

PR 2011/10WA1 - Addendum to Withdrawal - Income tax: AIL Almond Grower Project - 2010 (2011 Growers) (on or before 15 June 2011)

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Addendum to Withdrawal

Product Ruling

Income tax: AIL Almond Grower Project – 2010 (2011 Growers) (on or before 15 June 2011)

This Addendum amends Product Ruling PR 2011/10 withdrawal to provide information about the consequence for Growers following the termination of the Grower's business.

PR 2011/10 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, insert:

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 2011/10 for the Project on 6 April 2011. 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 2011.

5. As part of their participation in the Project, Growers or their associates were required to obtain units in the AIL Almond Asset Trust 2010 (Asset Trust) at a cost of \$2,000 per unit. This amount was paid by Unitholders on application for entry into the Project.

6. The Responsible Entity, Almond Investors Limited (AIL), advised that all Grower Agreements for the Project were terminated on 30 June 2011. 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 2011/10. The ruling is no longer binding on the Commissioner after 30 June 2011.

7. ALL also advised that the Unitholders' interests in the units in the Asset Trust ceased from 30 June 2011. Growers or their associates received credits of \$2,000 per unit on 18 February 2013.

8. 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

9. Paragraph 17 of PR 2011/10 sets out how Growers have an interest in the Project. Paragraphs 95 to 98 of PR 2011/10 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 2011, all Growers ceased to have an interest in the Project and therefore ceased to carry on a business of primary production.

Management Fees and Annual Rent

10. The Table at paragraph 21 of PR 2011/10 set out the deductions available for Management Fees and annual rent for the 2010-11, 2011-12 and 2012-13 income years.

11. Growers are entitled to claim a deduction under section 8-1 for the Management Fees of \$4,600 per Allotment incurred in the 2010-11 income year, provided that up to the date of termination of the Grower Agreements on 30 June 2011 the Project was carried out as described in PR 2011/10.

12. ALL has advised that Growers incurred Management Fees and annual rent totalling \$2,300 per Allotment in respect to the 2011-12 income year. As this amount was incurred after the termination of the Project Agreements on 30 June 2011 the \$2,300 per Allotment is not deductible under section 8-1 in the 2011-12 income year.

13. Growers who have claimed deductions for Management Fees or annual rent in the 2011-12 of later income years should amend their relevant income tax return to exclude these deductions.

14. Growers received a credit of \$2,300 per Allotment for the Management Fees and annual rent in the 2012-13 income year. Provided the Grower amends their 2011-12 income tax returns to exclude the \$2,300 per Allotment claimed the \$2,300 credit received per Allotment in the 2012-13 income year will not be assessable income.

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Horticultural plants

15. Note (vi) of paragraph 22 of PR 2011/10 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

16. The Table and Notes at paragraphs 22 and 23 of PR 2011/10 set out the administration fees on a per Allotment basis for the income years ending 30 June 2011 to 30 June 2013. Although the business activity ceased to be carried on after 30 June 2011 the administration fee of \$50 per Allotment was incurred in the 2010-11 Income year. Growers are entitled to claim \$10 per Allotment in each of the 2010-11 to 2014-15 income years as a deduction under section 40-880.

Irrigation charge and credit

Division 40

17. The Table and Note (v) at paragraph 22 of PR 2011/10 set out the deductions available for the irrigation charge on a per Allotment basis for the 2010-11 to 2012-13 income years. AIL has advised that the irrigation system was not installed before 30 June 2011 and that Growers were credited \$3,000 per Allotment in respect of the irrigation charge in the 2010-11 income year.

18. To obtain a deduction for a water facility under paragraph 40-515(1)(a) the water facility needs to be a depreciating asset as defined in section 40-30. Growers are not entitled to claim a deduction in any income year for the irrigation charge as the irrigation system (depreciating asset) was not installed.

19. Growers who claimed deductions for the irrigation charge should amend the relevant income tax return(s) to exclude the amount(s) claimed. Provided the Grower amends their relevant income tax returns to exclude amounts claimed the \$3,000 credit received per Allotment for the irrigation charge will not be assessable income.

Division 328

20. The Table and Note (vii) at paragraph 24 of PR 2011/10 set out the deductions available for a Grower who is a 'small business entity' who chose to claim a deduction under Division 328. A deduction under Division 328 is not available until the asset (irrigation system) has been used or installed ready for use by the Grower [subsection 328-175(4)].

21. AIL has advised that the irrigation system was not installed before the Grower Agreements were terminated, and the Growers ceased to have an interest in the Project, on 30 June 2011.

22. No deduction is available for a Grower under Division 328 in the 2010-11 or subsequent income years. Growers who claimed deductions for the irrigation charge should amend the relevant income tax return(s) to exclude the amount(s) claimed. Provided the Grower amends their relevant income tax returns to exclude amounts claimed the \$3,000 credit received per Allotment for the irrigation charge will not be assessable income.

Amounts incurred after business activities cease

23. Division 35 does not apply to amounts incurred from the Growers' business activities following the cessation of the business activities on 30 June 2011. Therefore, amounts incurred after the business activities cease may be deductible in the income year incurred – refer paragraph 19 below.

Interest

24. 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 TR2004 /4 are satisfied.

Capital Gains Tax (CGT) consequences

25. Growers or their associates acquired units in the Asset Trust at a cost of \$2,000 per unit. The units are CGT Assets (section 108-5) and the \$2,000 paid for each unit in the Asset Trust constitutes an outgoing of capital and are not allowable as a deduction.

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26. The amount paid for each unit will represent the first element of the cost base of the units (subsection 110-25(2)). The termination of their interest in the units in the 2010-11 income year by the Grower or their associates was a CGT event that may give rise to a capital gain or loss. However, as the \$2,000 per unit credit Growers or their associates received equals the initial cost per unit, there is no capital gain or loss.

This Addendum applies on and from 27 August 2014.

Commissioner of Taxation

27 August 2014

ATO references

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