



FINANCIAL SERVICES

ABN 41 973 962 834

21st April 2015

Mr Mark Coulton, MP
Member for Parkes
Suite 3
153 Brisbane Street
DUBBO NSW 2830

Dear Mr Coulton,

Thank you for forwarding on the letter that you received from the Assistant Treasurer, Mr Josh Frydenberg. I appreciate your efforts in forwarding my concerns on to the Assistant Treasurer.

I have approached Mr Barnaby Joyce MP and yourself over this matter in the past and I have received responses from the Minister of Finance, Mr Mathias Cormann (see attached) and now the Assistant Treasurer. I am gravely concerned that neither of these two men, who command such high positions in the Federal Government, actually understand the non-commercial loss rules, as Mr Cormann's response only actually only addresses the non-commercial loss rules once (in the first sentence) and then goes on to talk about everything else, while Mr Frydenberg is clearly wrong in his comment regarding the \$250,000 other assessable income test.

I refer you to the fifth paragraph of the letter sent by Mr Frydenberg in which he is discussing the effects of the \$250,000 adjustable taxable income test. He goes on to say "These changes are designed to prevent losses from the non-commercial activity being deducted from a taxpayers other assessable income. While I sympathise with the circumstances.....there is a limit to the capacity of the tax law to adapt to every circumstance".

If Mr Frydenberg actually understood the legislation then he would know that the \$250,000 other assessable income test has nothing to do with whether a business is commercially viable or not, in fact, it has nothing to do with a business at all! It is solely related to the individual taxpayer's income from other sources, in fact a business can pass the one or all of the four tests used to determine the commercial viability of a business and the taxpayer can still be caught by the legislation.

The key point to this whole issue is that the \$250,000 other assessable income test does not differentiate between commercially viable and non viable businesses at all, it doesn't even address the topic.

It is interesting to note that this legislation only attacks people carrying on a businesses, if a taxpayer is involved in a business that makes a loss once in twenty years they could potentially be caught by this legislation but if their income came from negatively geared investment activities such as rental properties or share portfolios and these investments made a tax loss for twenty years in a row they would not be caught by this legislation.

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I sincerely question the your government's priorities here, I think you have it all wrong, it is clear that you are attacking taxpayers who run a commercially viable business, producing goods and services for the economy, who may unfortunately have a loss one year, solely on the grounds of they have other assessable income (which may include redemption of Farm Managed Deposits (FMD's) which is greater than \$250,000. Meanwhile you reward taxpayers who borrow large amounts and investment these funds in passive investments that generally do comparatively little to the economy, not only does the latter receive the tax deduction but they receive a 50% reduction in any capital gain they make.

I suggest that if the Federal Government was serious about stopping non-commercial losses from non-commercial activities been deducted against the taxpayers assessable income, the mechanisms are already in place in the legislation just the benchmark tests levels are too low.

For example the Business turnover test of \$20,000 is too low and I would argue it should be closer to \$50,000 to \$75,000 per annum.

I suggest that the Business Real Property Test of just \$500,000 should be raised closer to \$750,000 or \$1 Million.

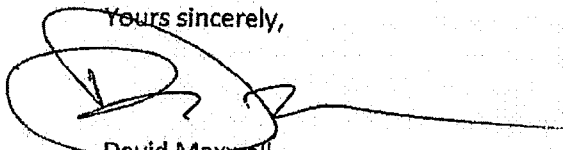
If the above changes were in place and the \$250,000 other assessable income test for the non-commercial loss legislation was removed it would create a pro-investment environment and many of our family farms would have a greater chance of transferring to the next generation.

The reality is that the tax law does not have to adapt to "every circumstance" but if it is drafted properly with adequate test levels in place such a half baked patch up legislation such as the \$250,000 other assessable income test would not exist.

From an outsider looking in, the \$250,000 other assessable income test is classic Labor Party class warfare legislation but like most classic Labor Party class warfare legislation it tends to hit more people than it is intended to and ends up a shemozzle. Your problem is that it ceases to be Labor Party legislation and becomes Liberal / National Party legislation when you leave it there and then have senior ministers defend it. It is what it is a poorly thought out piece of legislation aimed at high income taxpayer but it ends up hitting middle taxpayers. The latter are your constituents I doubt they are Mr Cormann's or Mr Frydenberg's.

Earlier this year I attended a meeting with Joe Hockey and Barnaby Joyce in Walgett. When they mentioned the FMDs and why people don't use them I advised them the FMDs deposits only work for partnerships to which Mr Hockey was genuinely surprised. When he asked why, I explained the problem with losses and he understood. It was very simple. What I am saying is that I do not believe that many in the senior ranks of the Liberal/National Party Government have any idea of what the tax implications are for farming businesses and clearly your colleague Mr Frydenberg does not understand the legislation in its basic form and until they do that we can have no hope for fair and just tax system.

Yours sincerely,



David Maxwell
Director
C & W Financial Services