Technical Bulletin

Tax Protection for Forestry MIS Investors

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The Government has released draft amending legislation which is designed to provide protection from unintended tax consequences for investors with an interest in a forestry MIS, who are forced to divest their interest for reasons outside of their control.

In order for an initial investor[1] in a forestry MIS to claim a tax deduction[2], a CGT event must not occur in relation to the forestry interest within four years after the end of the income year in which an expense was first incurred by the investor in relation to that interest.

Under current legislation, a CGT event within this time period will trigger the denial of these deductions, whether or not the CGT event occurred for reasons outside of the investor's control.

A CGT event includes but is not limited to the sale or transfer of the MIS interest.

If passed, this amending legislation will allow an investor to retain their right to 'up-front' tax deductions, provided that:

- the CGT event happened because of circumstances outside of the taxpayer's control; and
- when the taxpayer acquired the interest, they could not have reasonably foreseen that the CGT event would happen.

Situations which could be considered to be outside of the investor's control include:

1. the accidental death of the investor;
2. the interest in the MIS being compulsorily transferred because of marriage breakdown or compulsory acquisition by a government;
3. the initial investor becoming insolvent;
4. the interest being cancelled because of trees being destroyed by fire, flood or drought; and
5. the insolvency of the manager of the MIS, leading to the winding up of the scheme.

This amendment is expected to apply to CGT events occurring on or after 1 July 2007.

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[1] *An investor in an forestry MIS is an initial investor if they have obtained the interest from the manager of the scheme, and the payment to obtain the forestry interest results in the establishment of trees.*

[2] *Under either Division 394 of Income Tax Assessment Act 1997 or Section 82KZMGA(1) of Income Tax Assessment Act 1936*

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