



**Submission to**

**The Senate Standing Committee on Economics**

**Regarding the**

***Tax Laws Amendment (2009 Budget Measures No. 2) Bill  
2009***

The National Association of Forest Industries (NAFI) welcomes the opportunity to clarify the forest industry's position in relation to the *Tax Laws Amendment (2009 Budget Measures No. 2) Bill 2009* and related issues.

**The nature of income from retail forestry projects**

Growing trees for commercial wood production typically involves a large initial cost to cover establishment of the trees (the majority of which are deductible), often ongoing annual management costs over the life of the plantation (the majority of which are deductible) and income from harvesting of the trees (assessable income). Typically investors have to wait 10 years and often much longer to receive an income from the trees.

This typical cash flow characteristic coupled with the typical size of the investment in retail forestry projects has meant that though these projects provide a commercial return, many investors would technically not meet the test for non-commercial losses. That is a project would not meet at least one of the following tests:

- Assessable income test – the assessable income generated from the activity must be at least \$20,000;
- Profits tests – the activity must have produced a profit in three of the last five years, including the current income year;
- Real property test – the reduced cost base value of real property or interests in real property used on a continuing basis to carry out the activity is at least \$500,000; and
- The assets test – the reduced cost base of any other assets used on a continuing basis to carry on the activity is at least \$100,000.

In recognition of this characteristic of retail forestry projects, the Commissioner has

exercised his discretion under Section 35-55(1) (b) of the Income Tax Assessment Act 1997 (the Act) when issuing Product Rulings and determined that non-commercial loss rules do not apply to these projects for a determined period, usually the period of the project.

### **Concerns over the draft legislation**

NAFI is concerned that the proposed amendments to section 35-55 of the Act may render the Commissioner's discretion, pursuant to the existing Section 35-55(1) (b) of the Act invalid, specifically for investors with a potential assessable income exceeding \$250,000. This is because the proposed amendments condition the ability to obtain the Commissioner's discretion on commercial losses to income earners that have an assessable income below \$250,000 – the insertion of '*income requirement*' (2E). This would potentially subject these investors to the non-commercial loss rules.

If this is the case, it will create significant uncertainty for existing investors with potential assessable income over \$250,000 and who have previously received Commissioner's discretion for non-commercial losses through the project Product Ruling at the beginning of their investment in the project.

Though Paragraph 1.12 of the explanatory memorandum provides some guidance on this issue, it is important to note that the retail forestry project promoter has already provided all of the information initially required for the Commissioner's discretion on non-commercial losses at the time of original issue of the Product Ruling. The promoter or the investor may now be required to provide all of this information again, some years after the initial Commissioner's discretion was obtained and when there has been no change to the underlying circumstances of the project. This would create unnecessary and additional compliance and administrative costs for the investor and for the Tax Office.

NAFI appreciates the opportunity to provide this submission to the Inquiry. If there are any queries in relation to NAFI's submission, or further clarification is sought, please do not hesitate to contact Allan Hansard on (02) 6285 3833 or [allan.hansard@nafi.com.au](mailto:allan.hansard@nafi.com.au).