


PR 2009/28WA1 - Addendum to Withdrawal - Income tax: Piangil Grower Project - 2008 (2009 Growers)

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Addendum to Withdrawal

Product Ruling

Income tax: Piangil Grower Project – 2008 (2009 Growers)

This Addendum amends Product Ruling PR 2009/28 withdrawal to provide information about the consequence for Growers following the termination of the Grower's business.

PR 2009/28 withdrawal is amended as follows:

1. Paragraph 1

After the last sentence, insert '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.'

2. Paragraph 3 and 4

Omit the paragraphs, substitute:

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

Overview

4. The Commissioner issued PR 2009/28 for the Project on 6 May 2009. Each Grower participating in the Project was required to execute an Allotment Management Agreement and an Allotment Sublease Agreement (Grower Agreements) on or before 15 June 2009.

5. As part of their participation in the Project, Growers or their associates were required to obtain units in the 2010 Orchard Asset Trust (Asset Trust) at a cost of \$540 per unit. This amount was only payable by instalments from distributions of income or capital derived from the Project.

6. The Responsible Entity, Almond Investors Limited (AIL), advised that all Grower Agreements for the Project were terminated on 30 June 2012. The termination of the Grower Agreements has resulted in the Project being carried out in a materially different way to how it was described in PR 2009/28. The ruling is no longer binding on the Commissioner after 30 June 2012.

7. AIL also advised that the Unit Holders' interest in the units in the Asset Trust ceased from 30 June 2012. Growers or their associates made no payments towards the cost of the units in the Asset Trust as no distributions of income or capital were derived from the Project.

8. Provided that up to the date of termination of the Grower Agreements the Project was carried out as described in PR 2009/28, the termination does not disturb the tax treatment of previous Growers' outgoings as set out in PR 2009/28 for the 2008-09, 2009-10, 2010-11 and 2011-12 income years.

9. This withdrawal notice sets out the tax outcomes for Growers or their associates arising as a consequence of the termination of the Grower Agreements and disposal of their units in the Asset Trust.

Carrying on a business

10. Paragraph 17 of PR 2009/28 sets out how Growers have an interest in the Project. Paragraphs 97 to 100 of PR 2009/28 explain how the Growers' participation in the Project constitutes the carrying on of a business of primary production by the Growers. Upon termination of the Project, on 30 June 2012, all Growers ceased to have an interest in the Project and therefore ceased to carry on a business of primary production.

Horticultural plants

11. Note (ix) of paragraph 22 of PR 2009/28 provides that a deduction will be available under paragraph 40-515(1)(b) for the decline in value of almond trees as they are horticultural plants. As per section 40-530, item 2, the deduction is allowable when the almond trees enter their first commercial season. However, no deduction is available for Growers in the Project for any income year as no almond trees entered their first commercial season.

Deduction for administration fees

12. The Table and Notes at paragraph 22 of PR 2009/28 set out the administration fees on a per Allotment basis for the income year ending 30 June 2009 to 30 June 2011. Growers are entitled to claim \$10 per Allotment in the 2011-12 and 2012-13 income years as a deduction under section 40-880.

Deferral of losses from non-commercial business activities

13. Division 35 only applies to individuals, alone or in partnership, in income years in which they are carrying on a business activity. Under paragraphs 26 and 27 of PR 2009/28, 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 the income years ended 30 June 2009 to 30 June 2014.

14. The Commissioner's discretion under paragraph 35-55(1)(b) is no longer required in respect to the Project for the 2012-2013 and later income years.

Amounts incurred after business activities cease

15. Division 35 does not apply to amounts incurred from the Growers' business activities following the cessation of the business activities on 30 June 2012. Therefore, amounts incurred after the business activities cease may be deductible in the income year incurred – refer to paragraph 16 below.

Interest

16. Where Growers have used loans to finance their participation in the Project, any interest incurred on the loan will continue to be deductible under section 8-1 provided the requirements outlined in Taxation Ruling TR 2004/4 are satisfied.

Capital Gains Tax (CGT) consequences

17. As the Project did not generate income or capital, Growers and their associates did not pay any fees for their units in the Asset Trust. As a result, there are no CGT consequences arising from the disposal of these units.

This Addendum applies on and from 27 August 2014.

Commissioner of Taxation**27 August 2014**

ATO references

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