

PR 2005/83W - Income tax: Palandri Winegrape Project 2005

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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 Winegrape Project 2005

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**, **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

1. Product Ruling PR 2005/83 set out the Commissioner's view on the tax consequences for entities who participated in the Palandri Winegrape Project 2005 (the Project) by entering into a Lease and Management Agreement for the purpose of carrying on a commercial viticulture business. The Ruling was withdrawn on 1 July 2007 as interests in the Project were no longer being sold.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 Although withdrawn, the Ruling continues to apply to Members who were accepted to participate in the Project between 25 May 2005 and 15 June 2005. It therefore could be relied upon subject to there being no material difference in the arrangement, or in the Members' involvement in the arrangement.
3. PR 2005/83 ruled that Members could claim deductions for specified Project expenses 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 2008-09 income year.
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 constituted a material difference to the scheme described in PR 2005/83 and meant that Members were no longer carrying on their own business.

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5. For the 2008-09 year, Members may offset any losses incurred from the Project until 19 March 2009, the date the agreements were terminated. After that date, losses are no longer subject to Division 35, although no further Project fees were incurred from that date.

6. Whilst Members will not be carrying on business after the termination of their agreements, those taking the 7 or 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.

Commissioner of Taxation

25 May 2005

<i>Previous draft:</i>	- ITAA 1936 82KZL(1)
Not previously issued as a draft	- ITAA 1936 82KZM
	- ITAA 1936 82KZMA
<i>Related Rulings/Determinations:</i>	- ITAA 1936 82KZMB
IT 360; PR 1999/95; TD 93/34;	- ITAA 1936 82KZMC
TR 92/1; TR 92/20; TR 97/11;	- ITAA 1936 82KZMD
TR 97/16; TR 98/22; TR 2000/8;	- ITAA 1936 82KZME
TR 2001/14	- ITAA 1936 82KZME(1)
	- ITAA 1936 82KZME(2)
<i>Subject references:</i>	- ITAA 1936 82KZME(3)
- borrowing expenses	- ITAA 1936 82KZME(4)
- carrying on a business	- ITAA 1936 82KZME(7)
- commencement of business	- ITAA 1936 82KZMF
- fee expenses	- ITAA 1936 82KZMF(1)
- interest expenses	- ITAA 1936 Pt III Div 6
- management fees	- ITAA 1936 Pt IVA
- non commercial losses	- ITAA 1936 177A
- producing assessable income	- ITAA 1936 177C
- product rulings	- ITAA 1936 177D
- public rulings	- ITAA 1936 177D(b)
- taxation administration	- ITAA 1997 6-5
- tax avoidance	- ITAA 1997 8-1
	- ITAA 1997 17-5
	- ITAA 1997 25-25
<i>Legislative references:</i>	- ITAA 1997 Div 27
- ITAA 1936 82KL	- ITAA 1997 Div 35
- ITAA 1936 Pt III Div 3 Subdiv H	- ITAA 1997 35-10
- ITAA 1936 82KZL	- ITAA 1997 35-10(2)

- ITAA 1997 35-55
 - ITAA 1997 35-55(1)(b)
 - ITAA 1997 Div 40
 - ITAA 1997 Subdiv 40-F
 - ITAA 1997 40-515
 - ITAA 1997 40-515(1)(a)
 - ITAA 1997 40-515(1)(b)
 - ITAA 1997 40-520(1)
 - ITAA 1997 40-520(2)
 - ITAA 1997 40-525(2)
 - ITAA 1997 40-525(3)
 - ITAA 1997 40-530
 - ITAA 1997 40-535
 - ITAA 1997 40-540
 - ITAA 1997 40-545
 - ITAA 1997 40-550
 - ITAA 1997 Subdiv 61-J
- ITAA 1997 108-5
 - ITAA 1997 110-24(2)
 - ITAA 1997 Div 328
 - ITAA 1997 328-105
 - ITAA 1997 328-180
 - 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

ATO references

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