16 December 2015

Tom Reid
Law Design and Practice
The Treasury
Langton Crescent
PARKES ACT 2600
E-mail – taxlawdesign@treasury.gov.au

Dear Tom,

Tax and Superannuation Laws Amendment (2015 Measures No.7) Bill 2015: Farm management deposits

Thank you for the opportunity to comment on Tax and Superannuation Laws Amendment (2015 Measures No.7) Bill 2015: Farm management deposits (FMD bill).

Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand is made up of over 100,000 diverse, talented and financially astute professionals who utilise their skills every day to make a difference for businesses the world over.

Members of Chartered Accountants Australia and New Zealand are known for professional integrity, principled judgment and financial discipline, and a forward-looking approach to business.

We focus on the education and lifelong learning of members, and engage in advocacy and thought leadership in areas that impact the economy and domestic and international capital markets.

We are represented on the Board of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance, and Chartered Accountants Worldwide, which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

FMD bill

Chartered Accountants Australia and New Zealand is generally supportive of the changes made by this bill to FMDs which:

- Double the deposit limit from $400,000 to $800,000;

- Remove the legislative restrictions placed on financial institutions which currently prevent FMD accounts from being used as a farm business loan offsets; and
- Provide early access provisions for farmers in severe drought.

Early access provisions and the *Incorporating an integrity measure for the early access provisions*

As it is currently drafted the proposed section 393-40(3)(b) of the Income Tax Assessment Act 1997 refers to 'any of the land' that is used for primary production. Paragraph 1.24 of the explanatory memorandum states that "the rainfall test only needs to be satisfied in relation to a part of the land. It can be just one part of a number of parcels of land from which the business is carried on." This broad wording, leaves the legislation open to manipulation.

We suggest that the proposed changes in relation to the early access provisions could be enhanced by incorporating integrity provisions that are similar to those that were used in relation to areas declared under the now defunct exceptional circumstances measures.

The integrity measures could involve:

- A requirement that the affected land must contribute at least 50% of the assessable income of the business in the preceding and current tax year to be eligible; or
- Only a percentage of the FMDs can be released in line with the percentage of affected land; or
- Profit may need to be calculated and deposits allocated to specific geographical locations.

Extending early access to other events

Drought is not the only natural disaster that can have catastrophic effects on primary producers. Fire and flood can have consequences that are equally as devastating. We suggest that consideration be given to extending the early access provisions to include circumstances such as fire and flood.

Other entity types

Currently the FMD scheme is limited to individuals. Given many agricultural assets are held in different structures (such as companies, trusts and partnerships) the effectiveness of this scheme is limited.

We recommend that the government, as part of the tax white paper, consider the merits of extending the FMD scheme to apply to primary producers holding their agricultural assets in entities. We believe that this would be in keeping with the purpose of the FMD scheme and further assist primary producers in becoming more self-reliant in managing the risk of climate variability.

Non-commercial loss rules

The Agricultural Competitiveness White Paper notes that the non-commercial loss rules will be considered in the tax white paper. We recommend that when the non-commercial loss provisions are considered, the interaction with the FMD provisions be taken into account.

One of our members has noted that currently, the Australian Taxation Office consider that where a FMD is withdrawn and *not reinvested back in the business*, that the FMD is not income from a business activity. As a consequence, the FMD will count towards the $250,000 income cap. If the income cap is exceeded then the FMD amount will be taxable and any business losses during the same income year may be quarantined.

Rainfall test

One of our members has noted that approximately 80% of the annual rainfall in Northern Australia falls during the wet season that runs from December until April (5 months at the outside). If the wet season fails or is at a level of around 30% of average then the rest of the year will be tough going. Depending upon the timing (e.g. wanting to withdraw funds in February in a low wet season), the six month figures may not be appropriate to primary producers in these regions wanting to access their FMDs early.

*   *   *

We would be happy to discuss any aspects of our submission with you. Please contact me on (02) 9290 5609 or michael.croker@charteredaccountantsanz.com

Yours sincerely,

Michael Croker
Tax Leader Australia

Appendix 1 – extending FMDs to all entities

Companies

Companies have the same variability of income as an individual operating a business. While a flat rate of tax avoids the problem of paying tax at higher marginal rates during more profitable years, the cash flow impacts (including higher PAYG instalments) are of the same significance as any other entity.

To help address the same underlying issues of income volatility we recommend that consideration be given to allowing companies to access FMDs. Such access may be limited in relation to how long that companies can hold deposits and may include a different threshold limit to recognise that companies face a flat rather than a marginal tax rate.

Partnerships and Trusts

Currently an individual partner (or beneficiary of a trust) must draw money from the partnership (trust) to invest in a FMD under an agreement that the money will be paid back to the partnership (trust) upon its withdrawal from the FMD - this is needed to ensure that the funds are going to be available for their intended purpose (to fund the business in leaner years). Most related party businesses do not have this degree of governance as they usually rely on the relevant parties 'doing the right thing'. The consequence of this is that funds may not be made available to the business following withdrawal.

Rather than require individual partners or beneficiaries to manage FMDs and their documentation, it is suggested that it could be more efficient to allow the partnership or trust itself to manage FMDs. This could operate in the following manner.

> *Money that is invested in a FMD in the name of a partnership or trust would be deducted from the assessable income of the partnership or trust before profit is distributed to partners or beneficiaries. Assessable income from withdrawal of a FMD would then be added to the partnership or trust income before profit is distributed to partners or beneficiaries.*

We acknowledge that thought would need to be given to the appropriate thresholds for entities compared with individuals. For example a family partnership may have 4 partners giving them access of up to $3,200,000 in FMD threshold (under the proposed change from $400,000 to $800,000). If FMDs are extended or changed to entities, a different approach would need to be taken in determining the entity-based threshold.