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Tom Reid
Law Design Practice
The Treasury
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By Post & by Email: taxlawdesign@treasury.gov.au

Dear Mr Reid

Thank you for the opportunity to provide a submission on the exposure draft legislation (Tax and Superannuation Laws Amendment Bill 2015: Farm management deposits) and explanatory memorandum to implement the changes to the Farm Management Deposit (FMD) scheme announced in the Agricultural Competitiveness White Paper. These include:

- a doubling of the deposit limit for FMDs from $400,000 to $800,000
- the removal of legislative restrictions placed on financial institutions preventing FMD accounts being used as a farm business loan offset
- introducing early access provisions for farmers in severe drought.

AgForce is the peak rural group representing the majority of beef, sheep and wool and grain producers in Queensland. The broadacre beef, sheep and grains industries in Queensland generated around $5 billion in gross farm-gate value of production in 2013/14. AgForce exists to ensure the long-term growth, viability, competitiveness and profitability of these industries. Our members provide high-quality food and fibre products to Australian and overseas consumers, manage more than 50 per cent of the Queensland landscape and contribute significantly to the social fabric of rural and remote communities.

The FMD Scheme is very successful in assisting primary producers deal more effectively with variability in cash flows (tax management and income smoothing) and to manage their financial risk in low-income years by building up cash reserves and self-reliance. FMDs are also useful for addressing variable incomes for those who have opted out of income averaging tax arrangements.

In our submissions to the Agricultural Competiveness Issues and Green Papers (April and December 2014) AgForce highlighted the important role of FMDs in preparing for and managing longer-term climate and other associated risks and made suggested improvement including:

- lifting the deposit limit in line with multiples (e.g. 3 to 5 years) of annual input costs
- extending direct access to companies and trusts (with further investigation indicated)
- enabling access within 12 months with retention of tax benefits in the event of a drought

- enabling the FMD to be held as an offset against other farm loans, which are often accruing interest at a greater rate than offered on FMDs, to maximise the value of the reserve.

The announced changes are generally aligned with the changes AgForce advocated for and so are welcomed. The following sections outline specific comments on each of these changes.

Doubling of the Deposit Limit

AgForce supports an increase in the current deposit cap from $400,000, particularly given the increasing scale of today's primary production businesses and the general desire for primary producers to be prepared and resilient to climatic risks. An increase of the cap in line with multiples of annual input costs would enable enterprise scale to be most effectively addressed, but an increase to a single cap has the advantage of administrative simplicity. AgForce would recommend that both the off-farm income and deposit limits should be indexed annually to the inflation of agricultural input costs and also reviewed regularly.

Introducing an Offset Capability

AgForce is strongly supportive of including the capability of a FMD to be used to offset other farm-related debt of the individual, or any primary production business partnership they are involved in, to reduce interest costs and maximise the value of the deposit.

It is important that the Government engage with the rural finance institutions to obtain their support for this initiative and to structure the system in a cost efficient and effective manner for both depositor and provider. There may be some practical issues where loans are held in the name of the business partnership/entity rather than of individual depositors and in determining the proportion of the loan used to support the primary production business. These are not seen as insurmountable obstacles however, with offset accounts provided by lenders on a regular basis.

The proposed provisions also include an administrative penalty of double the benefit from an uncompliant offset arrangement. This will act as a significant deterrent to game the system for purposes not associated with the agricultural business. Enabling the Commissioner of Taxation to take into account all relevant factors in deciding to apply the penalty also enables instances of minor or unwitting breaches to be addressed appropriately and is supported.

Introducing Early Access Provisions

AgForce supports the re-establishment of the FMD early access provisions (withdrawal within 12 months across income years without loss of tax considerations) that were lost when the Exceptional Circumstances system was removed.

The current proposal enables early repayment of deposits to a primary producer carrying on a production business where any of the land used in the business has a rainfall deficiency as defined by regulation, or within the lowest 5% of rainfall for that land according to publically available rainfall records held by the Bureau of Meteorology (BOM), for the most recent period of 6 consecutive months (or as defined in regulation) prior to the repayment.

A six month timeframe may be problematic in northern Australia with a strongly seasonal or variable rainfall pattern resulting in large monthly shifts in the geographical area with a complying deficiency.

Having a geographical distribution of land holdings is one proactive strategy to reduce climate risk within an enterprise and the users of such strategies should not be disadvantaged under the current proposed settings.

The Explanatory Notes reference the Australian Bureau of Agricultural and Resource Economics and Sciences rainfall monitor tool, which is based on BOM data. There is already an Australian Rainfall Deficiency Analyser in use by the Commonwealth (http://www.bom.gov.au/climate/ada/) in determining access to drought assistance measures, including for concessional loans and possibly also for declaring councils under the Drought Communities Programme. The Analyser compares 91 potential time period subsets across an overarching 2-year total period and then identifies if any comply with the desired rainfall deficiency requirement. This approach reduces any period bias due to variability in rainfall incidence.

Further, concerns have been raised about the use of the Analyser in that it does not reflect the actual agricultural effectiveness of received rainfall and it also does not operate at a sufficient precision to account for the significant spatial variability observed in rainfall patterns. The BOM itself acknowledges that the maps '*may not reflect actual rainfall at a particular location'*.

Due to these factors, the Government has recently introduced the capacity for individuals outside of the identified deficiency areas seeking concessional loans to make a case by case argument on the impacts of drought on their businesses. Further Commonwealth investment in improving the rainfall recoding network coverage and data analysis is needed to increase the effectiveness of this tool in the future. Similar concerns will likely apply to the ABARES Rainfall Monitor Tool. It would be preferable for the Government to use a single, robust tool for delivering consistency in making eligibility decisions and for ease of access by interested primary producers.

Other Improvements

AgForce would also request further consideration and investigation of the following changes:

- extending direct access to partnerships, companies and trusts, given the desirability of improved interchangeability for business structures (eg, between companies and partnerships) when accessing various forms of assistance
- enabling FMDs to contribute to superannuation for retiring primary producers, up to a suitable cap on personal contributions given the tax benefits

These changes would require some safeguards of the policy intent of the FMD system to be included.

AgForce has also supported the recent lifting of the off-farm income limit to $100,000 from $65,000, as producers who diversify to include off-farm income sources to help stabilise farm income should not be penalised or excluded from access to this useful tax incentive. This cap should be indexed annually and reviewed periodically.

Conclusion

AgForce supports the FMD system which delivers a range of benefits for primary producers to proactively manage climate risk and income variability over time. The proposed changes will deliver greater industry relevance and derive further value from the system.

If there are any questions relating to the contents of this submission please contact Dr Dale Miller via email (millerd@agforceqld.org.au), or telephone (07 3236 3100).

Yours sincerely

Charles Burke
Chief Executive Officer