LEGISLATION INTRODUCED TO CLOSE $700 MILLION HOBBY FARM TAX LOOPHOLE

The Government has today introduced legislation to close the tax loophole around hobby farms and similar non-commercial pursuits by high-income individuals, as part of the Government's commitment to improve the fairness and integrity of the tax system.

The Assistant Treasurer, Senator Nick Sherry, highlighted that today's legislation gives effect to the changes to the non-commercial losses rules announced in the 2009-10 Budget and is expected to deliver $700 million in revenue.

"The current loophole in the rules allows high-income individuals to take advantage of the tax system and claim deductions meant for functioning businesses when the non-commercial activity is no more than a hobby or a lifestyle choice," said the Assistant Treasurer.

"The targeting contained in this measure will contribute $700 million to the Budget bottom line over the forward estimates. It's a responsible and equitable measure that will deliver important revenue for the whole Australian community."

Under the existing rules, individuals may apply losses against their other income where one of four tests is met. The current four tests focus on the business activity's prior year profits, its revenue and the assets — such as real estate and equipment — that are involved in carrying on the business.

The new non-commercial losses rules will prohibit individuals with an adjusted taxable income of over $250,000 from applying losses from non-commercial business activities against their other income, unless they have applied to the Commissioner of Taxation and the Commissioner has assessed the activity as genuinely commercial.

If the Commissioner does not exercise their discretion, the losses are quarantined and can only be applied against future assessable income from that activity.

"It is not right that other taxpayers should subsidise such arrangements," the Assistant Treasurer said.

The existing rules, however, continue where individuals have an adjusted taxable income under $250,000.

"Upon request, the Commissioner will assess whether the activity will make a profit within a commercially viable period based on evidence provided, if the Commissioner assesses that it will, then deductions relating to the activity will not be quarantined."

The Government conducted extensive public consultation on this legislation. As a result of this consultation the Government has accepted several minor modifications to the exposure draft provisions.

The Bill introduced today now formalises the process for applying to the Commissioner for the exercise of his discretion and to grandfather previous discretions provided by the Commissioner.

The Bill also contains a carve-out to remove any effect of these changes on the eligibility of profitable business for the small business and general business tax breaks. The Bill does not change the existing exemptions for primary producers and professional artists.

The changes to the non-commercial losses rules will apply from the 2009-10 income tax year.

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