

<b>EXPOSURE DRAFT</b>
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Inserts for

**Treasury Laws Amendment (2016 Measures No. XX) Regulation 2016: Farm management deposits**

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**Commencement information**

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**Column 1**

**Column 2**

**Column 3**

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**Provisions**

**Commencement**

**Date/Details**

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1. Schedule #

The day after this instrument is registered.

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## **Schedule #—Farm management deposits**

### **Part 1—Amendments**

#### *Income Tax Assessment Regulations 1997*

##### **1 After Part 3**

Insert:

### **Part 3A—Rules for particular industries and occupations**

#### **Division 393—Farm management deposits**

##### **393-1 Simplified outline of the farm management deposits scheme**

Division 393 of the Act establishes the farm management deposits scheme, which are deposits made with FMD providers in the circumstances described in that Division.

You can deduct a farm management deposit you make if:

- (a) you are an individual carrying on a primary production business (including a primary production business you carry on as a partner in a partnership or as a beneficiary of a trust); and
- (b) you hold the deposit for at least 12 months; and
- (c) you meet some other requirements.

The amount of the deposit repaid is included in your assessable income in the income year in which it is repaid. Special rules apply if the deposit is repaid in the event of a severe drought or an applicable natural disaster.

Farm management deposits allow you to carry over income from years of good cash flow and to draw down on that income in years when you need the cash. This enables you to defer the income tax on your taxable primary production income from the income year in which you make the deposit until the income year in which the deposit is repaid.

##### **393-5 Application form for a farm management deposit: information given by depositor**

For paragraph 393-20(2)(b) of the Act, the following information is to be provided by a depositor to an FMD provider:

- (a) the depositor's name, address, date of birth and telephone number;
- (b) the amount of the deposit;
- (c) a description of the major commodity or commodities produced in the year of the deposit;

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- (d) if the depositor is not the owner of the deposit—the owner’s name, address and date of birth.

Note: Subsection 393-20(2) of the Act requires a depositor to apply to an FMD provider to make a farm management deposit with the FMD provider.

Under paragraph 393-20(2)(b) of the Act, the application form must require the depositor to provide any information required by regulations.

Under paragraph 393-20(2)(a) of the Act, the application form must also permit the depositor to state the owner’s tax file number in the form.

### **393-10 Application form for a farm management deposit: information given to depositor**

For paragraph 393-20(2)(c) of the Act, the form used to apply to an FMD provider to make a farm management deposit must contain:

- (a) either of the statements set out in Part 1 of Schedule 1C; and
- (b) the statements set out in Part 2 of Schedule 1C; and
- (c) the additional information required by Part 3 of Schedule 1C.

Note: Subsection 393-20(2) of the Act requires a depositor to apply to an FMD provider to make a farm management deposit with the FMD provider.

Under paragraph 393-20(2)(c) of the Act, the application form must include any statements, required by regulations, that are to be read by the depositor when completing the form.

### **393-15 Repayment of farm management deposit in the event of a natural disaster**

For paragraph 393-40(3A)(b) of the Act, the circumstances that are to be satisfied in relation to a repayment of the whole or a part of a farm management deposit are:

- (a) recovery assistance has been provided:
  - (i) as a Category C measure, as defined in the Natural Disaster Relief and Recovery Determination Version 2.0 determined by the Minister for Justice on 29 October 2015; and
  - (ii) in the form of a recovery grant for a primary producer, as described in that Determination; and
- (b) the recovery assistance was first provided during the 12 month period mentioned in subsection 393-40(1) of the Act; and
- (c) the farm management deposit was repaid after the recovery assistance was first provided.

Note: Paragraph 393-40(3A)(b) of the Act relates to a repayment if natural disaster relief and recovery arrangements made by or on behalf of the Commonwealth apply.

## **2 After Schedule 1B**

Insert:

### **Schedule 1C—Farm management deposits: statements to be read by depositors**

(regulation 393-10)

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## Part 1—Statements

### 1 *Authorised deposit-taking institution*

The FMD provider issuing this application form is an authorised deposit-taking institution for the purposes of the *Banking Act 1959*.

### 2 *Financial Claims Scheme*

The account holder may be entitled to payment under the Financial Claims Scheme. Payments under the Financial Claims Scheme are subject to a limit for each depositor in respect of total deposits held by that depositor at a locally incorporated authorised deposit-taking institution. For further information contact the Australian Prudential Regulation Authority or visit [www.fcs.gov.au](http://www.fcs.gov.au).

## Part 2—Required statements

### 1 *Purpose of farm management deposits scheme*

The farm management deposits scheme is designed to allow individuals carrying on a primary production business in Australia to shift before-tax income from years when they need it least to years when it is most needed. The scheme helps those individuals to manage their exposure to adverse economic events and seasonal fluctuations.

Eligibility criteria apply to individuals carrying on a primary production business in Australia under the scheme.

Note: **Primary production business** and carrying on a primary production business are explained in subsection 995-1(1) of the Act.

### 2 *Tax consequences of farm management deposits*

The scheme allows individuals carrying on a primary production business in Australia to deduct the amount of any farm management deposit they own from their assessable income for the income year in which the deposit is made. However, the amount of the deductions cannot exceed the owner's taxable primary production income for the income year.

Under the Pay As You Go system, owners may reduce their instalment income for an instalment period by the amount of farm management deposits made during that period. The reduction is limited to the amount that the owners can reasonably expect to deduct for the deposit for the income year in which the deposit is made. However, the instalment income for the period cannot be reduced below nil.

When a farm management deposit is repaid to an owner in an instalment period, the instalment income of the period will include the amount of the repayment. But the owner's instalment income will only include so much of the repayment as will be included in the owner's assessable income for the income year in which the repayment is made.

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If neither the owner's tax file number nor Australian Business Number has been quoted to the FMD provider that holds the deposit, the amount repaid will also be subject to withholding at a rate equal to the sum of the top marginal tax rate and the Medicare levy.

### 3 *Important requirements for farm management deposits*

Some of the requirements for farm management deposits are summarised below. There are also other requirements set out in the Act. A breach of some of the requirements will result in the deposit not being treated as a farm management deposit, and the tax benefits will be lost.

- The owner must be an individual who is carrying on a primary production business in Australia when the deposit is made.
- The deposit must be made by only one individual and on behalf of only one individual.
- Rights of the depositor must not be transferable to another entity.
- The deposit must not be used as security for any amount that the depositor or any other entity owes to the FMD provider or any other entity.
- Interest or other earnings on the deposit must not be invested as a farm management deposit with the FMD provider without having first been paid to the depositor.
- If the depositor requests in writing, the FMD provider must electronically transfer the deposit, or part of the deposit, to another FMD provider that agrees to accept it as a farm management deposit.
- The FMD provider must not deduct any fees from the principal of a farm management deposit. However, it may charge fees on the deposit.

### 4 *Repayment of farm management deposits*

The tax benefits are not retained for deposit amounts repaid within the first 12 months after the deposit was made, unless the repayment is made:

- (a) because the owner:
  - (i) dies; or
  - (ii) becomes bankrupt; or
  - (iii) ceases to carry on a primary production business in Australia and does not start carrying on such a business again within 120 days; or
  - (iv) has requested the deposit, or part of the deposit, to be transferred to another FMD provider and the repayment relates to the transfer; or
- (b) because the circumstances specified in subsection 393-40(3) of the Act or in regulations made for the purposes of that subsection, relating to repayment in the event of severe drought, exist; or
- (c) because the circumstances specified in regulation 393-15 of the Act, relating to repayment in the event of a natural disaster, exist.

## **Part 3—Additional information**

Note: Under paragraph 393-10(1)(c) of the Act, an FMD provider is required to insert the figures that are stated in the provisions mentioned in this Part.

- 1 The minimum deposit threshold is the amount stated in item 4 of the table in section 393-35 of the Act.

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- 2 The maximum deposit limit is the amount stated in item 10 of the table in section 393-35 of the Act.
  - 3 An individual can own more than one farm management deposit, and can own farm management deposits with different FMD providers, but the sum of the balances of all of the farm management deposits of an owner claimed as a deduction must not be more than the maximum deposit limit.
  - 4 The amount of any repayment of the deposit must be at least the amount stated in item 12 of the table in section 393-35 of the Act, except where the entire amount of the deposit is repaid.
  - 5 The deposit will not be deductible if taxable non-primary production income for the year of income exceeds the amount stated in paragraph 393-5(1)(d) of the Act.
  - 6 If neither the owner's tax file number nor Australian Business Number has been quoted to the FMD provider, any repayment will be subject to the withholding rate, which is the sum of:
    - (a) the top marginal tax rate for the income year in the year of deposit; and
    - (b) the Medicare levy.

Note 1: The top marginal tax rate is the maximum rate specified in column 3 of the table in Part 1 of Schedule 7 to the *Income Tax Rates Act 1986*.

Note 2: The Medicare levy is specified in subsection 6(1) of the *Medicare Levy Act 1986*.
  - 7 If the deposit is used to offset a liability to pay interest on debts to the FMD provider that do not relate to a primary production business that the owner carries on, the owner is liable to an administrative penalty of up to 200% of that offset.

## ***Taxation Administration Regulations 1976***

### **3 Regulation 2**

Insert:

***Agriculture Secretary*** has the meaning given in subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

***FMD provider*** has the meaning given in subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

### **4 After Part 7**

Insert:

## **Part 7A—Farm management deposits**

### **63A Information to be given to Agriculture Secretary**

For paragraph 398-5(3)(d) in Schedule 1 to the Act, an FMD provider must give the following information to the Agriculture Secretary:

- (a) the month being reported;

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- (b) in relation to each farm management deposit:
- (i) the industry code for the depositor, by reference to the Australian and New Zealand Standard Industrial Classification Code; and
  - (ii) an account number that is modified by the FMD provider to prevent the disclosure of the identity of the depositor and the identity of the owner (if the owner is not the depositor), and that remains the same while the owner holds the farm management deposit; and
  - (iii) a personal identification number that is modified by the FMD provider to prevent the disclosure of the identity of the depositor and the identity of the owner (if the owner is not the depositor), and that remains the same while the owner holds any farm management deposits with the FMD provider; and
  - (iv) the closing balance of the farm management deposit at the end of the month to which the report relates; and
  - (v) the State or Territory of the residence of the owner; and
  - (vi) the year of birth of the owner; and
  - (vii) the year and month of the deposit.

Note 1: Section 398-5 in Schedule 1 to the Act requires an FMD provider that holds an FMD at the end of a month to give information in writing, before the 11th day after the end of that month, to the Agriculture Secretary. The information is described in subsection 398-5(3) in Schedule 1 to the Act, and includes any other information, in relation to farm management deposits held by the FMD provider, that is required by the regulations.

Under subsection 398-5(4) in Schedule 1 to the Act, the regulations must not require information that discloses the depositor's identity or from which the depositor's identity could be reasonably inferred.

Note 2: This information is additional to the information that an FMD provider must give to the Agriculture Secretary under paragraphs 398-5(3)(a), (b) and (c) in Schedule 1 to the Act.

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## **Part 2—Repeals**

### ***Income Tax (Farm Management Deposits) Regulations 1998***

#### **5 The whole of the Regulations**

Repeal the Regulations.