

# ADDITIONAL COMMENTS FROM COALITION SENATORS

While the Coalition is not opposing this legislation, there are a number of technical issues that the Coalition wishes to raise.

## **\$250,000 income threshold**

It was pointed out during the hearings that while \$250,000 sounds like a high annual income, it should be indexed to ensure that farmers who were successful in generating off-farm income were not excessively penalised.

While it may appear that imposing a \$250,000 threshold will avoid any impact on genuine farming operations, the NFF is aware of a number of instances where this is not the case. The NFF therefore questions why these farmers, who have been more successful than most at generating off-farm income (even for a temporary period) should be penalised.<sup>1</sup>

Similarly, many of the operations that currently do not fit under the \$250,000 threshold could squeeze over the line, because over ten years that threshold would become comparatively lower.

I thought that there might have been some adjustments to the thresholds, the existing tests, rather than this \$250,000 income figure. That was probably the expectation.

Essentially, you thought there might have been a little bit more of a sophisticated approach to trying to target the people who the government want to get in terms of higher net income – for example, higher net income people out there who might go and buy themselves a nice country property as a holiday home, run a few horses on it and claim that as a loss against their income, and so basically they get a holiday home in before-tax dollars.

MR TIMS: And that is not fair.<sup>2</sup>

...the fact that there is no discussion either way of having any kind of indexation around the threshold. Sure, \$250,000 may seem like a high income now, but will it be in 10 years time? Do we have to go through another legislative process to ensure that it meets an intended level for all time into the future?<sup>3</sup>

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1 National Farmers' Federation, *Submission 2*, p.7.

2 Mr Adam Tims, Thoroughbred Breeders Australia, *Proof Committee Hansard*, 9 November 2009, p. 33.

3 Mr Charles McElhone, Manager, Economics and Trade, National Farmers Federation, *Proof Committee Hansard*, 9 November 2009, p. 15.

It was suggested that a solution to this problem was the removal of the \$500,000 real property test rather than introducing the arbitrary \$250,000 income test which would seem appropriate to adjust in future.

We do have a solution... a reasonably simple solution – that is, remove the \$500,000 real property test rather than introduce this arbitrary \$250,000 income test. The real property test is one of the existing four tests of the non-commercial loss provisions and is, in our view, the one that would be passed by, if you like, your Collins Street farmer or the individual that the government is looking to target in these proposed changes. So our No. 1 solution is to remove that \$500,000 test.<sup>4</sup>

Additionally, it was accepted that Treasury had not done any financial modelling as to the impact of removing of the real property test.<sup>5</sup>

### **Commissioner's discretion**

While there is no doubt that the Commissioner acts with the utmost propriety, the questions needs to be asked as to what advice the Commissioner will take on board. For example, a number of industries have developed out of hobby farms that otherwise would not have occurred if this option was not available to them.

The wine sector is a clear example. You mentioned the Margaret River wine industry earlier. Clearly, that has generated a lot of benefit from the non-commercial loss provisions and has developed in its own right to make a very genuine and positive contribution to the Australian economy broadly. There are a whole range of examples and I do not think they are limited to the wine sector. Particularly in some farming operation in some of the peri-urban areas, there are a whole raft of examples...<sup>6</sup>

We are concerned that already strong tax disincentives to investment in our industry will be escalated by the imposition of the new measures proposed, which will disadvantage genuine farming operations.<sup>7</sup>

The long lead times in areas such as alpaca farming, where the genetic improvements of the herd needs to occur to produce higher wool yields, and other new industries require assistance in this area.

That has been our challenge – to get our genetic development to that stage – but we are getting closer.<sup>8</sup>

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4 Captain Kerry Dwyer, PSM (Retired), Board Director, Australian Alpaca Association Ltd, *Proof Committee Hansard*, 9 November 2009, p. 26.

5 Mr Chris Leggett, Senior Adviser, Personal and Retirement Income Division, Department of the Treasury, *Proof Committee Hansard*, 9 November 2009, p. 38.

6 Mr Charles McElhone, National Farmers' Federation, *Proof Committee Hansard*, 9 November 2009, p. 19.

7 Captain Kerry Dwyer, PSM (Retired), *Proof Committee Hansard*, 9 November 2009, p. 22.

8 *Proof Committee Hansard*, 9 November 2009, p. 22.

## Retrospectivity

Coalition Senators in principle believe that it is unfair to impose tax changes retrospectively. Some evidence was given that there should be time for industries and individuals to get their affairs in order.

The point here is that introducing these proposed new laws from 1 July 2009 for the 2009-10 income year will mean that certain taxpayers who have taken positions based on the law as it stood prior to the budget announcement this year may be potentially disadvantaged in an adverse way...<sup>9</sup>

## Impost on rural communities

While there may be an ideological view that these operations are merely tax dodges for the wealthy, the fact of the matter is that most of these enterprises employ people in the local area and are legitimate businesses. By their operation, the employment of local people means that money is spent in the local community on local goods and services.

The third area of focus is on the social considerations of this legislation. I guess what the Taxation Institute would do here is to make sure that there is a question on the table as to whether all of the social implications of the proposed changes have been considered... There may be effects in local communities when you take money out of local communities that would otherwise be there to build up the wealth of the community. Investment decisions may be affected and that has flow-on social implications. Also, there are productivity issues. Sometimes when people are comfortable enough to be in a situation where they follow their passion – whether it is some sort of farming venture, or art – the community ultimately benefits. Some of the examples given in the guidelines show how the current vision of how this might work can really narrow that scope for advances in productivity and innovation.<sup>10</sup>

## Revenue projections

It has been projected that this measure would raise an additional \$700 million. During the hearings, Treasury did state that there was an assumption about the behaviour of people that it may affect.

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9 Mr Yasser El-Ansary, Tax Counsel, Institute of Chartered Accountants in Australia, *Proof Committee Hansard*, 9 November 2009, p. 8.

10 Ms Joan Roberts, President, Taxation Institute of Australia, *Proof Committee Hansard*, 9 November 2009, p. 11.

I can confirm that the \$700 million includes a behavioural assumption of people moving into different investment types as a result of this...<sup>11</sup>

However, other witnesses felt that this was an unusually high amount of revenue.

I must confess that I found the number of \$700 million to be a significantly high number, in my estimation.<sup>12</sup>

What we are suggesting there is that, for high-income earners, there are a range of tax-effective options available, the major one being negative gearing in metropolitan areas. So if it is the sole purpose of a high-income earner to minimise their taxation through non-commercial loss provisions through hobby farming, we would argue that, sure, the savings might be there in the first year of operation, only for long enough for those investors to shift their investment into other areas such as negative gearing, where they will continue to make equivalent savings.<sup>13</sup>

The question that needs to be asked is whether the \$700 million that has been projected as revenue from this will actually be realised, as the legislation could result in more people moving away from such investments as may be captured by this legislation than expected. This would have dramatic impacts on not only the expected revenue but on local communities as well.

It is not known what proportion of those individuals will apply for the Commissioner's discretion, or what proportion will actually receive relief from the rules.<sup>14</sup>

Additionally, evidence was given that new and innovative forms of agricultural enterprises would have difficulty in being approved. The failure of development of the Margaret River wine industry is just one scenario where this measure could have impacted on investment in a local community.

## Conclusion

In conclusion, the Coalition Senators are concerned that this measure may inhibit the growth of new industries, such as the development of the Margaret River wine region, alpaca breeding and blood stock breeders, from developing into the future and consideration must be given as to the effectiveness of this measure by comparing the projected revenue against the potential economic and social costs of such a measure.

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11 Mr Michael Willcock, General Manager, Personal and Retirement Income Division, Department of the Treasury, *Proof Committee Hansard*, 9 November 2009, p. 45.

12 Mr Yasser El-Ansary, Institute of Chartered Accountants in Australia, *Proof Committee Hansard*, 9 November 2009, *Proof Committee Hansard*, 9 November 2009, p. 7.

13 Mr Charles McElhone, National Farmers' Federation, *Proof Committee Hansard*, 9 November 2009, p. 16.

14 Department of the Treasury, responses to questions on notice - question 3, 9 November 2009 (received 13 November 2009).

**Senator Alan Eggleston**

**Deputy Chair**

**Senator David Bushby**

**Senator Barnaby Joyce**

