PR 2008/22W - Income tax: Barossa Vines Project 2007 - Applicant Group 2 (using finance from Barossa Vines Limited)

Notice of Withdrawal

Product Ruling

Income tax: Barossa Vines Project 2007 – Applicant Group 2 (using finance from Barossa Vines Limited)

Product Ruling PR 2008/22 is withdrawn with effect from today.

1. Product Ruling PR 2008/22 set out the Commissioner's opinion on the tax consequences for a defined class of entities participating in the Barossa Vines Project 2007 – Applicant Group 2 (the Project) using finance from Barossa Vines Ltd. The Project is a viticultural managed investment scheme with the purpose of establishing and maintaining a vineyard and producing wine grapes for sale.

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 This Product Ruling has been withdrawn in accordance with subsection 358-20(1) of Schedule 1 to the *Taxation Administration Act 1953*, which states the Commissioner may withdraw a public ruling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, and never had any binding effect on the Commissioner, as the scheme entered into is not the scheme ruled upon. The Project was carried out in a materially different way from that described in PR 2008/22.

3. Under paragraphs 59 to 63 of PR 2008/22, the Responsible Entity was required to carry out certain services under the Management Agreement on behalf of Growers. In particular, it was required to:

- obtain and plant healthy Grapevine rootlings on each Grower's Vineyard Lot by 30 June 2008;
- establish, manage and maintain the Grower's Vineyard Lot in accordance with good viticultural practices;
- install appropriate irrigation equipment by 30 June 2008
- operate the irrigation system in order to irrigate the Grower's Vineyard Lots; and
- replace and replant any of the Grapevine rootlings which died during the first 12 months following planting.

4. The Responsible Entity failed to complete or carry out these services to the extent required which resulted in a significant delay in the establishment of the vineyard and consequently, the production of assessable income.

5. Under paragraph 30 of PR 2008/22, the Commissioner conditionally undertook to exercise his discretion to allow losses incurred by individual Growers, alone or in partnership, during each income year ending 30 June 2008 to 30 June 2012 to be offset against other assessable income in the income year in which the losses arise.

6. The effect of the material differences identified is that the Commissioner is not satisfied that the conditions have been met to exercise his discretion. Growers relying on the discretion are not entitled to immediate deductions for the income years ending 30 June 2008 to 30 June 2012 and losses from this activity in these years must be deferred under subsection 35-10(2) of the *Income Tax Assessment Act 1997*.

Commissioner of Taxation
15 February 2012

ATO references

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