


# ***PR 2007/64W - Income tax: 2007 Timbercorp Avocado & Fruit Project - Post 30 June Growers***

 This cover sheet is provided for information only. It does not form part of *PR 2007/64W - Income tax: 2007 Timbercorp Avocado & Fruit Project - Post 30 June Growers*

 This document has changed over time. This is a consolidated version of the ruling which was published on *27 August 2014*



## Notice of Withdrawal

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### Product Ruling

### Income tax: 2007 Timbercorp Avocado & Fruit Project – Post 30 June Growers

Product Ruling PR 2007/64 is withdrawn with effect from today.

1. Product Ruling PR 2007/64 sets out the Commissioner's opinion on the tax consequences for persons participating in the 2007 Timbercorp Avocado and Fruit Project – Post 30 June Growers (the Project), a horticultural managed investment scheme, entered into for the purpose of growing and harvesting avocados and fruit.
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 This Product Ruling has been withdrawn in accordance with subsection 358-20(1) of Schedule 1 to the *Taxation Administration Act 1953*, which states the Commissioner may withdraw a public ruling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. 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.
3. Provided that up until 3 March 2010 the Project was carried out as described in PR 2007/64, the events described below do not disturb the tax treatment of the Grower's previous outgoings, up until 3 March 2010, as set out in PR 2007/64.
4. All legislative references in this withdrawal notice are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise stated.

### Overview

5. On 25 June 2009 Growers in the Project voted to replace Timbercorp Securities Ltd (in Administration) with Huntley Management Ltd as Responsible Entity (RE) for the Project.
6. On 3 March 2010 Growers in the Project voted to replace Huntley Management Ltd with Food and Beverage Australia Ltd (FABAL) as RE for the Project. Growers also voted to accept a series of transactions that changed the fee structure and reduced the size of Grower Lots. These transactions constitute material changes of Product Ruling PR 2007/64.
7. On 31 January 2014 operations ceased and scheme leases were returned to the landowners, resulting in the termination of the Grower's Lot Licence Agreements.

8. This withdrawal notice sets out the tax outcomes for Growers following the appointment of FABAL as RE for the Project on 3 March 2010 and the termination of the Grower's Lot Licence Agreements on 31 January 2014.

## **Carrying on a business**

9. Paragraph 19 of PR 2007/64 explains how the Growers' participation in the Project constitutes the carrying on of a business of primary production by the Growers. Upon termination of the Grower's Lot Licence Agreements on 31 January 2014, all Growers ceased to have an interest in the Project and therefore ceased to carry on a business of primary production.

## **Deductions for Management Fees, Licence Fees, Interest, Loan Application Fee and establishment of Trees**

10. The Table and Notes at paragraph 25 of PR 2007/64 sets out the fees and expenses on a per Lot basis for the income years ending 30 June 2008 to 30 June 2010. As outlined in paragraph 16 to 19 below, Growers relying on the non-commercial loss discretion are not entitled to immediate deductions for the income years ending 30 June 2009 for individuals who are Joint Venturers or 30 June 2010 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).

11. Although not covered by PR 2007/64, the Management Fees, Licence Fees, Interest, Loan Application Fee and establishment of Trees incurred by Growers following the appointment of FABAL as RE on 3 March 2010 should continue to be deductible up until the Grower's Lot Licence Agreements were terminated on 31 January 2014, subject to being deferred under subsection 35-10(2).

12. Interest expenditure incurred after 31 January 2014 will be deductible under section 8-1 provided Growers meet certain 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.

## **Establishment of Trees**

13. Note (vii) of paragraph 25 of PR 2007/64 provides that a deduction will be available under paragraph 40-515(1)(b) for the decline in value of avocado, mango and citrus trees as they are horticultural plants. As per section 40-530, item 2, the deduction is allowable when the avocado, mango and citrus trees enter their first commercial season.

14. No deduction is available for horticultural plants following the termination of the Grower's Lot Licence Agreements on 31 January 2014. From this date, Growers' ceased carrying on a business of primary production and no longer had an interest in Trees.

15. Deductions for horticultural plants on or before 31 January will be subject to deferral under subsection 35-10(2) where Growers are relying on the non-commercial loss discretion.

#### **Deferral of losses from non-commercial business activities**

16. Division 35 only applies to individuals, alone or in partnership, in income years in which they are carrying on a business activity. Under paragraph 27 of PR 2007/64, the Commissioner conditionally undertook to exercise his discretion under paragraph 35-55(1)(b) to allow losses incurred by Growers to be offset against other assessable income in the income year in which the losses arise for:

- non Joint Venturers, who have taken a minimum allocation of 3 Lots, for the income years ending 30 June 2008 to 30 June 2009; and
- Joint Venturers, who have taken a minimum allocation of 8 Lots, for the income year ending 30 June 2008.

17. The Project did not see Grower's return a profit in any income year. Therefore, Growers relying on the non-commercial loss discretion, after the income years exercised above, are required to defer losses under subsection 35-10(2) for each subsequent income year until the business activity ceased on 31 January 2014. This includes deductions in excess of assessable income for the period from 1 July 2013 until 31 January 2014.

18. Amounts deferred under subsection 35-10(2) will only be deductible in a subsequent year if the business activity that gave rise to this amount, or one 'of a similar kind', is carried on in that subsequent year. For more information regarding 'Business activities of a similar kind' see paragraphs 49 to 54 of Taxation Ruling TR 2001/14.

19. If the activity, or one 'of a similar kind', is never carried on again, the entitlement to deduct the amount will be lost.

#### **Amounts incurred after business activity ceases – Interest**

20. Amounts incurred by Growers after 31 January 2014, for example interest, could be deductible – refer paragraph 12 above. Amounts incurred after the business activity has ceased are not subject to deferral under subsection 35-10(2).

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21. The Table and Note (v) at paragraph 25 of PR 2007/64 ruled that Growers can claim deductions for interest incurred under a loan agreement with Timbercorp Finance Pty Ltd as described at paragraphs 83 to 90 of PR 2007/64.

22. Growers relying on the non-commercial loss discretion are not entitled to immediate deductions for interest expenses incurred prior to the date the business ceased on, 31 January 2014. Interest expenses from the Project incurred during this period must be deferred under subsection 35-10(2).

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**Commissioner of Taxation**

27 August 2014

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ATO references

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