


PR 2009/49W - Income tax: Macquarie Almond Investment 2009 - Late Growers

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 This document has changed over time. This is a consolidated version of the ruling which was published on *16 September 2015*



Notice of Withdrawal

Product Ruling

Income tax: Macquarie Almond Investment 2009 – Late Growers

Product Ruling PR 2009/49 is withdrawn with effect from today.

1. This Product Ruling has been withdrawn in accordance with subsection 358-20(1) of Schedule 1 to the *Taxation Administration Act 1953*, which states the Commissioner may withdraw a public ruling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.
2. Product Ruling PR 2009/49 set out the Commissioner's opinion on the tax consequences for persons participating (the Growers) in the Macquarie Almond Investment 2009- Late Growers ('the Project'), a managed investment scheme, entered into for the purpose of establishing and harvesting Almond trees in Australia.
3. Macquarie Alternative Assets Management Ltd (MAAML) (the Responsible Entity) advised that in agreement with the Growers the almond orchards were sold on 17 August 2015 and the Project will be wound up.
4. The past deductions claimed by Growers, as set out in PR 2009/49, will not be denied provided that the Scheme was carried out in the manner described in the ruling up until the date the lease was surrendered.
5. The revenue from the sales of the Almonds from the 2015 Crop will be treated as assessable income by the Growers in a manner consistent with the existing Ruling, in the 2016 income year.
6. The surrender of the Project lease by MAAML, acting in its capacity as trustee for the Growers, will give rise to a capital gain on the effective date of the lease termination deeds, equal to the entire cash offer amount received by MAAML. The capital gain will be a discount capital gain.
7. Each Grower's share of the capital gain, made by MAAML on trust for the Growers from the lease surrender, is assessable income in the income year in which the CGT event occurs. MAAML will provide each Grower with a statement detailing the calculation of their share of the capital gain and the discount applied, to assist them in meeting their own capital gains tax obligations.

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8. As MAAML's capital gain will be a discount capital gain, each Grower will be required to:

- Gross up their share of the discount capital gain from MAAML by multiplying that amount by two
- apply any capital losses from other sources (if any) to the reduce the gain, and
- apply the appropriate discount percentage (if any) to any remaining amount.(under subdivision 115-C of the *Income Tax Assessment Act 1997* (ITAA 1997).

9. The appropriate percentage for a Grower who is an individual will be a 50% CGT discount, and for a Grower who is a complying superannuation entity it will be a 33^{1/3}% CGT discount (under subdivision 115-B of the ITAA 1997).

10. Paragraphs 91 to 94 of PR 2009/49 set out how the Growers' participation in the Project constitutes the carrying on of a business of primary production by the Growers. Upon the sale of the almond orchards, on 17 August 2015, all Growers ceased to carry on a business of primary production in this project.

11. Following the surrender of the Leases, if a Grower has an outstanding loan and the interest incurred on the loans was previously deductible, interest expenditure will continue to be deductible (under section 8-1 of the ITAA 1997) even though they have ceased to carry on a business, provided Growers meet certain requirements.

12. These requirements are outlined in Taxation Ruling TR 2004/4.

13. Generally, where a business activity has ceased, ongoing interest will continue to be deductible unless an event or circumstance occurs to break the connection between the loan and the business activity. If you refinance, renegotiate or otherwise alter the purpose of the loan, the connection to the income earning activity may be broken and the interest may no longer be deductible.

ATO references

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