


PR 2004/5WA1 - Addendum to Withdrawal - Income tax: Great Southern Plantations 2004 Project

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Addendum to Withdrawal

Product Ruling

Income tax: Great Southern Plantations 2004 Project

This Addendum amends Product Ruling PR 2004/5 withdrawal to provide information about the consequence for Growers following the disposal of the Grower's rights, titles and interest in the Project.

PR 2004/5W is amended as follows:

1. Preamble

Omit the preamble.

2. Paragraph 1

Omit the paragraph; substitute:

1. Product Ruling PR 2004/5 sets out the Commissioner's opinion on the tax consequences for persons participating in the Great Southern Plantations 2004 Project ('the Project'), a forestry managed investment scheme, entered into for the purpose of the establishment and tending of Eucalypt trees for felling in Australia.
2. This Product Ruling has been withdrawn in accordance with subsection 358-20(1) of Schedule 1 to the *Taxation Administration Act 1953*, which states the Commissioner may withdraw a public ruling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.

Overview

3. The Responsible Entity, Gunns Plantations Limited (in liquidation) advised that as part of the liquidation process of this entity, the Growers' rights, titles and interest in the Project were disposed of by 18 February 2016.
4. This withdrawal notice sets out the tax outcomes for Growers or their associates arising as a consequence of the disposal.

Assessable Income

5. The proceeds from the sale of their right, title and interest in the Project is in respect of the Growers' interest in the standing timber as the other associated rights and interest are considered to have no value.

6. The sale of standing timber under the liquidation process is the disposal of trading stock outside the ordinary course of business. The treatment of assessable income on disposal of trading stock outside the ordinary course of business is described in section 70-90.¹

7. By way of section 70-90, Growers are required to include the market value of that trading stock on the day of disposal, in their assessable income in the year of that disposal.

8. For the purposes of section 6-5 of the ITAA 1997, Growers are required to include their share of the harvest proceeds and other amounts payable to the Growers under the liquidation process, in their assessable income in the year they are derived.

9. The final amount to be distributed to the Growers by the liquidator (the Net Distribution Amount) will not be known until just prior to the distribution. This will occur when all costs and competing claims have been finalised as part of the liquidation process.

10. As a consequence, there was no simple way for Growers to determine the market value of their interest in the trading stock, at the time of disposal.

11. Notwithstanding the requirement to return the market value of their interest in the trading stock as assessable income in the year in which the disposal happened and the requirement to return harvest proceeds and the other amounts referred to in paragraph 8 of this notice in the year in which they are derived, the Commissioner will accept that Growers in the Project, can:

- treat the Net Distribution Amount as the amount required to be returned as assessable income, and
- return the Net Distribution Amount, in their assessable income in the income tax year in which the distribution is received.

12. Class Ruling CR 2016/19 *Income tax: liquidation – Great Southern Plantation and Gunns Plantation Limited Woodlot Schemes*, sets out the tax outcomes for Growers or

¹ All legislative references in this withdrawal notice are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated.

their associates arising as a consequence of the disposal of their rights, titles and interest in the Project.

Deductions

13. Paragraphs 61 to 73 of PR 2004/5 explain how the Growers' participation in the Project constitutes the carrying on of a business of primary production by the Growers.

14. Growers that continued to have an interest in the Project up until 18 February 2016 were entitled to claim deductions for the expenditure outlined in paragraphs 52 and 55 of PR 2004/5.

15. Any expenditure that a Grower incurred prior to 18 February 2016 but did not actually pay is not deductible, because these amounts have been taken into account in calculating the Net Distribution Amount.

16. From 18 February 2016, Growers in the Project ceased to be carrying on a business of primary production, and are no longer entitled to claim deductions, with the exception of interest which may continue to be deductible. See paragraphs 19 and 20 of this notice.

Deferral of losses from non-commercial business activities

17. Division 35 only applies to individuals, alone or in partnership, in income years in which they are carrying on a business activity. In PR 2004/5, the Commissioner conditionally undertook to exercise his discretion under paragraphs 35-55(1)(b) or 35-55(1)(c), to allow losses incurred by Growers to be offset against other assessable income in the income year in which the losses arose, for the relevant income years.

18. The Commissioner's discretion under paragraphs 35-55(1)(b) and 35-55(1)(c) is no longer required in respect to the Project for the income years in which the Growers' interest in the Project ('forestry interest') was disposed of, and for later income years.

Interest

19. Where Growers have used loans to finance their participation in the Project, any interest incurred on the loan will continue to be deductible under section 8-1 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 satisfied.

20. The deductibility of interest on such loans is unaffected by the loss deferral rules in Division 35, from the year in which the Growers dispose of their interests in the Project, and for later income years. See paragraphs 17 and 18 of this notice.

3. Related Rulings/Determinations

Omit the references; substitute 'TR 2004/4; CR 2016/19'.

4. Subject references

Omit the references.

5. Legislative references

Omit the references; substitute:

- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 Div 35
- ITAA 1997 35-55(1)(b)
- ITAA 1997 35-55(1)(c)
- ITAA 1997 70-90
- TAA 1953
- TAA 1953 Sch 1 358-20(1)

6. Case References

Omit the reference.

This Addendum applies on and from 18 February 2016.

Commissioner of Taxation

22 February 2017

ATO references

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