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Ruling Compendium – TD 2010/7, TD 2010/8 and TD 2010/9

This is a compendium of responses to the issues raised by external parties to draft Taxation Determinations:

- TD 2009/D9 Income tax: does a change of Responsible Entity of a registered agricultural managed investment scheme affect the tax outcomes for participants if the arrangement continues to be implemented in accordance with the relevant product ruling?
- TD 2009/D10 Income tax: does the disposal or termination of an interest in a non forestry managed investment scheme which arises as a result of circumstances outside the control of the taxpayer result in the denial of deductions previously allowed under paragraph 8-1(1)(b) of the *Income Tax Assessment Act 1997* in respect of your contributions to the scheme?
- TD 2009/D11 Income tax: is a payment received by an investor in a non-forestry managed investment scheme upon the winding-up of the scheme, that does not involve the disposal of your interest in the scheme to another person, necessarily ordinary or statutory income under the *Income Tax Assessment Act 1997*?

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

Issue no.	Issue(s) raised	ATO Response/Action taken
1	Oral comments relating to other Managed Investment Scheme (MIS) issues, primarily questioning whether further Determinations would be issued in relation to forestry MIS issues.	Generally advised that further issues are being assessed and products will be issued if necessary. It should be noted that since the comments were received four Determinations, that is Taxation Determinations TD 2009/D13, 2009/D15, 2009/D15 and 2009/D16 concerning forestry MIS issues have been issued.
2	The commenting entity supports the draft Determinations; however has concerns about the example used in TD 2009/D9. It believes that the example should remove the reference to the Commissioner's review and addendum as it is unnecessary for the Determination to state what is clearly acceptable. It also suggested that multiple examples would be better.	The example in TD 2010/7 has been adjusted and an additional example has been added.

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Issue no.	Issue(s) raised	ATO Response/Action taken
3	The query deals with the situation where there is a reasonably substantial reapportionment of the amount to be paid to the new responsible entity (RE), for example, where the share of net proceeds to go to the RE for the scheme would increase significantly. The following two questions were asked: 1. I assume the investors tax position would alter to take into account the reapportionment. Please confirm. 2. Would this change in the apportionment of harvest proceeds be considered a change sufficient to remove the arrangement from the draft determination [TD 2009/D9]?	The ATO will need to consider the exact facts of any changes before assessing the tax implications. That will only be able to be assessed when a detailed application or proposal is formally put to it for consideration. The sort of issues that might arise from a change of RE, where the share of net proceeds to the RE increase, include: • Allowability of section 8-1 of the Income Tax Assessment Act 1997 deductions - is there still a sufficient commercial purpose to the activities such as to support a conclusion that a business continues to be carried on? • Commissioner's discretion in relation to the non-commercial loss provisions - is there still an objective expectation that, within a commercially viable period, the activity will meet one of the one of the objective tests set out in sections 35-30, 35-35, 35-40 or 35-45 or produce assessable income for an income year greater than the deductions attributable to it? A relevant example has been added to TD 2010/7.