


PR 2008/61 - Income tax: GlenKara Estate Vineyard Project - Stage 2A

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Product Ruling

Income tax: GlenKara Estate Vineyard Project – Stage 2A

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! This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law).

You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

No guarantee of commercial success

The Tax Office **does not** sanction or guarantee this product. Further, we give no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. We recommend a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out in the **Ruling** part of this document are available, **provided that** the scheme is carried out in accordance with the information we have been given, and have described below in the **Scheme** part of this document. If the scheme is not carried out as described, participants lose the protection of this Product Ruling.

Terms of use of this Product Ruling

This Product Ruling has been given on the basis that the entity(s) who applied for the Product Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Product Ruling.

What this Ruling is about

1. This Product Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified in the Ruling section (below) apply to the defined class of entities, who take part in the scheme to which this Ruling relates. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997). In this Product Ruling this scheme is referred to as the GlenKara Estate Vineyard Project – Stage 2A or simply as 'the Project'.

Class of entities

2. This part of the Product Ruling specifies which entities can rely on the tax benefits set out in the Ruling section of this Product Ruling and which entities cannot rely on those tax benefits.

3. The class of entities who can rely on those tax benefits are referred to as Growers. Growers will be those entities who were specifically identified in paragraph 40 of Product Ruling PR 1999/84 and who, on or after 23 June 1999 and on or before 30 June 1999, entered into the specified scheme that is set out in paragraphs 12 to 38 of that Ruling. They must have had a purpose of staying in the scheme until its completion (that is, being a party to the relevant agreements until their term expired), and deriving assessable income from this involvement.

4. The class of entities who can rely on the tax benefits set out in the Ruling section of this Product Ruling does **not** include entities who:

- were accepted into this Project before 23 June 1999 or after 30 June 1999; or
- participated in the scheme through offers made other than through the Prospectus.

Qualifications

5. The class of entities defined in this Product Ruling may rely on its contents provided the scheme that was actually carried out has been carried out in accordance with the scheme described in paragraphs 12 to 38 of PR 1999/84.

6. If the scheme actually carried out differs materially from the scheme that was described in PR 1999/84 and in this Product Ruling, then:

- this Product Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Product Ruling may be withdrawn or modified.

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Date of effect

8. This Product Ruling applies for the income years ending 30 June 2004 to 30 June 2008 to the specified class of entities that entered into the scheme from 23 June 1999 until 30 June 1999, being the closing date for entry into the scheme. This Product Ruling provides advice on the availability of tax benefits to the specified class of entities for the 2004, 2005, 2006, 2007 and 2008 income years.

9. However the Product Ruling only applies to the extent that:

- up to 30 June 2008 there was no change in the scheme or in the entity's involvement in the scheme;
- the Ruling is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

10. If this Product Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

11. If this Product Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Product Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

12. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Ruling

Application of this Ruling

13. This Product Ruling applies to those entities that are within the class of entities described in paragraphs 3 and 4 of this Ruling and who incurred the fees set out in the Development Agreement, Management Agreement and the Vineyard Lease.

Division 35 – deferral of losses from non-commercial business activities

Section 35-55 – exercise of the Commissioner’s discretion

14. Growers who were accepted into the Project between 23 June 1999 and 30 June 1999 have losses arising from their participation in the Project. These losses are subject to the loss deferral rule in section 35-10 unless a Grower satisfies a test, the Grower is eligible for an exception or the Commissioner exercises the discretion set out in section 35-55.

15. Having regard to the information provided with the application for this Product Ruling and an inspection of the Project carried out by the Tax Office on 25 July 2008 the Commissioner is satisfied that the business activity of each of those Growers was affected by special circumstances outside of their control. Therefore, for the income years ended 30 June 2006, 30 June 2007 and 30 June 2008, the Commissioner will exercise the discretion in paragraph 35-55(1)(a). The exercise of this discretion will allow losses from those income years to be offset against each of the Growers’ other assessable income in the income year in which the losses arise.

16. The Commissioner has not exercised the discretion for losses arising from a Grower’s business activity in the income years ended 30 June 2004 and 30 June 2005 as the business activity would not have satisfied one of the four tests in Division 35 even if the special circumstances had not occurred. Losses arising in the income years ended 30 June 2004 and 30 June 2005 will be able to be offset against assessable income in the income year ended 30 June 2006.

Scheme

17. The scheme that is the subject of this Ruling is identified and described in paragraphs 12 to 38 of PR 1999/84. It also incorporates the following additional documents and facts:

- Application for a Product Ruling received on 24 April 2008 as constituted by documents provided on 17 September 2007, 12 and 15 October 2007, 8 and 16 November 2007 and additional correspondence and emails dated, 19 December 2007, 3, 7 and 14 January 2008, 26 February 2008, 26 and 31 March 2008, 22 April 2008, 25 June 2008, 4, 14 and 18 July 2008; and
- Report of site inspection of the Project undertaken on 25 July 2008.

18. On 23 June 2008 a general meeting of the Growers of the Project passed a resolution as an extraordinary resolution for the Responsible Entity of the Project, Pyrenees Vineyard Management Limited, to wind up the Project.

Commissioner of Taxation

20 August 2008

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

19. In deciding to exercise the discretion in paragraph 35-55(1)(a) for the income years ended 30 June 2006, 30 June 2007 and 30 June 2008, the Commissioner has applied the principles set out in Taxation Ruling TR 2007/6 Income tax: non-commercial business losses: Commissioner's discretion. Based on evidence supplied by the Responsible Entity Pyrenees Management Limited and the Project site inspection, the Commissioner has determined that the business activities of Growers in the Project were affected by drought conditions outside of their control. Drought conditions are special circumstances for the purposes of paragraph 35-55(1)(a).

20. The Commissioner is satisfied that if it were not for the special circumstances the business activity carried on by a Grower would have satisfied the profits test in section 35-35 for the income years ended 30 June 2006 to 30 June 2008. The Commissioner has therefore exercised the discretion in paragraph 35-55(1)(a) for those income years.

21. The loss deferral rule in section 35-10 applies to losses arising from a Grower's business activity for the income years ended 30 June 2004 and 30 June 2005 as neither the profits test, nor any of the other tests in Division 35, would have been satisfied in those income years even if the special circumstances had not occurred. Losses arising in the income years ended 30 June 2004 and 30 June 2005 will be able to be offset against assessable income in the income year ended 30 June 2006.

Appendix 2 – Detailed contents list

22. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

PR 1999/84; PR 1999/84A;
TR 2007/6

Subject references:

- non-commercial losses
- product rulings
- public rulings

Legislative references:

- ITAA 1997 Div 35
- ITAA 1997 35-10
- ITAA 1997 35-35
- ITAA 1997 35-55
- ITAA 1997 35-55(1)(a)
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

ATO references

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