

I have sent numerous letters to the Treasury over 10 years with a simple formula to save investors millions of dollars in MIS schemes to no avail so I finally gave up but, in one final effort to make my point, I enclose a submission to the senate committee.

Given the Timbercorp and Great Southern liquidations I think it is relevant that someone should investigate the ATO's abysmal record in granting Tax Approvals for vastly overpriced MIS scheme offerings.

None, I repeat, none of these products would have been sold in the last 7-8 years if the ATO restricted the deductions to the real commercial cost of developing a vineyard or plantation. The only reason the major promoters kept selling product was the huge margins in selling something worth

\$2-3,000 for \$9,000 sanctioned by an ATO product ruling.

I have, like a number of others, been writing to ASIC and treasury over nearly a decade warning them that the losses now experienced by thousands of investors would happen.

I am a lawyer with 35 years experience in corporate and commercial law, 15 years in MIS schemes and 30 years in agriculture in the SW of WA where many of the Timbercorp and Great Southern plantations were situated.

Most of the locals and forestry people knew the returns predicted from most blue gum plantations wouldn't be there but it was like the emperors new clothes, because many of the people involved derived income some way or the other from the industry.

In about 1995, I made one phone call to a forestry contractor and got 6 hectares of blue gums planted for \$1,200 a hectare on my farm near Manjimup – in the same year Great Southern were selling product for \$9,000 a hectare to be planted on far inferior sites. The next year my brother (who is a farmer) and I bought a 720 acre farm and planted a large blue gum forest for about \$680 a hectare – Great Southern were still selling product at \$9,000 a hectare through advisers who had no idea (or didn't care) what the real cost was. In many cases advisers would have received more in commissions per hectare than it actually cost us to plant our forest. Let alone the soft dollar benefits.)

The losses to investors now make Offset Alpine look like a Sunday School picnic. It would be interesting to collate all the letters and warnings and testimony given to ASIC, the ATO and treasury and parliamentary enquiries to demonstrate just how negligent they have been in regulating promoters.

Anyone who cared to make one or two phone calls would have found the cost of planting blue gums was certainly less than \$2,500 a hectare and yet the ATO continued to issue product rulings for up front deductions at \$9,000 a hectare.

A hectare of vineyard costs about \$54,000 to plant and develop over two years. Go to the ATO web site and look at Product Ruling **PR2002/120** for the Palandri Wine Business. Add up the figures in clauses 29 to 31 and the rents and fees come to \$28,591.50 per investor lots. **BUT** those investor lots are only .04 of a hectare (74 grape vines) **or 25 investor lots to the hectare**. That works out to a per hectare cost of a staggering **\$715,000 a hectare**.

What level of incompetence or worse led the ATO to give that project a tax ruling, how does owning 74 vines constitute “carrying on a business” , what sort of financial adviser or accountant sold the product at a price roughly 15 times the realistic commercial cost and why?

Where were ASIC to ensure the product disclosure statement said in large letters on the front page:

**“THE INDUSTRY COST OF DEVELOPING A VINEYARD OVER THE FIRST TWO YEARS IS IN THE REGION OF \$54,000 A HECTARE. UNDER THIS DISCLOSURE DOCUMENT YOU WILL BE PAYING THE PROMOTERS OVER THE FIRST TWO YEARS THE EQUIVALENT OF \$715,000 A HECTARE.”**

**“ OF THE SUM OF \$715,000 PER HECTARE YOU ARE REQUIRED TO PAY AS A GROWER IN THE SCHEME, THE ATO HAS ISSUED A TAX RULING CONFIRMING THAT YOU WILL BE ENTITLED TO A DEDUCTION OF ONLY \$54,000, EQUAL TO THE COMMERCIAL COST OF DEVELOPING A VINEYARD IN THE MARGARET RIVER REGION OVER THE FIRST TWO YEARS OF THE VINEYARD.”**

Anyone who read a warning like that and still invested has only themselves to blame but there was no one in ASIC or the ATO insisting on such a disclosure. It would have stopped the excesses of the industry in its tracks overnight and warned investors and financial advisers/product salesmen what they were getting into. I made exactly those suggestions to treasury ten years ago!!!!

ASIC HAS A CLEAR DUTY TO ENFORCE THE LAW including Section 1013E of the Corporations Act 2001.

**“A Product Disclosure Statement must also contain any other information that might reasonably be expected to have a material influence on the decision of a reasonable person, as a retail client, whether to acquire the product.”**

An insistence on the inclusion of a simple warning/disclosure such as that above would have saved investors hundreds of millions of dollars and similarly, over a wide range of such products, perhaps half a billion dollars.

In 2005, Great Southern made an EBIT of 178 million dollars on revenue of 297 million for an EBIT margin of 60%. In other words, for every hectare of blue gums it sold for \$9,000 it made \$5,400 profit! Can it be that simple? Absolutely. If one was deduct 10% commissions and 5% marketing fees from the \$9,000 charged to investors for a hectare of blue gums and say \$2,250 for the actual planting costs and you are left with \$5,400 profit and that is the EBIT margin the Great Sothern annual accounts show!!.

I despaired and eventually gave up as no regulatory body took my warnings or suggestions seriously.

If there are super profits to be made by promoters, in a situation where the regulators are negligent or incompetent, or don't have the will to protect retail investors, it will invariably

cost ordinary Australians dearly. In the case of highly priced and un-commercial MIS schemes sold by planners and salesmen who did not know or care what the product should have cost, small investors and businesses/suppliers/unsecured creditors have and will lose billions before it is rectified.

I don't advocate preventing promoters from charging what ever they like as we live in a free enterprise economy and once a warning is included such as I suggest above is prominently displayed on page one of the Offer Document, promoters then have 60-70 pages of Prospectus, experts reports, charts, coloured photos and prediction in which to explain to investors just **why** they should pay \$715,000 for an investment worth \$54,000 with only \$54,000 in tax deductions.

In my view, most of the losses incurred over the last 8-9 years would not have happened if ASIC had enforced Section 1013E and the ATO had restricted deductions in the Product Rulings issued to the real commercial cost of the projects involved.

Yours Faithfully,  
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