

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

23 – 24 February 2011

Question No: AET 20

Topic: MIS

Hansard Page: Written

Senator Brown asked:

1. Is it the case that the Tax Commissioner must deem MIS plantation investments as commercially viable (via a product ruling) before they qualify as tax deductible investments?
2. Has the commissioner reviewed the rulings in relation to MIS plantations following the collapse of most of them in the past two years? If so, on what basis does the commissioner deem new schemes to be commercially viable?
3. Specifically, investors in Macquarie Forestry Investment 2010 paid an upfront (tax deductible) cost of \$10,208 per hectare to establish plantation MIS for the financial year 2009/10 (under ATO Product Ruling 2010/9). At the same time (June 2010) Midway reported to ASIC that its standing eucalypt/softwood plantations (excluding land) were valued at \$6892 per hectare. This is a conservative comparison because Macquarie's plantations don't yet exist while Midway has standing trees. On what basis does the commissioner deem Macquarie's MIS scheme to be commercially viable and therefore qualifying for tax deductibility?

Answer:

1. No. The Commissioner expressly warns potential participants that the ATO does not sanction or guarantee any product as an investment. The ATO has not and does not give any assurance that the product is commercially viable, that the projected returns will be achieved or that fees charged by managers are reasonable.
2. Yes, the Commissioner does review some product rulings to ascertain whether the scheme has been implemented in accordance with the facts set out in the product ruling. However, the advice provided in rulings is limited to the tax effect of the arrangements if implemented in the way described to the ATO in the ruling request. If the scheme has been implemented in a manner that is materially different to the product ruling there are a range of actions the Commissioner may take, including withdrawing the product ruling and potential application of promoter penalty provisions.

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The Commissioner has not and does not give any assurance that the product is commercially viable, that the projected returns will be achieved or that fees charged by managers are reasonable.

In issuing a product ruling on a MIS afforestation scheme the Commissioner considers whether provisions in Division 394 of the ITAA 1997 will be satisfied in each particular case. The applicant is required to provide information regarding the plantation including expenditure, expected returns and any assumptions. The Commissioner determines whether the arrangements as described in the product ruling requests meet the requirements of the tax law.

3. The Commissioner has not and does not give any assurance that the product is commercially viable, that the projected returns will be achieved or that fees charged by managers are reasonable.

As discussed in Question 2 above the Commissioner considers the facts and issues on a case by case basis before issuing a product ruling. It is not appropriate for the Commissioner to provide comments in relation to specific cases.