

## Senate Standing Committee on Economics

### ANSWERS TO QUESTIONS ON NOTICE

#### Treasury Portfolio

#### Budget Estimates

31 May – 2 June 2011

**Question No:** BET 1

**Topic:** Managed Investment Scheme

**Hansard Page:** Written

#### Senator Brown asked:

1. What evidence is the Australian Taxation Office (ATO) using to arrive at an 'objective expectation' that forestry managed investment scheme (MIS)s are commercially viable? (This could include both data and advice from various sources).
2. Will the evidence and the reasoning be made public? If not, why not?
3. On what basis are new MISs being judged commercially viable given the recent history of serial collapse of such schemes?
4. What data does the ATO have in its own records that could be analysed to assess the commercial viability of forestry MISs? Describe the types of data, the kind of analysis that could be carried out, and plans to undertake any analysis.

#### Answer:

1. Evidence of the commercial viability of forestry managed investment schemes is not a requirement for deductions to be available to participants in a forestry managed investment scheme under Division 394 of the *Income Tax Assessment Act 1997* (ITAA 1997). In issuing a product ruling on a forestry managed investment scheme, the Commissioner considers whether the provisions in Division 394 of the ITAA 1997 will be satisfied in each particular case. One of the key requirements of Division 394 of the ITAA 1997 is that the Commissioner is satisfied that the forestry manager will spend, actually or notionally, at least 70% of participants' contributions on direct forestry expenditure over the life of the scheme.

The Commissioner will also need to consider the operation of Division 35 of the ITAA 1997 where the forestry managed investment scheme is structured to ensure individual participants under the scheme are engaged in carrying on a business of forestry. Before exercising his discretion under Division 35 of the ITAA 1997, the Commissioner needs to be satisfied that the anticipated lead time for the forestry managed investment scheme is within accepted industry norms. Deductions are available under Division 394 of the ITAA 1997 irrespective of whether the forestry managed investment scheme is structured as a business or passive investment.

In addition, page one of all product rulings issued by the ATO contains the following paragraphs under the heading 'No Guarantee of commercial success':

*The Commissioner **does not** sanction or guarantee this product. Further, the Commissioner gives no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.*

*Potential participants must form their own view about the commercial and financial viability of the product. The Commissioner recommends a financial (or other) adviser be consulted for such information.*

*This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out in the **Ruling** part of this document are available, **provided that** the scheme is carried out in accordance with the information we have been given, and have described below in the Scheme part of this document. If the scheme is not carried out as described, participants lose the protection of this Product Ruling.*

The product rulings system is outlined in PR 2007/71. Paragraphs 29 and 30 of this ruling states the following under the heading 'The extent of certainty provided by a Product Ruling':

*29. While a Product Ruling provides entities covered by the Product Ruling with certainty as to the tax consequences of participating in the scheme described in the Product Ruling, the Product Ruling provides no assurance that:*

- *the scheme is commercially viable;*
- *the fees, charges and other costs are reasonable or they represent industry norms; or*
- *the projected returns will be achieved or are reasonably based.*

*30. Potential participating entities must form their own view about the commercial and financial viability of the scheme.*

2. As explained in the answer to question 1 above, the Commissioner does not, nor is required to, arrive at an objective expectation that managed investment schemes are commercially viable. Therefore no such reasoning is available.
3. The Commissioner does not judge the commercial viability of new managed investment schemes. As explained in the answer to question 1, the Commissioner considers whether provisions in Division 394 of the ITAA 1997, and Division 35 of the ITAA 1997 where applicable, will be satisfied. 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.
4. As explained in the answer to question 1 above, evidence of the commercial viability of forestry managed investment schemes is not a requirement for deductions to be available to participants in a forestry managed investment scheme under Division 394 of the ITAA 1997. Analysis is limited to determining satisfaction of the requirements associated with the application of the tax law. The Commissioner explicitly does not, and is not required to, rule on the commercial viability of the scheme.