


PR 2009/8 - Income tax: Goulburn Valley Orchards Project

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Product Ruling

Income tax: Goulburn Valley Orchards Project

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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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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 Commissioner **does not** sanction or guarantee this product. Further, the Commissioner gives 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. The Commissioner recommends 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) unless otherwise indicated. In this Product Ruling, this scheme is referred to as the Goulburn Valley Orchards Project 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 the Ruling part of Product Ruling PR 1999/7 and who, on or after 3 March 1999 and on or before 30 June 1999, entered into the specified scheme that is set out in paragraphs 12 to 26 of that Ruling.

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:

- terminated their involvement in the scheme prior to 1 July 2007, or who otherwise did not intend to derive assessable income from it;
- are accepted into this Project before 3 March 1999 or after 30 June 1999; or
- participate in the scheme through offers made other than through the Product Disclosure Statement.

Qualifications

5. The class of entities defined in this Product Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 12 to 26 of PR 1999/7.

6. If the scheme actually carried out is materially different from the scheme that is described 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 only to the specified class of entities that enter into the scheme set out in paragraphs 12 to 26 of PR 1999/7 between 3 March 1999 and 30 June 1999.

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

- there is no change in the scheme or in the entity's involvement in the scheme;
- it 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

Continuing application of PR 1999/7

13. Although now withdrawn, the tax benefits set out in PR 1999/7 continue to apply to Growers who are within the specified class of entities to which the Product Ruling applied and who entered into the specified scheme between 3 March 1999 and 30 June 1999. This is subject to there being no material difference in the scheme or in the entities involved in the scheme.

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

Section 35-55 – exercise of Commissioner’s discretion

14. A Grower who is an individual accepted into the Project between 3 March 1999 and 30 June 1999 may have losses arising from their participation in the Project that would be deferred to a later income year under section 35-10. Subject to the Project being carried out in the manner described in paragraphs 12 to 26 of PR 1999/7, the Commissioner will exercise the discretion in paragraph 35-55(1)(a) for Growers for the income year ended 30 June 2008. This conditional exercise of the discretion will allow those losses to be offset against the Grower’s other assessable income in the income year ended 30 June 2008.

Scheme

15. The scheme that is the subject of this Ruling is specified in paragraphs 12 to 26 of PR 1999/7. It also incorporates the following additional documents:

- Correspondence dated 10 January 2009;
- Correspondence to Growers dated 23 September, 30 August and 13 October 2008;
- Report to Growers dated August 2008;
- Independent Experts Report entitled ‘Review of Goulburn Valley Orchards’ dated July 2008; and
- Produce reports and revised projected yields for 2007-08 and 2008-09.

Termination of the Scheme

16. A meeting of Growers on 9 October 2008 voted in favour of a resolution to terminate the scheme with immediate effect. As a result of the resolution being passed, Growers have no further financial obligations in relation to the scheme for periods after 30 June 2008.

Commissioner of Taxation4 March 2009

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.*

Deferral of losses from non-commercial business activities and the Commissioner's discretion

Sections 35-10 and 35-55

17. In deciding to exercise the discretion in paragraph 35-55(1)(a) on a conditional basis for the 2007-2008 income year, 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 the evidence supplied by the Responsible Entity, the Commissioner has determined that for the 2007-2008 income year it is unreasonable to apply the rule in section 35-10 as the Grower's activity was affected by special circumstances outside the control of the Manager.

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

Appendix 2 – Detailed contents list

19. 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:

TR 2007/6; PR 1999/7

Subject references:

- Commissioner's discretion
- non-commercial loss
- product rulings

Legislative references:

- ITAA 1997
- ITAA 1997 Div 35
- ITAA 1997 35-10
- 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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