MC TAX ADVISORS

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12 August 2019

Committee Secretary
Senate Standing Committees on Economics
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam

Treasury Laws Amendment (2019 Tax Integrity And Other Measures No. 1) Bill 2019
Limiting deductions for vacant land

MC Tax Advisors is a specialist tax advisory firm, servicing accounting practitioners and the SME market. We appreciate the opportunity to make a submission with respect to Schedule 3 of the Treasury Laws Amendment (2019 Tax Integrity And Other Measures No. 1) Bill 2019 in relation to limiting deductions for vacant land.

We understand that the proposed legislative amendments are an integrity measure to both:

- Address concerns that deductions are being improperly claimed for the costs of holding vacant land that is not genuinely held for the purpose of earning assessable income; and
- Reduce tax incentives for land banking.

However, we believe that the legislation would deny deductions to many taxpayers who appear to fall outside this intended purpose. The definition of land as being vacant if it has no substantive structures ignores the many circumstances where the utilisation of the land to derive income does not require such structure, such as agistment of farmland or if leased to use as a car park (where the only structures may be ticketing machines).

In the primary production industry in particular, it is common for farmland to be leased, or provided via a share farming arrangement, to third parties to carry on a primary production business. We understand that these arrangements can provide income to a landowner from land they no longer wish to farm, whilst offering opportunities for others to start a farming enterprise or expand their current operations without the significant capital outlay. In many cases, the landowner themselves is not carrying on a business (whether that be because they have ceased farming, or their farming activities are carried on by a related entity). Even where a business is being carried on, the relevant parcel of land may not be considered to be held in the course of carrying on that business.

The Explanatory Memorandum contemplates that 'a commercial parking garage complex, a woolshed for shearing and baling wool and a grain silo' may be sufficient to fall outside the provisions if they are used to generate income. As such, although this may assist in the above scenarios if the relevant land includes these or similar structures, there is still likely to be a degree of uncertainty as to whether a structure will be considered substantial. Further, this has no application if there are no substantive structure at all. We work with a number of accounting firms who service rural clients, and who have advised us that;

- A significant number of farmland leases involve properties on which there are no structures. It is very common for a farmer to acquire a farm and then lease additional acres to graze cattle/sheep on to provide enough feed. In these situations, there is unlikely to be a structure on the land. In some cases there may be hay or storage sheds, or stockyard pens but it is not clear that these would be considered to be 'substantial' or to have an 'independent purpose'.

- Where a farmer is leasing part of their farmland to a third party this is generally being done for cash flow purposes, or because the farm is too large for them to service all of it themselves. As such, the blocks they lease are not part of their main farm and so contain no sheds or structures.

It is further noted that, due to the intergenerational nature of farmland ownership, it may be that the entity carrying on a business does not meet the connection requirements provided for in the draft legislation. This would be the case, for example, if a farm was owned by 'mum and dad' but the farming business was carried on by a trust which was jointly controlled with their children.

These scenarios would not appear to fall within the scope of the integrity measures as set out in the Budget.

There does not appear to be any policy reason why a taxpayer who derives assessable income from the use of land in these ways should be subject to tax on this income, but be denied a deduction for related expenses, merely because the land is not held in the course of carrying on a business. It is also questioned whether these consequences to the farming industry is justified when the Government is separately trying to assist them with drought relief.

In our view, if a taxpayer is deriving assessable income in return for the use of their land then this should be sufficient evidence of a genuine use of the land for the purpose of deriving assessable income.

Submission Point 1

The provisions should allow a deduction for the cost of holding vacant land up to the amount of any income received in return for the use of that land in the same income year. A deduction could be denied for any excess costs in accordance with the proposed legislation. For certainty, the extent of deductions available could be specifically limited in accordance with the area of land to which any income relates.

In addition, or as an alternative, to Submission Point 1, primary production activities should be specifically excluded from the proposed legislation. If this does not provide sufficient integrity, on the basis that a primary production business can be carried out on land that could also be used for residential development, this exclusion could also be linked to the zoning of the land. This is the approach used to exempt primary production land from land tax in most States and Territories.

Submission Point 2 ***The provisions should not deny a deduction for the cost of holding vacant land that is used to carry on a business of primary production (as defined in section 995-1 of the Income Tax Assessment Act 1997) by any person.*** ***If necessary, a further requirement could be that the land is not located, for example, in a residential zone or urban growth zone, or that it is eligible for a primary production exemption under the relevant land tax legislation.***[1]

If you would like to discuss these submission points in further detail, please contact [redacted]

Yours sincerely,

MC Tax Advisors

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Natalie Claughton – Director	Jacci Mandersloot - Director

[1] It is noted that the Northern Territory does not impose land tax