

EMERITUS PROFESSOR F. GRAHAM SWAIN AM FAIAST FAICD

fax 0245 721941

< defgs@pnc.com.au >

P.O. Box 3132

Grose Vale 2753

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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,

I write as an external Director of Huntley Management Ltd. and at the request of the Board to respond to the above review.

I am an agricultural scientist of some 52 years standing. Over this period I have held research and administrative appointments with the NSW Department of Agriculture; teaching appointments with the University of New England and for the last 21 years prior to retirement in 1993, I was Principal of Hawkesbury Agricultural College (1972-1988) and then Deputy Vice Chancellor and CEO of the University of Western Sydney, Hawkesbury (1989-1993).

Following retirement I have served on the Boards of several agricultural production managed investment companies. In my current position, Huntley Management Ltd. acts as the single responsible entity or custodian for a variety of managed investment companies.

GENERAL COMMENT

Proposals to end tax deductibility for non-forestry managed investment schemes would be a retrograde and destructive action from an economic, environmental and social perspective. Non-forestry MIS are making a big contribution to rural and regional Australia. They have resulted in money from urban sources being invested in rural and regional areas. With the drought and general

economic problems facing rural Australia there is a serious shortage of investment funds from rural communities themselves. The urban funds have stimulated employment for a large number of employees and contractors in non-urban areas. The products from Non-Forestry MIS have the potential to increase export earnings.

TOPIC 1

Do MIS have a tax advantage?

Rather than having a tax advantage MIS provide an investment incentive. Point 4 in the review section of the Issues Paper describes this situation very well. Reference is made to the non-forestry MIS' ability to attract funds which enable them to achieve economies of scale. Point 4 elaborates on the contributions being made by non-forestry MIS. I do not agree with the points made in Point 3 of the Review Paper where it is stated that the growth in non-forestry MIS is due to unfair tax advantages resulting in a range of adverse effects.

Point 43 of Topic 1 of the Issues Paper (page 7) indicates that the ATO is challenging the tax deductibility of MIS participants in the courts because MIS structure has changed and initial contributions by MIS participants have become almost exclusively tax deductible. The ATO is taking a most unreasonable and unrealistic position in this matter. In order for an MIS to be established in the current economic climate it has become necessary for the land and infrastructure to be acquired by the MIS operator because of the shortage of rural investment funds. This has changed the method of payment of fees. Again, investment incentives are necessary if MIS are to continue to be established.

The ATO has also indicated it does not support the concept that MIS participants do not have day-to-day control over the running of the project and are not actively involved in the management of the MIS. My experience with several MIS' companies is that the participants do not want to be actively involved in the management of the MIS. They look on their involvement as an investment with the expectation that the MIS operator will make the decisions. Given the size of many

MISs and the complex nature of an agricultural operation this is the most efficient way to operate the MIS. Having the individual participants involved in the decision making would be unwieldy and in many cases unworkable.

It is significant that Federal Court Judge Robert French in September 2007 rejected the ATO's argument that an investor in an MIS had the main purpose of avoiding tax. He argued that there would be "significant returns which could reasonably be expected from a moderately successful outcome to the project independent of any tax benefits". The MIS industry has argued that the projects are genuine commercial arrangements with the commercial aspects of the arrangements predominating over any tax benefits.

TOPIC 2

How well do MIS perform?

Chart 1 in the review section of the Issues Paper provides convincing evidence that MIS are performing well: \$160 million initial contributions in 2003-4 and \$467 million in 2006-7 . Point 11 in the Review paper provides evidence of the wide range of products now produced by non-forestry MIS.

The performance of MIS has to take account of the variable performance of agricultural production projects because of the effects of climate, drought, storms, bushfires and market variability. With prospectuses that I have been involved with, I have ensured that all the factors that can affect performance are defined and that forecasts are qualified. Again there have to be investment incentives eg tax deductions to take account of the factors causing variable performance of non-forestry MIS.

TOPIC 3

What is the Impact of MIS on Inputs, the Environment and Regional Areas?

Points relating to this matter have been made in the General Comments section at the beginning of this submission.

The extensive list of regions which have seen an influx of funds by MIS is a

strong indicator of the important contribution being made by MIS (see Point 69-topic 3 of the Issues Paper).

Point 72 in the paper is strongly supported ie that MIS operations are more efficient due to economies of scale resulting in greater profits which can be used to purchase inputs from less efficient farmers.

TOPIC 4

Non-Forestry MIS and Commodity Markets

By the year 2050 the world population will have reached 9 billion people. This will be 2.3 billion more than the world's population in 2008. The challenge to feed these additional people will be very great. Non-forestry MIS can make an important contribution in meeting this challenge. Accordingly, investment incentives eg tax deductions should be available to encourage the development of MIS and to encourage investors in the current situation.

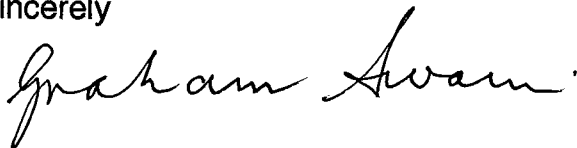
Clearly production from the MIS will have to be sold at economic levels both domestically and as exports. The operators of MIS will have to put in place effective and sustainable marketing strategies.

CONCLUSION

It is strongly recommended that the same taxation provisions for non-forestry MIS should apply as those for forestry MIS.

The foregoing provides arguments in support of this recommendation.

Yours sincerely



[EMERITUS PROFESSOR F. GRAHAM SWAIN, AM]