


PR 2006/58WA1 - Addendum to Withdrawal - Income tax: 2006 Timbercorp Avocado Project - Post 30 June Growers

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Addendum to Withdrawal

Product Ruling

Income tax: 2006 Timbercorp Avocado Project – Post 30 June Growers

This Addendum amends Product Ruling PR 2006/58 withdrawal to provide information about the consequence for Growers following the appointment of a replacement Responsible Entity for the 2006 Timbercorp Avocado Project – Post 30 June Growers (the Project).

PR 2006/58 withdrawal 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 This Product Ruling has been withdrawn in accordance with subsection 358-20(1) of Schedule 1 to the *Taxation Administration Act 1953*, which states the Commissioner may withdraw a public ruling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. Where the scheme described in the ruling is materially different from the scheme actually carried out, the ruling does not have any binding effect on the Commissioner, as the scheme entered into is not the scheme being ruled upon.

2. Provided that up until 12 October 2009 the Project was carried out as described in PR 2006/58, the events described below do not disturb the tax treatment of the Grower's previous outgoings, up until 12 October 2009, as set out in PR 2006/58.

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

Overview

4. Product Ruling PR 2006/58 sets out the Commissioner's opinion on the tax consequences for persons participating in the Project, a horticultural managed investment scheme, entered into for the purpose of growing and harvesting avocados.

PR 2006/58

5. On 12 October 2009, Timbercorp Securities Ltd (in Liquidation) was replaced by Food and Beverage Australia Ltd (FABAL) as the responsible entity (RE) for the Project, following a resolution passed at a meeting of Growers.
6. FABAL advised that Growers voted in favour of a series of transactions resulting in the reduction in interest size and changes to the fee structure.
7. These transactions constitute material changes of Product Ruling PR 2006/58, which means PR 2006/58 has no binding effect on the Commissioner after 12 October 2009.
8. This withdrawal notice sets out the taxation treatment of expenditure made by Growers following the appointment of FABAL as RE for the Project on 12 October 2009.

Deductions for Management Fees, Licence Fees, Interest, Loan Application Fee and Marketing Costs

9. The Table and Notes at paragraph 69 of PR 2006/58 sets out the fees and expenses on a per Avolot basis for the income years ending 30 June 2007 to 30 June 2009. For the income year ending 30 June 2009, and for the period from 1 July 2009 until the appointment of FABAL as RE on 12 October 2009 fees and expenses incurred by Growers will be deductible as outlined in PR 2006/58, subject to being deferred under subsection 35-10(2).
10. Although not covered by PR 2006/58, the Management Fees, Licence Fees, Interest, Loan Application Fee and Marketing Costs incurred by Growers following the appointment of FABAL as RE on 12 October 2009 should continue to be deductible provided Growers continue to hold an interest in their Avolots in the Project for the purpose of growing and harvesting avocados, subject to being deferred under subsection 35-10(2).

Horticultural plants

11. Paragraph 73 to 75 of PR 2006/58 provides that a deduction will be available under paragraph 40-515(1)(b) for the decline in value of Avocado Trees as they are horticultural plants. As per section 40-530, item 2, the deduction is allowable when the Avocado Trees enter their first commercial season. Growers will continue to be entitled to claim a deduction for Avocado Trees, provided they have a licence interest over the land on which the Trees are attached (Avolots) and they continue to carry on a business of horticulture on the land. FABAL will obtain advice for Growers regarding the amount of tax deduction they are entitled to each year, subject to being deferred under subsection 35-10(2).

Division 35 – deferral of losses from non-commercial business activities***Section 35-55 – Previous exercise of Commissioner’s discretion***

12. At paragraph 76 of PR 2006/58 the Commissioner exercised his non-commercial loss discretion in paragraph 35-55(1)(b) for Growers who are individuals, alone or in partnership, and:

- not Joint Venturers, and have taken a minimum allocation of 3 Avolots, for the income years ending 30 June 2007 to 30 June 2008
- Joint Venturers, and have taken a minimum allocation of 7 Avolots, for the income year ending 30 June 2007.

13. Growers relying on the discretion are not entitled to immediate deductions for the income years ending 30 June 2008 for Joint Venture Growers, or 30 June 2009 for individuals who are not Joint Venturers, and later income years. Losses from the Project in these years must be deferred under subsection 35-10(2), unless the Commissioner has exercised his discretion in paragraph 14 to 20 below.

Income years where allowable deductions exceed assessable income

14. Information provided to the Australian Taxation Office (ATO) indicates all Growers in the Project made a loss (allowable deductions exceed assessable income) from their business activity in the income years ending 30 June 2007, 30 June 2008, 30 June 2009, 30 June 2012 and 30 June 2013. However, some Growers may have declared a tax profit (assessable income greater than allowable deductions) in their income tax returns for the income years ending 30 June 2010 and 30 June 2011, before deducting deferred losses.

15. Growers who did not declare a tax profit from their Avolot business activity in their income tax returns for both the years ending 30 June 2010 and 30 June 2011 are not entitled to any further exercise of the Commissioner’s discretion under subsection 35-55(1), other than as outlined in paragraph 76 of PR 2006/58 and paragraph 12 above. These Growers must defer losses from the Project under subsection 35-10(2) for the income years the Commissioner has not exercised the non-commercial loss discretion.

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Profit in the years ending 30 June 2010 and 30 June 2011

16. Growers who declared a tax profit (assessable income greater than allowable deductions) in their income tax returns for the income years ending 30 June 2010 and 30 June 2011 may have losses arising from their participation in the Project offset due to special circumstances.

17. For these Growers, the Commissioner will exercise the discretion in paragraph 35-55(1)(a) for the income years ended 30 June 2012 and 30 June 2013.

18. The exercise of the discretion in the income year ending 30 June 2012 will enable losses deferred in the income years ending 30 June 2009 for individual Growers, and 30 June 2008 and 30 June 2009 for Joint Venture Growers, that were not claimed in their income tax returns for the income years ending 30 June 2010 or 30 June 2011, as well as losses in the income year ending 30 June 2012, to be claimed in the year ending 30 June 2012. This is because these Growers would have satisfied the profits test (income in 3 of the past 5 years) if it were not for the special circumstances occurring in the income year ending 30 June 2012. That is, profit in the income years ending 30 June 2010 and 30 June 2011 as well as a projected profit in income year ending 30 June 2012 if it were not for special circumstances.

19. The exercise of the discretion in the income year ending 30 June 2013 will enable losses arising in this year to be claimed. This is because these Growers would have satisfied the profits test if it were not for the special circumstances occurring in the income year ending 30 June 2013. That is, profit in the income years ending 30 June 2010 and 30 June 2011 as well as a projected profit in income year ending 30 June 2013 if it were not for special circumstances

20. As outlined in paragraph 15 above, Growers who did not include a tax profit in their tax returns for both the income years ending 30 June 2010 and 30 June 2011, before deducting deferred losses, are not entitled to the Commissioner's discretion for special circumstances in the income years ending 30 June 2012 or 30 June 2013. This is because they would not have satisfied the profits test if it were not for special circumstances.

3. References

Omit the references.

The Addendum applies on and from 12 October 2009.

Commissioner of Taxation

3 September 2014

ATO references

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