

26th June 2009

Senate Select Committee on Agricultural and Related Industries,
Department of the Senate,
POB 6100,
Parliament House, Canberra, ACT 2600.

Re : Inquiry into food production – impact of Managed Investment Schemes.

SUBMISSION.

TAXATION.

The whole spectrum of Primary Producer (Agricultural businesses, ventures and schemes) taxation, requires full investigation. Clearly, the demise of high profile ventures e.g. Timbercorp Ltd., Great Southern Plantations Ltd; has given all such projects a bad name, to the point where it will now be very difficult to obtain equity capital for any primary production venture, reputable or otherwise.

It is true these ventures gained substantial funding through the provision of upfront Income Taxation deductions to Investors – yet they failed. It is also clear that the Australian Taxation Office (ATO) had no inbuilt mechanism to determine the faults in their (MIS) business plans; if indeed they (ATO) had inbuilt monitoring systems – clearly, they did not use them.

This abuse of the taxation system, and its inevitable result, has the capability of destroying ‘corporate’ farming in the vision of the investing public; yet in many areas, this is the future of primary production.

The Australian Taxation Office has no alternative – it must employ, or have ready access to, Agribusiness specialists, so that the Primary Producer taxation provisions cannot be manipulated, to produce economically detrimental schemes (such as MIS). These schemes have destroyed credibility in investment; also family farms, rural communities, and, significantly, confidence in the fairness of the Income Taxation system.. It has also distorted farmland valuations in certain districts, by scheme managers purchasing land for prices considerably above market (farming and pastoral) value, due to the fact investment capital was readily available – from investors whose intention was to minimise Income Tax.

At this point, mention is made of the ATO specification (definition) of Primary Producers (see ITAA 97): i.e.

- Significant Commercial Purpose or Character;
- Income Test - \$20000 per annum;

- Real Property Test – at least \$500000 valuation;
- Other Assets Test – at least \$100000 valuation;
- Profits Test – taxable income in at least 3 of the last 5 income years;

However, there is no tangible proof of the ATO providing field audits of these MIS properties by suitably qualified and experienced field staff; over the many years these projects have been in existence.

IRRIGATION:

In its perspective, irrigation at its 'highest and best use' is a significant production regulator in lands of fertile soil with low to medium rainfall; it regulates production of livestock and crops. With astute management and modern engineering, the \$ value per unit (megalitre) of water is impressive, and profitable. However, water is a scarce commodity, and it is debatable whether its irrigation use should be directed to non-food items e.g. fibre or luxury items.

Recent 'unbundling' (i.e. separation of Water Rights from Real Estate titles) has produced more problems than it has solved because, in the absence of full Government regulation of supply and delivery, water has become a readily tradeable commodity. The price of water is now fully exposed to open market forces (of supply and demand), and through the use of Brokers, is bought by the purchaser willing and able to pay the highest price on that market (for whatever end use).

The impact of MIS on irrigation farming communities, following 'unbundling' (i.e. in the absence of careful regulation of water allocation to established and already productive horticulture, tree crops, dairy farming and other annual crop production) has, more than any other influence, upset the well-balanced, virtually self-regulating systems that for many years existed between Primary Producers and the downstream processors of their produce. This situation has been made worse by drought, and water shortfall, especially in the Murray-Goulburn Irrigation districts: however, without MIS, compromises and water supply regulation would have been achievable – with equity. There is now a situation where:

- Water Rights have been sold from irrigation farms, for 'temporary' survival;
- Irrigation farms, without Water Rights, being difficult to sell, are not investment material;
- Water for seasonal production has to be bought in an unpredictable market, against 'cashed up' buyers whose investment money has come via investors with upfront taxation advantages, which individual farmers do not have (it is probable that many farmers do not have sufficient income to pay income tax);
- Downstream processors (Dairy factories, Fruit Cannery, Wineries) now have a future described as uncertain, placing many permanent and seasonal jobs at risk;
- The economic future of the towns so affected, is as uncertain as their citizens jobs.

CONCLUSIONS:

The focus of the impact of Managed Investment Schemes (MIS) into food production, inevitably leads to the misuse of the taxation incentive, which has been poorly considered and administered. While the business models (of MIS) have been proven faulty, the taxation incentives (1) to investors in the schemes and (2) to the schemes themselves, had a twofold effect:

- in rainfall districts, elevating land prices to a figure beyond which primary producers (farmers) would, or could, afford; and
- in irrigation districts, elevating water prices to a figure beyond which primary producers (farmers, horticulturalists, orchardists), would, or could, afford.

It is uncertain whether Australian Taxation Office (ATO) implement their own requirements properly under ITAA 97 (requiring Commercial Purpose or Character) clearly, these tests have not been applied to Managed Investment Schemes. Nor is it certain whether the ATO have suitably qualified or experienced professional staff to adequately appraise any Primary Producing business – to which MIS must be categorised. Did the ATO conduct diligent field audits of MIS?

The end result is the worst of both worlds (A) the two most prominent MIS have financially collapsed, and (B) due to distorted markets (horticulture, grapes) and elevated price of irrigation water, many existing farmers (Primary Producers) now have no future.

The taxation treatment of Primary Producers (by ATO) requires complete and immediate revision. Nothing could illustrate this more clearly than the demise of Managed Investment Schemes.

J. I. Cone.
AAPI SPINZ

