

The Assistant Treasurer, Senator Nick Sherry, has today announced the Rudd Government will amend the tax law to protect around 19,000 investors in forestry managed investment schemes (MIS) from an unintended and adverse tax outcome.

The collapse of Timbercorp and Great Southern is expected to lead to a number of forestry MIS being wound-up or restructured, which could cause investors to fail the requirement of having held their interest in the MIS for four years as a condition of an up-front tax deduction.

The Rudd Government will amend this four-year holding period rule for forestry MIS to ensure that it cannot be failed for reasons genuinely outside an investor's control.

"Under current law, investors in forestry MIS managed by Timbercorp and Great Southern may have previous years' deductions clawed back because they haven't held their interests for four years," the Assistant Treasurer said.

"The four-year holding rules were introduced in 2007 as part of a package to regulate secondary trading of forestry interests."

"Many of the investments in question were made before this holding requirement was put in place – at the time they decided to invest, these investors had no way of knowing that their deductions were at risk."

"The Rudd Government doesn't consider that to be a desirable outcome, as it unduly penalises investors for events outside their control."

"Accordingly, we will amend the tax law to allow an investor's deduction to stand where the four-year holding rule is failed due to events beyond the control of the investor."

"These events include insolvency of the MIS manager, the death of the investor or where an MIS interest is cancelled, for example because of trees being destroyed by fire, flood or drought."

The Government will also amend the law to ensure that civil penalties can still apply to the promoters of forestry MIS notwithstanding that the investors' deductions are allowed to stand because of the amendment to the four-year holding rules.

The promoter penalty provisions are an important integrity measure designed to discourage the implementation of schemes covered by an Australian Taxation Office product ruling in a way that is materially different from the product ruling.

"The amendments will ensure the right balance between protecting certain investors' deductions and discouraging excessively risky behaviour," the Assistant Treasurer said.

"They ensure that taxpayers are not unfairly affected as a result of events outside their control, while maintaining robust integrity provisions."

As the holding period rules apply only to investments in forestry MIS, investors in other agribusiness MIS are not affected.

The Government will release draft legislation for public comment.

The Australian Taxation Office has also released further detail on the tax implications for investors in non-forestry agribusiness MIS where the operator becomes insolvent. It is available at www.ato.gov.au.

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