

EXPOSURE DRAFT EXPLANATORY STATEMENT

Issued by authority of the Minister for Revenue and Financial Services

Income Tax Assessment Act 1997, Taxation Administration Act 1953

Income Tax Assessment Regulations 1997, Taxation Administration Regulations 1976

Schedule # to the *Treasury Laws Amendment (2016 Measures No. #) Regulation 2016* (the Amending Regulation) sets out information requirements for farm management deposits (FMDs). These requirements include the information that must be provided in application forms by depositors of FMDs, the information FMD providers must give to depositors and the information that FMD providers must give to the Agriculture Secretary. The Amending Regulation also prescribes the types of natural disaster relief and recovery arrangements that enable FMDs to be withdrawn within 12 months without affecting the income tax deduction for deposits.

Section 909-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) and section 18 of the *Taxation Administration Act 1953* (TAA 1953) provide that the Governor-General may make regulations prescribing matters required or permitted by the Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Acts.

The purpose of Schedule 1 to the Amending Regulation is to revise and remake regulations for FMDs previously contained in the *Income Tax (Farm Management Deposits) Regulations 1998* (FMD Regulations 1998) prior to their sunseting in 2019. The Amending Regulation relocates them from the FMD Regulations 1998 to the *Income Tax Assessment Regulations 1997* (ITAR 1997) and to the *Taxation Administration Regulations 1976* (TAR 1976).

The Amending Regulation also makes consequential changes to existing information requirements as a result of recent changes to the taxation law concerning FMDs made by Schedule 3 to the *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016* (the Act).

The Act made the following amendments to the tax law to:

- enable certain primary producers experiencing severe drought conditions to withdraw an amount that has been held in an FMD for less than 12 months (ITAA 1997);
- enable FMDs to be used to offset loans or other debts relating to the FMD owner's primary production business (ITAA 1997 and TAA 1953) and
- impose an administrative penalty where an FMD is applied to reduce interest on a non-qualifying loan (TAA 1953).

The Amending Regulation remakes the FMD Regulations 1998 to reflect the changes to the taxation law concerning FMDs, including consolidating the regulations and updating the wording to reflect current drafting practices. The regulations are remade as part of the ITAR 1997 and the TAR 1976, achieving correspondence between the

relevant sections of the ITAA 1997 and the relevant sections of the ITAR 1997. The Amending Regulation also updates an out-of-date reference to ‘the Secretary of the Department of Agriculture, Fisheries and Forestry’.

The Acts do not specify any conditions that must be met before the power to make the Amending Regulation may be exercised.

The Amending Regulation is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amending Regulation commences on the day after registration on the Federal Register of Legislation.

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**Details of Schedule # of the Treasury Laws Amendment (2016 Measures No. #)
Regulation 2016**

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Treasury Laws Amendment (2016 Measures No. #) Regulation 2016*.

Section 2 – Commencement

This section provides that each provision of the Amending Regulation specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms.

Section 3 – Authority

This section provides that the Amending Regulation is made under the *Income Tax Assessment Act 1997* and the *Taxation Administration Act 1953*.

Section 4 – Schedule

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule # - Farm management deposits

The FMD Regulations 1998 were due to sunset in 2019. The purpose of the Amending Regulation is to revise and remake the FMD regulations, relocating them from the FMD Regulations 1998 to the ITAR 1997 and to the TAR 1976. This allows for the repeal of the FMD Regulations 1998.

The Amending Regulation also makes consequential changes to existing information requirements as a result of recent changes to the taxation law concerning FMDs.

The Act extended the natural disaster circumstances in which primary producers can withdraw an amount held in an FMD within 12 months of deposit in the income year following deposit, without affecting the income tax treatment of the FMD in the earlier income year. The natural disaster circumstances are extended to include severe drought.

The Act also amended the ITAA 1997 and TAA 1953 to enable FMDs to be used to offset loans or other debts relating to the FMD owner's primary production business. The Act also amended the TAA 1953 to impose an administrative penalty in circumstances where an FMD is applied to reduce interest on a non-qualifying loan such as a non-primary production business or private loan.

As a result of the changes to FMD arrangements in the Act consequential changes are also made in the Amending Regulation to ensure that FMD depositors are fully informed when making deposits. Accordingly, the Amending Regulation requires FMD providers to inform depositors of FMDs that, although FMDs can be used to offset loans, a 200 per cent administrative penalty may apply if an FMD is offset against a non-primary production business loan. The Amending Regulation also ensures that the information provided to FMD depositors includes an explanation of potential eligibility to withdraw an FMD amount within 12 months in severe drought situations. The Amending Regulation also updates the information provided to

depositors concerning the security of money held in FMDs by requiring information about the Financial Claims Scheme to be provided to depositors. The Amending Regulation updates a reference to the Natural Disaster Relief and Recovery Arrangements (NDRRA) concerning repayment in the event of a natural disaster to refer to the most recent 2012 NDRRA determination.

The Amending Regulation remakes the FMD Regulations 1998, to reflect these changes to the taxation law concerning FMDs and also to consolidate the regulations and to update the regulations to reflect current drafting practices. Minor changes are also made to the wording of the explanation of the information that must be provided to depositors and also provided by FMD providers to the Agriculture Secretary. These changes clarify and streamline the explanation of these information requirements. The Amending Regulation is remade under the ITAA 1997 and the TAA 1953, achieving correspondence between the relevant sections of the ITAA 1997 and the relevant sections of the ITAR 1997. The Amending Regulation also updates an out-of-date reference to ‘the Secretary of the Department of Agriculture, Fisheries and Forestry’.

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