INFORMATION, ANALYSIS
AND ADVICE FOR THE PARLIAMENT

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 80 2002–03

Taxation Laws Amendment (Earlier Access to Farm Management Deposits) Bill 2002

DEPARTMENT OF THE PARLIAMENTARY LIBRARY

ISSN 1328-8091

Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2646.

Information and Research Services publications are available on the ParlInfo database.
On the Internet the Department of the Parliamentary Library can be found at:
http://www.aph.gov.au/library/

Published by the Department of the Parliamentary Library, 2002

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 80 2002–03

Taxation Laws Amendment (Earlier Access to Farm Management Deposits) Bill 2002

Chris Field
Law and Bills Digest Group
12 December 2002

Contents

Taxation Laws Amendment (Earlier Access to Farm Management Deposits) Bill 2002

Date Introduced: 5 December 2002

House: House of Representatives

Portfolio: Treasury

Commencement: The amendments described in this Digest relating to exceptional circumstances will be taken to have commenced on 1 July 2002. The amendment relating to repayment terms will apply from 2 January 1999.

Purpose

To allow farm management deposits to retain their concessional tax treatment if withdrawn within 12 months of deposit where an exceptional circumstances determination is in force in respect of the depositor's property. The Bill will also amend the nature of accounts which can be used for Farm Management Deposits.

Background

There have been a number of schemes designed to encourage primary producers to deposit funds when their income is high and draw upon them when income is low. Such schemes involve an exemption from tax for the funds deposited and their taxation on withdrawal. When income is high the funds deposited would otherwise be subject to higher marginal tax rates than when they are withdrawn when a lower marginal rate is payable or, depending on the level of income, no tax is payable.

The current scheme, Farm Management Deposits (FMD), commenced on 2 January 1999 and replaced the Income Equalisation Deposit scheme. The two schemes have much in common, with a major difference being that the latter scheme was run by the Department of Primary Industries and Energy, while deposits under the FMD are made with private institutions. To be eligible to use the FMD scheme a number of conditions must be satisfied, including:

- the depositor must be a primary producer and operate either as a sole trader, a partnership or a trust (ie the scheme is not open to companies)

- the minimum amount of a deposit or withdrawal is $1 000 and the total maximum amount that may be deposited is $300 000
- deposits must be with the same financial institution, and
- deposits cannot be withdrawn within 12 months of being deposited except in a restricted number of circumstances, such as the depositor ceasing to be a primary producer or dying.

Commonwealth involvement in providing assistance to primary producers in time of severe drought principally occurs after an exceptional circumstances (EC) declaration is made in respect of an area. The process for an area to be declared to be in EC is that the relevant State or Territory government must have provided substantial new assistance to the area, declared drought for the area and applied to the relevant Commonwealth Minister for an EC declaration. After an application is made a preliminary assessment occurs and if it prima facie appears that there could be EC the matter is referred to the National Rural Advisory Council for final determination. The criteria used in making such an assessment are that the conditions are rare (a once in 20-25 year event) and severe, this has resulted in a severe downturn in farm income for a prolonged period for a significant number of primary producers in the area and the event was not predictable.

Where an EC declaration is made, primary producers are eligible for income support at the same rate of Newstart Allowance which would be payable. Business assistance is also available in the form of interest subsidies for 50% of the amount of interest payable by the business. In the period between a prima facie case being found and a final determination being made, interim income support is available for a maximum of 6 months. The Commonwealth funds 90% of the cost of the assistance, with the States and Territories providing the remaining 10%.[1]

The involvement of both State/Territory and the Federal government in EC determinations leaves the situation open for 'blame shifting' when there are complaints about the apparent slow progress of a determination, with the States/Territories blaming the Commonwealth for delays in making an assessment, while the Commonwealth blames the States/Territories for being slow in making the initial application. The National Farmers Federation has stated that there is currently disagreement between the Commonwealth and State/Territory governments regarding the funding of EC and other drought related measures, which is affecting the delivery of programs, and recommended that EC matters should be a wholly Commonwealth responsibility while the States/Territories remain the principal providers of normal drought assistance.[2]

In addition to EC assistance, the Commonwealth government has announced a number of further assistance measures. On 27 November 2002 the Prime Minister, while announcing new measures, estimated that EC declarations would cost approximately $370 million over the next two years while for the 2002-03 financial year the EC scheme would cost approximately $470 million in foregone revenue. As well as announcing that there would be streamlined consideration of EC declarations, the Prime Minister announced that primary producers in a EC declared area would be entitled to access their FMD even though the deposit was made within 12 months of the withdrawal.[3]

A number of changes to the EC scheme were announced by the Prime Minister on 9 December 2002, including:

- interim income support will be available for 6 months to eligible primary producers in an area which has received a one in 20 year rainfall deficiency during the period March to November 2002
- if more than 80% of a State has been assessed as eligible for EC assistance the entire State will be declared eligible for EC interim income support
- business support would also apply to $100 000 of new commercial loans at the rate of the lower of half the loan rate or 5 percentage points, and
- eligible small businesses in EC declared areas will also be eligible for loan subsidy at the lower of half the loan rate or 5 percentage points for new loans up to $100 000.[4]

Main Provisions

Item 13 of Schedule 1 of the Bill will substitute a **new section 393-37** into the *Income Tax Assessment Act 1936* (ITAA36) which will allow FMDs to be withdrawn within 12 months of the deposit. Under the proposed new section, most withdrawals within 12 months of deposit will be deemed to have never been a FMD. However, if the withdrawal is made:

- in the income year following the year of deposit
- at a time when an EC declaration is in force which was not in force at the time the deposit was made, or
- when an EC declaration relating to household support is in force or comes into force within 3 months after the end of the year in which the withdrawal is made,

the funds will retain their FMD status..

As well, withdrawals due to death, bankruptcy or loss of primary producer status, or to transfer funds to another financial institution, will retain their FMD status.

Application: 1 July 2002.

Repayment Terms

A further potential problem with FMDs concerns the condition that they be invested in an account that is not repayable within 12 months, except under the conditions described above. It has become apparent that some financial institutions have offered FMDs in accounts that do not have the requirement that they cannot generally be withdrawn within the 12 month period. There has been some anticipation that the Australian Taxation Office is preparing to release a ruling that if the condition is not met FMD status would not apply. The Minister for Agriculture, Fisheries and Forestry is reportedly of the view that if such a ruling was made the government would act to ensure there would be no impact on farmers.[5]

Part 1 of Schedule 1 of the Bill will insert a **new section 393-37** into the ITAA36 to provide that FMD status will be retained so long as the funds have not actually been repaid (so that the terms of the account will not matter).

Application: From 2 January 1999.

Concluding Comments

It may be noted that both the above amendments relate to the substitution of a new section 393-37 into the ITAA36. The reason for this is that the amendments relating to repayment terms will apply for the period between the commencement of the FMD scheme, 2 January 1999, and the commencement of the newer section 393-37 on 1 July 2002. From 1 July 2002 the provision concerning repayment terms will be incorporated in the newer section, which also contains the EC withdrawal provisions.

Endnotes

1 http://www.affa.gov.au/content/output.cfm?ObjectID=B5E5D00C-3547-4E65-A8D1C488908117C8

2 National Farmers Federation, *News Release*, 14 November 2002.

3 Prime Minister, *Media Release*, 27 November 2002.

4 Minister for Agriculture, Fisheries and Forestry, *Media Release*, 9 December 2002.

5 The Weekend Australian, 23 November 2002.