

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

TREASURY

Australian Taxation Office

Supplementary Budget Estimates 22 October 2008

Question **SBT 1**
Topic: **Tax deductions for establishment of Carbon Sinks**
Hansard Page: **Written QON**

Senator Boswell asked:

Tax Law Amendment 2008 No.2 this year produced a tax deduction to establish Carbon Sinks and this legislation precluded Managed Investment Schemes from being able to receive the deduction.

- (a) If a Managed Investment Scheme restructured their operations whereby they exchanged the interests of project investors for new shares by way of contractual schemes of arrangement with an issue price per share above the share price of the MIS, would this organisation still be regarded as a Managed Investment Scheme?
- (b) Has the Treasury been asked to make a ruling on whether an entity like this is still regarded as a MIS? If so, how many rulings have the Treasury made and on which companies?
- (c) Would this newly restructured company be eligible for a tax deduction if they established a Carbon Sink?
- (d) Would the plantation forestry already owned by the entity be eligible for carbon credits, if they complied with the Office of Greenhouse guidelines?
- (e) Is it possible for a MIS to restructure their operations as suggested and turn forestry plantations already established into a carbon sink if that forestry meets Office of Greenhouse guidelines?
- (f) Has the department been made aware of the Great Southern Limited (GSL) restructure that follows the scenario suggested in the previous questions, and if so what work is being done to address this potential loophole in the Tax System?

Answers:

- (a) The original Managed Investment Scheme (MIS) would cease as a result of this scenario. The investor interests are simply replaced by shares in a company.

Although more properly a question for ASIC, the *Corporations Act, 2001* states that a company cannot be a MIS and that shares in a company cannot constitute an interest in a MIS.

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- (b) While this question is directed to Treasury, the Tax Office has not been asked to rule on this issue in respect of such a restructure.
- (c) A tax deduction would be available if any company (including one involved in such a restructure) established a Carbon Sink Forest which met the qualifying conditions of Sub Division 40-J in respect of that forest.

An existing forest could not subsequently qualify for the Carbon Sink Forest deduction. That is, a restructured MIS with an established forest cannot access the deduction in Sub Division 40-J.

- (d) This question is not for the Tax Office as it relates to the proposed Carbon Pollution Reduction Scheme, not existing income tax laws.
- (e) An existing forest could not subsequently qualify for the Carbon Sink Forest deduction. However this question is not for the Tax Office as it relates to guidelines that are administered by another department.
- (f) The Tax Office cannot comment on specific cases.