

**Senate Standing Committee on Economics**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Additional Estimates

26 February 2014

**Question:** AET 3034-3038

**Topic:** Managed investment schemes

**Hansard Page:** 104-105

**Senator WHISH-WILSON asked:**

**Senator WHISH-WILSON:** I have a couple of questions about MISs—monthly income schemes. Recently there was a federal court case against Barossa Vines. I understand that you pursued them because they failed to manage the scheme in accordance with how they said they would provide a product ruling. I just wanted to check that that is correct.

**Mr Jordan:** I do not have the full details of that case. I do understand that it was under that promoters legislation and that they had not met the stated requirements in the information they had provided to us to get the product ruling. But my detailed knowledge beyond that is fairly limited.

**Senator WHISH-WILSON:** Perhaps you could just generally give me an idea of how many product rulings have been withdrawn through MIS-type—what would we call them? Packages? <sup>1</sup>

**Mr Jordan:** I would have to take that on notice.

**Senator WHISH-WILSON:** Could you also give me an idea of how many product rulings the ATO has made on managed investment schemes over the past decade? <sup>2</sup>

**Mr Jordan:** I would certainly have to take that one on notice.

**Senator WHISH-WILSON:** We don't want much, do we! I understand that the process for granting a product ruling is fairly comprehensive. In this case, being a vineyard owner, like my colleague Senator Edwards, I understand that planting rootstocks rather than rootlings would be a material difference to what was in a prospectus. Have any rulings been withdrawn on the basis that the marketing of agricultural products and MISs has not been delivered in the way it was promised in prospectuses or that markets have not existed? <sup>3</sup>

**Mr Jordan:** Again, I am not specifically aware of that and would have to take it on notice. As a general comment, clearly a lot of analysis goes into the matter before a product ruling is given, because people obviously rely on it and at times it is significant in terms of the level of investment and the amount of tax deductions that are claimed under that product ruling. As for the ongoing monitoring of exactly what happens to each of those schemes, I think there is an element of intelligence that we rely on for people. Clearly we need to work with other agencies, if people have been misrepresented, so that the sharing of that knowledge—

**Senator WHISH-WILSON:** I was going to ask you what resources you had specifically in relation to monitoring these things. But it makes sense that it is a joint— <sup>4</sup>

**Mr Jordan:** Yes, but we do rely on maybe complaints from people about the investment, but I am not aware of us specifically monitoring all product rulings.

**Senator WHISH-WILSON:** So it would have to be referred to you. The reason I was interested in this is that we know that in Tasmania, with a large plantation estate, much of it is driven by an MIS, and because we have had failed schemes, there are issues around pruning not being done, for example, or management of those estates. So I was just interested in whether that was being monitored or whether there were any existing investigations.

**Mr Jordan:** I am not aware of the ATO having any responsibility to physically monitor over the years. You are referring to some of these forest MISs. They often have lifetimes of 25-plus years in terms of

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<sup>1</sup> 3034

<sup>2</sup> 3035

<sup>3</sup> 3036

<sup>4</sup> 3037

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the return. I am not aware of the ATO having any specific program. I will take that on notice, but I can say here that it is not something I am specifically aware of—of us going back five, 10 or 15 years and checking whether the pruning has been done, whether there has been sufficient maintenance of it to justify the deductions. It is more a consumer protection—

**Senator WHISH-WILSON:** I understand that would be very difficult. But there is a situation where I suppose you have had massive failures in the companies managing these things, and farmers are complaining about it. It is common knowledge. Perhaps I could also get on notice what the tax expenditure has been for managed investment schemes over the past decade, or what has been deferred away from the taxation stream right across—

**Mr Jordan:** We can certainly take that on notice. I know that a number of years ago they were fairly severely restricted, and there are only a few types of arrangements now that are allowed.<sup>5</sup>

**Senator WHISH-WILSON:** Could I also get that final detail?

**Mr Jordan:** Yes.

**Senator WHISH-WILSON:** Thank you, because I did have a bit of confusion when I was looking it up as to which schemes it is still applicable on.

**Mr Jordan:** I know it is still applicable to forestry. I am not too sure whether it goes much beyond forestry.

**Senator WHISH-WILSON:** That is what I could not find. I could not find anything else.

**Mr Jordan:** I thought most of the others were now restricted as really forestry.

#### Answer:

3034) Approximately 390 product rulings relating to agricultural MIS have been withdrawn over the last decade.

3035) Over the last decade 751 product rulings issued of which 595 were agricultural MIS.

3036) Of the 390 agricultural MIS product rulings that were withdrawn most of these were due to the arrangement never commencing. However, 82 were withdrawn because the scheme was carried out in a way that was materially different (for example 24 were withdrawn due to termination of the scheme, 22 due to the manager's withdrawal from forestry, 14 due to restructuring and a further 17 because the manager carried out the arrangement in a materially different way and a further 5 for other reasons).

3037) Compliance resources are allocated according to risk. In the last 5 years 85 cases relating to both new and existing schemes were referred to the ATO's compliance area for review of potential material differences between the scheme implemented and what was described in the product ruling.

3038) New investment in the agribusiness MIS industry peaked at over \$1 billion in each of the years from 2004-05 to 2007-08. However, following the impact of the Global Financial Crisis during 2008-09, the biggest MIS companies operating in Australia went into administration. Agricultural MIS investment over this decade was \$5,523 billion and with a 30% estimated tax rate this equates to around \$1.6569 billion in estimated tax deductions claimed. The ATO does not hold data on financial managed investment schemes or other financial products with associated product rulings.

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<sup>5</sup> 3038