraph 61 of PR 2004/52 ruled that Growers can claim deductions for interest incurred on a loan to fund their investment in the Project if the loan was between the Investor and ITC Finance Pty Ltd (now Elders Forestry Finance Pty Ltd) or the Nominated Financier. Interest expenses incurred following this withdrawal will continue to be deductible provided the requirements outlined in Taxation Ruling TR 2004/4 *Income tax: deductions for interest incurred prior to the commencement of, or following the cessation of, relevant income earning activities* are met.

**Commissioner of Taxation**

5 May 2004

*Previous draft:*

Not previously issued in draft form

*Related Rulings/Determinations:*

TR 92/1; TR 92/20; TD 93/34;  
TR 97/11; TR 97/16; TR 98/22;  
PR 1999/95; TR 2000/8;  
TR 2001/14; TD 2003/12

*Subject references:*

- advance deductions and expenses for certain forestry expenditure
- carrying on a business
- commencement of business
- fee expenses
- forestry agreement
- interest expenses
- forestry fees
- non commercial losses
- producing assessable income

- product rulings
- public rulings
- seasonally dependent agronomic activity
- taxation administration
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters
- tax shelters project

*Legislative references:*

- ITAA 1936 82KL
- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZME
- ITAA 1936 82KZME(1)
- ITAA 1936 82KZME(2)
- ITAA 1936 82KZME(3)
- ITAA 1936 82KZME(4)
- ITAA 1936 82KZME(7)
- ITAA 1936 82KZMF

- ITAA 1936 82KZMF(1)
- ITAA 1936 82KZMG
- ITAA 1936 82KZMG(1)
- ITAA 1936 82KZMG(2)
- ITAA 1936 82KZMG(3)
- ITAA 1936 82KZMG(4)
- ITAA 1936 82KZMG(5)
- ITAA 1936 Div 3 Pt III
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 17-5
- ITAA 1997 Div 27
- ITAA 1997 Div 35
- ITAA 1997 35-10
- ITAA 1997 35-10(2)
- ITAA 1997 35-55
- ITAA 1997 35-55(1)(b)
- ITAA 1997 Div 328
- ITAA 1997 328-105
- ITAA 1997 328-105(1)(a)
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- TAA 1953 Pt IVAAA
- 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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