

Mareeba District Fruit & Vegetable Growers Association Inc.

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Review of Non-Forestry Managed
Investment Schemes
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir or Madam

The association would like to raise our concerns in regards to horticulture based Managed Investment Schemes (MIS) and the effects on land and water acquisitions these schemes are having on the Australian horticultural industry.

The previous government had corrected the unfair playing field, which has been occurring in the agricultural industry by removing investors in Managed Investment Schemes (MIS) being able to claim upfront deductions for their contributions to the MIS. The association strongly hopes your government will take the same line and ensures this decision continues.

We would also like to emphasize the unsustainable of MIS as true businesses by the concerns expressed by them that if the upfront tax deductions were removed there would be loss of jobs in the industry. The upfront tax deductions have been supporting these unviable businesses, without these deductions they are not an on going business.

MIS, or investment schemes of some description have been around for a number of years. The Australian Taxation Office ruling allows investors to be classified as primary producers and affords them access to the taxation treatment of claiming expenses as deductions which can be offset against other income.

In the case of plantation forestry there is an additional 12 month rule that allows investors to claim expenses where the activity is carried out in the following 12 months even though they may be in different taxation years.

The introduction of the Managed Investments Act in 1998 removed the two party manager/trustee system and introduced the Responsible Entity (RE) for the operation of an investment scheme. This was aimed to provide greater certainty as to where the responsibilities, obligations and liabilities resided. In the same year, product rulings were introduced to the tax effective investments industry by ATO. The product ruling system gave investors confidence in the related tax treatment and was intended to tighten the availability of tax deductions.

Somewhere between \$1.25 billion and \$1.4 billion is expected to be invested in agribusiness managed investment schemes (MIS) by the end of the 2005-06 financial year, up from \$1.02 billion last year. The biggest growth area in investment was horticulture at 45%, (\$414 million) and agriculture (\$98

million), with a recently announced \$25 million glasshouse tomato project in SA. This contrasted with timber plantation investment which remained static at \$744 million.

The Australian Treasury invited interested parties to provide written submissions regarding the Taxation Treatment of Plantation Forestry by August 2005. In May 2006 the Assistant Treasurer announced a number of proposed arrangements for the plantation forestry treatment of MIS and called for public consultation. The Association through the NFF provided a submission to the review outlining the main concerns of the distortionary effects on land values and commodity values, the transparency of the schemes, the reputation of agricultural investment and specific comments on the proposed arrangements.

The Association's concerns with current MIS arrangements remain the same:

- There are concerns about the adequacy and independence of information available to potential investors in agricultural MIS and the potential for undue influence in the product ruling processes of the ATO.
- There is a transfer of agricultural capital and natural resources away from proven and viable industries to ones with questionable profit potential e.g. the tax relief driven investments in viticulture have contributed greatly to the current oversupply crisis in the Australian wine industry.
- The investment decision is no longer risk/return driven but purely tax driven.
- The decoupling of the land purchase decision from the investment decision. The dollars generated by MIS have enabled these schemes to bid from a position of relative advantage in terms of their access to capital.
- The removal of risk of project failure from the promoter.

The Government has identified market failure within some industries (eg forestry, or the arts), and established arrangements to encourage investment, because there is a reasonable fear that it would not otherwise occur. However, there is no market failure in horticulture, nor is there any necessity to artificially bolster investment in our industry.

ASIC's 2003 report expressed concerns regarding MISs involving primary production, particularly in relation to:

- Questionable commerciality.
- Poor quality, or absent, disclosure.
- Occasional inappropriate or misleading advice.
- Payment of high commissions to advisors.

Our market signals are being distorted by oversupply of certain commodities, leading to exacerbation of 'boom and bust' cycles eg:

- wine grapes currently.
- olives in the future.
- teatree in the past.

MISs are increasing competition for scarce resources:

- Land (resulting in artificial raising of prices or 'land-grabs')
- Water
- Labour (particularly seasonal labour, which is already at crisis point in many regional communities)

Targeting of industries with high up-front expenses for maximum tax benefit eg vines and tree crops.

For example, inflated establishment costs versus 'real world' grower costs, investor deductions of \$40K (which does include management fees) against the true 'real world' plant-able hectare cost of \$4K for almonds.

A recent Goldman Sachs JBWere report stated that they believe both the economic model and industry structure of MISs is "unsustainable". MDFVGA's view is that the simple solution is to treat "passive investors" (for tax purposes) as if they were any other investor, NOT as operators of a horticultural business:

- This should remove the artificial up-front incentives, and the focus on input costs rather than long-term sustainability and profit
- This, in turn, should remove or reduce market distortions, and
- Reduce or remove the current incentives for poor operators, and consequent risks to passive investors and genuine producers alike.

We hope you give the same consideration to this important issue.

Yours sincerely



for Joe Moro
President