

EXPOSURE DRAFT

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

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule #	The day this Act receives the Royal Assent.	
2.		
3.		

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Schedule #—Farm management deposits

Income Tax Assessment Act 1997

1 Section 393-1

Omit “in exceptional circumstances or in the event of”, substitute “in the event of a severe drought or”.

2 After paragraph 393-15(2)(c)

Insert:

(ca) subsection 393-40(3) (about repayment of a farm management deposit in the event of severe drought); and

3 At the end of Subdivision 393-A

Add:

393-17 Tax consequences of offsetting liabilities with interest from farm management deposits

(1) To avoid doubt, if an amount that would otherwise accrue as interest or other earnings on a *farm management deposit:

(a) is applied to reduce, or is applied in a way that has the effect of reducing, liabilities of its *owner, or of a partnership of which the owner is a partner, to pay interest to the *FMD provider in respect of loans or other debts of the owner or partnership; or

(b) is applied to reduce, or is applied in a way that has the effect of reducing, the amount of any loans made by the FMD provider to, or any other debts owed to the FMD provider by, the owner or partnership;

then:

(c) any income of the owner or partnership comprising the reduction is neither assessable income nor *exempt income of the owner or partnership; and

(d) any amount that any person could have, apart from this section, deducted under this Act if the reduction did not occur is not deductible.

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1 (2) However, this section applies only to the extent that the loans or
2 other debts relate to a *primary production business that the
3 depositor or partnership carries on.

4 **4 Subsection 393-30(2)**

5 Omit “items 7 to 9”, substitute “items 7 and 9”.

6 **5 At the end of section 393-30**

7 Add:

8 Note: There is an administrative penalty if a requirement contained in the
9 relevant agreement as set out in item 8 of the table in section 393-35 is
10 contravened: see section 288-115 in Schedule 1 to the *Taxation*
11 *Administration Act 1953*.

12 **6 Section 393-35 (table item 8)**

13 Omit the item, substitute:

8 Amounts that would otherwise accrue as interest or other earnings on the
deposit must not (except in the circumstances specified in section 393-37):

- (a) reduce, or have the effect of reducing, liabilities of any person to pay interest to the *FMD provider in respect of loans or other debts of any person; or
- (b) reduce, or have the effect of reducing, the amount of any loans made by the FMD provider to, or any other debts owed to the FMD provider by, any other person.

14 **7 After section 39-35**

15 Insert:

16 **393-37 Agreements for a farm management deposit may allow for** 17 **some offsets of a depositor’s liabilities**

18 An agreement mentioned in paragraph 393-20(1)(b) does not
19 contravene the requirements of item 8 of the table in
20 section 393-35 to the extent that:

- (a) it allows amounts:
 - (i) to reduce, or to have the effect of reducing, liabilities of the depositor, or of a partnership in which the depositor is a partner, to pay interest to the *FMD provider in respect of a loan or other debt of the depositor or partnership; or

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- 1 (ii) to reduce, or to have the effect of reducing, the amount
2 of any loans made by the FMD provider to, or any other
3 debts owed to the FMD provider by, the depositor or a
4 partnership in which the depositor is a partner; and
5 (b) that loan or other debt relates to a *primary production
6 business that the depositor or partnership carries on.

7 **8 Section 393-35 (table item 10)**

8 Omit “\$400,000” (wherever occurring), substitute “\$800,000”.

9 **9 Subsection 393-40(1) (note 1)**

10 Omit “subsection (3A)”, substitute “subsection (3), (3A)”.

11 **10 Subsection 393-40(2) (note 1)**

12 Omit “subsection (3A)”, substitute “subsection (3), (3A)”.

13 **11 After subsection 393-40(2)**

14 Insert:

15 *Repayment in the event of severe drought*

- 16 (3) Subsections (1) and (2) do not apply to a repayment of the whole
17 or a part of a *farm management deposit if:
- 18 (a) the *owner of the deposit carries on a *primary production
19 business that satisfies one or more of paragraphs (a), (b), (c)
20 and (f) of the definition of *primary production business* in
21 subsection 995-1(1); and
- 22 (b) any of the land from which the owner of the deposit carries
23 on any primary production business that satisfies one or more
24 of those paragraphs has, for the period specified in
25 subsection (3AA), had a rainfall that:
- 26 (i) is deficient to an extent prescribed by the regulations; or
27 (ii) if there are no such regulations—is within the lowest
28 5% of rainfall for that land according to records held by
29 the Commonwealth Bureau of Meteorology; and
- 30 (c) for the period specified in subsection (3AA):
- 31 (i) the owner of the deposit has carried on a primary
32 production business on that land; and
33 (ii) the amount of the repayment has been held in that farm
34 management deposit.

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1 (3AA) For the purposes of paragraphs (3)(b) and (c), the period is:

2 (a) a period prescribed by the regulations; or

3 (b) if there are no such regulations—the most recent period of 6
4 consecutive months:

5 (i) that precede the repayment; and

6 (ii) for which rainfall records held by the Commonwealth
7 Bureau of Meteorology are publicly available at the
8 time of the repayment.

9 **12 Subsection 393-40(4)**

10 Omit “subsection (3A)”, substitute “subsection (3) or (3A)”.

11 *Taxation Administration Act 1953*

12 **13 At the end of Division 288 in Schedule 1**

13 Add:

14 **288-115 Prohibited offsets of liabilities using interest etc. accrued on** 15 **farm management deposits**

16 (1) The depositor of a *farm management deposit is liable to an
17 administrative penalty if:

18 (a) an amount that would otherwise accrue as interest or other
19 earnings on the deposit reduces, or has the effect of reducing,
20 a liability; and

21 (b) the reduction:

22 (i) contravenes a requirement, contained in the agreement
23 mentioned in paragraph 393-20(1)(b) in relation to the
24 deposit, as set out in item 8 of the table in
25 section 393-35; or

26 (ii) would contravene such a requirement if it were
27 contained in that agreement.

28 (2) The amount of the penalty is 200% of so much of the reduction as
29 contravenes that requirement, or would contravene such a
30 requirement.

31 **14 Application of amendments**

32 The amendments made by this Schedule apply to the 2016-17 income
33 year and later income years.