

PR 2008/23A2 - Addendum - Income tax: Piangil Grower Project - 2008

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Addendum

Product Ruling

Income tax: Piangil Grower Project – 2008

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Product Ruling PR 2008/23 to exercise the Commissioner's discretion under Section 35-55 of the *Income Tax Assessment Act 1997* for the financial years ended 30 June 2014 and 30 June 2015, provided certain conditions are met. It also amends Product Ruling PR 2008/23 to correct errors in paragraph referencing.

PR 2008/23 is amended as follows:

1. Paragraphs 6 and 18

Omit 'paragraphs 30 to 112'; substitute 'paragraphs 30 to 109'.

2. Paragraph 23

Omit 'paragraphs 93 to 112'; substitute 'paragraphs 90 to 109'.

3. Paragraph 24

Omit 'paragraphs 126 and 127'; substitute 'paragraphs 123 and 124'.

4. Paragraph 28

After the paragraph insert:

28A. For the financial years ending **30 June 2014 and 30 June 2015**, the Commissioner will exercise the discretion in subsection 35-55(1) once the following conditions are satisfied:

- the Grower carried on their business of almond growing during the financial year,
- the business activity that is carried on is not materially different to that in the scheme described in paragraphs 30 to 109, and
- the Grower has incurred a taxation loss for the income year from carrying on that business activity.

28B. If these conditions are met for the financial years ending 30 June 2014 and 30 June 2015, the Commissioner will exercise the discretion under:

- paragraph 35-55(1)(b) for a Grower in the Project who satisfies the income requirement in subsection 35-10(2E), and
- paragraph 35-55(1)(c) for a Grower in the Project who does not satisfy the income requirement in subsection 35-10(2E).

28C. In any year where the discretion is not exercised, losses incurred by a Grower will be subject to the loss deferral rule in section 35-10 and the Grower will not be able to offset the losses from the Project against other assessable income.

28D. Note that the discretion has not been exercised for Growers who incur interest expenditure in relation to the Project. Such Growers are subject to the loss deferral rules in section 35-10.

5. Paragraph 29

Omit 'paragraphs 130 and 131'; substitute 'paragraphs 125 and 126'.

6. Paragraph 30

Omit last two dot points; insert:

- Executed Lease Agreement (Trust Head Lease) between Sandhurst Trustees Limited (the Custodian of the Asset Trust – 2008) and Sandhurst Nominees (Victoria) Limited (the sub –custodian of the Project) and AIL (as the Responsible Entity of the Project), dated 15 June 2008;
- Executed **Allotment Sub-Lease Agreement** between AIL (as the Responsible Entity of the Project) and Sandhurst Nominees (Victoria) Limited (the sub-custodian of the Project), and each Grower, dated 15 June 2008;
- Report dated February 2013 titled 'Orchard Inspection and General Discussion on Recent Yield Variability within Australian Almond Orchards', received 8 April 2014;
- Report dated December 2013 titled 'Independent Assessment of Almond Investors Limited Orchards at Piangil', received 8 April 2014; and
- Piangil Grower Project - 2008 After Tax Analysis for a Grower for the financial years ended 30 June 2014 through 30 June 2025, received 8 April 2014.

7. Paragraph 85

Omit from the 5th dot point 'paragraph 87'; substitute 'paragraph 85'.

8. Paragraph 134

After the paragraph; insert:

134A. The Responsible Entity advised on 8 April 2014 that the almond growing business of Growers would not produce a tax profit in the financial years ending 30 June 2014 or 30 June 2015, and requested the Commissioner extend his discretion to allow losses to be claimed in these financial years. The Responsible Entity has forecast that Growers will make tax profits in each of the financial years ending 30 June 2016 to 30 June 2025. The Commissioner accepts that the period of the requested extension is within the lead time for the almond growing industry.

134B. Where, in the financial years ended 30 June 2014 and/or 30 June 2015, a Grower with income for non-commercial loss purposes of less than \$250,000 (that is, the Grower satisfies the income requirement in subsection 35-10(2E)) incurs a loss from carrying on their business activity the discretion in subsection 35-55(1)(b) is exercised for that year, because the Commissioner has determined:

- it is because of its nature that the business activity of the Grower will not satisfy one of the four tests in Division 35, and
- there is an objective expectation that within a period that is commercially viable for the almond growing industry, the Grower's business activity will satisfy one of the four tests set out in Division 35 or produce assessable income for a financial year greater than the deductions attributable to it for that year (apart from the operation of subsections 35-10(2) and (2C)).

134C. Where, in the financial year ended 30 June 2014 and/or 30 June 2015, a Grower with income for non-commercial loss purposes of \$250,000 or more (that is, the Grower does not satisfy the income requirement in subsection 35-10(2E)) incurs a loss from carrying on their business activity, the discretion in paragraph 35-55(1)(c) is exercised for that year, because the Commissioner has determined:

- it is because of its nature that the business activity of the Grower will not produce assessable income greater than the deductions attributable to it, and

- there is an objective expectation that within a period that is commercially viable for the almond growing industry, the Grower's business activity will produce assessable income for a financial year greater than the deductions attributable to it for that year (apart from the operation of subsections 35-10(2) and (2C)).

134D. The exercise of the Commissioner's discretion under paragraph 35-55(1)(b) or 35-55(1)(c) is conditional on the Project being carried on the manner described in paragraphs 30 to 109 of this Ruling during the financial years specified. If the Project is carried out in a materially different way to that described in this Ruling, a Grower will need to apply for a private ruling on the application of section 35-55 to those changed circumstances.

134E. In each individual year where the Commissioner's discretion is exercised, a Grower within the meaning of either paragraph 134B or paragraph 134C of this Ruling, who would otherwise be required to defer a loss arising from their participation in the Project under section 35-10 until a later financial year, is able to offset that loss against their other assessable income.

134F. Note that the discretion under Division 35 has not been exercised under this ruling for Growers who incur interest expenditure in relation to the Project, because there is no objective expectation that these Growers will satisfy one of the four tests set out in Division 35 or produce assessable income in that year greater than the deductions attributable to the Project within a period that is commercially viable for the almond industry, that is, by the financial year ended 30 June 2016. Growers who incur interest expenditure (or other expenses not within the scope of the ruling) may apply for a private ruling on the application of subsection 35-55(1).

9. Legislative references

Insert:

- ITAA 1997
- ITAA 1997 35-10(2C)
- ITAA 1997 35-10(2E)
- ITAA 1997 35-55(1)
- ITAA 1997 35-55(1)(c)

This Addendum applies on and from 8 October 2014.

Commissioner of Taxation

8 October 2014

ATO references

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