



CONSTRUCTION  
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UNION

FORESTRY &  
FURNISHING  
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15/01/10

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**RE:**

**Exposure Draft Legislation and Explanatory Material:  
Tax Laws Amendment (2010 Measures No. 1)  
Bill 2010: Forestry MIS**

To whom it may concern,

Below is comment on Exposure Draft Legislation and Explanatory Material: Tax Laws Amendment (2010 Measures No. 1) Bill 2010: Forestry MIS. Please do not hesitate to contact me to discuss this submission further.

Sincerely,

Jane Calvert  
National President  
Forestry and Furnishing Products Division  
CFMEU



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## CFMEU FFPD submission: Exposure Draft Legislation and Explanatory Material: Tax Laws Amendment (2010 Measures No. 1) Bill 2010: Forestry MIS.

1. The CFMEU FFPD supports the proposed amendments contained in the Exposure Draft Legislation and Explanatory Material.
2. The FFPD recognises the importance of the taxation amendments proposed in the Exposure Draft Legislation in the context of the high profile collapses of forestry MIS promoters Timbercorp and Great Southern in 2009.
3. Maintenance of the right of investors in forestry MIS to the applicable taxation deduction in spite of the 'four year rule' being failed due to a Capital Gains Tax event when the failure has occurred due to an event genuinely outside the investors control, is a fair, just, reasonable and an equitable outcome for investors.
4. These amendments must in no way adversely act against the effectiveness of enforcing the promoter penalty provisions designed to discourage the implementation of forestry MIS covered by an Australian Taxation Office (ATO) product ruling in a way that is materially different from the product ruling. Indeed, this submission argues that product rulings should be tightened to avoid similar outcomes to the collapse of Timbercorp and Great Southern, for the protection of investors and for the benefit of the wider community.
5. The FFPD recognises rulings supporting the taxation deductibility arrangement for forestry MIS investors which are consistent with other taxation deductibility laws available to any person incurring business costs. The FFPD also accepts taxation arrangements which in addition acknowledge the distinct commercial factors involved in forestry plantation investment such as the long-term nature of the investment and the upfront costs of plantation establishment and supports the arrangements.
6. Whilst appreciating these arrangements, it is the contention of the FFPD that further regulation is required which prioritises that capital returns on investments is the driving attraction to invest in forestry MIS as opposed to an immediate tax deduction exclusively. The FFPD contends that when used purely by certain investors as a taxation deduction mechanism that there is an incentive for forestry MIS promoters to use unprofitable high cost structures in order to provide greater tax deductibility to investors, while

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directing a percentage of this investment to related entities charging above commercial rates for project services. This unsustainable and inefficient business model can and should be avoided and the government must determine if the 70% Direct Forest Expenditure (DFE) rule is effective in preventing uncompetitive business and/or 'ponzi' models emerging.

7. Reform should aim to ensure that tax deductibility for forestry MIS investment compliments, rather than competes with genuine commercial forestry plantation operations and it assists in raising more capital for the management of more forests which are part of an integrated forest to market business model. This outcome is essential if forestry MIS is to mature to represent an investment structure which operates in the interests of the forest and forest products industry in the immediate and enduring future, thus providing the Australian government and tax payer value for money for the taxation deductions provided to forestry MIS investors.
8. The FFPD therefore recognises that the proposed amendment protects investors' deductions but advocates that further regulation is required to avoid excessively risky and economically unviable behaviour by forestry MIS promoters. This should be done for the purpose of assuring benefit to both the industry and the national interest.
9. Whilst supporting the taxation amendments contained in the Exposure Draft Legislation, the FFPD wishes to highlight that the main lesson from the collapse of the MIS promoters in 2009 should be that taxation benefits in terms of up front deductions for investors alone is an unsustainable and ineffective driver of economically sustainable plantation development.
10. Forestry MIS projects and their resultant plantation commodities need to be correlated with specific targeted markets and operations which are economically viable for the benefit of the entire forest and forest products industry (growers and processors) This is particularly important given the increasing mutual economic reliance shared between the plantation sector and the downstream processing sectors (not to mention sectors in between such as harvest and haulage)
11. The legitimate investor outrage at the corporate collapse of forestry MIS promoters in 2009 and continuing investor discontent despite the governments' proposed taxation amendment demonstrates that investors are and should be attracted to forestry MIS for the dual purpose of an



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immediate deduction but also for a reasonable prospect of a long term return on their investment. Therefore, the linking of forestry MIS projects and their resultant plantation commodities with specific customers, markets and operations which are economically viable and mutually financially beneficial for both the resource producer and the downstream processor is not just good for the industry and national interest but also vital to attracting sustainable investment in the plantation estate in an increasingly competitive financial market in the present and future.

12. The Government, by existing legislation being effectively utilised and additional legislation being introduced as deemed necessary, through the auspices of the Australian Securities and Investment Commission (ASIC) and the ATO can play a pro-active role in assuring these financial linkages are made between forestry MIS and markets.
13. Tightening the rules governing forestry MIS promoters by assuring that ATO product rulings require promoters to provide considerably more thorough information to potential investors about the probable transaction (including customers), timing, realistic target market, alternative market and sale price of a given schemes' specific product would go some way in re-establishing investor confidence in forestry MIS.
14. Ultimately, forestry MIS promoters should be required to present a business model which has sound commercial propositions, demonstrate an adequate basis for this information and be able to commercially justify their projected returns. Promoters should be subject to stronger penalties if their prospectus is significantly off market (except if impacted by events outside the promoters' control, like severe drought or downstream operator closures etc).
15. Forestry MIS can be attractive to investors and effective for the forest and forest products industry and as a result provide an economic, social and environmental dividend for the investment made by the government in the form of tax deductibility if regulatory requirements progress to assure that forestry MIS promoters identify and ideally secure buyers for their timber with an agreed price formula.
16. The above outcome can be achieved through the development of business models (with the security guarantee of binding contracts if deemed appropriate and necessary) through collaboration and mutual planning and monitoring by government agencies and departments, MIS promoters, downstream industry sector players and unions.



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17. The proposed taxation amendments in the Exposure Draft Legislation can assist with providing some confidence in forestry MIS but only a minuscule amount compared to the introduction of alternative and complimentary initiatives which would assure the linking of resource commodity product from forestry MIS plantation estates to a viable market, such a requirement would have the added effect of discouraging uncompetitive business arrangements for forestry MIS and projects developing.
18. Other initiatives including a full consideration of suitable additional taxation deductions for the forest and forest products industry further down the production line should be the priority for further investigative inquiry and subsequent legislative amendments by the government in promoting the forest and forest products industry for the economic, social and environmental benefit of the country.

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