

## **TARGETING NON-COMMERCIAL LOAN RULES IN SUPPORT OF RURAL COMMUNITIES AND SMALL BUSINESS OPERATORS**

The Assistant Treasurer, Senator Nick Sherry, has today released the post-consultation details of the 2009-10 Budget measure to tighten the non-commercial loan rules.

"This is an important measure that will improve the fairness and integrity of the tax law, and the final details of the measure deliver this outcome, while addressing the concerns of the farming and small business communities," said the Assistant Treasurer.

The Budget measure will prevent private companies from making "payments" to shareholders using company assets, such as providing access to holiday houses, cars and other luxury items, which are then priced at less than market value and disguised as tax-free distributions.

This loophole arises because a lease of real property is not present in such cases and a "payment" does not arise if only a right-to-use or licence gives access to the company house, boat or other asset. The Budget measure will directly rectify this loophole by covering licences and rights-to-use.

The Government undertook public consultation following the announcement of the measure and has now clarified aspects of the measure to ensure both the rural and small business communities are not unintentionally impacted.

"After listening to the community – particularly the farming and small business communities – I have agreed to two new features to the measure," said the Assistant Treasurer.

"We received submissions that genuine farming businesses and those small businesses that include a residence located at the business itself may have been unintentionally impacted – so we've listened to those concerns and acted decisively to provide certainty and clarity."

The non-commercial loans measure will now include:

- an "otherwise deductible rule" for certain payments – any "business use" assets (that is, not for private purposes) that are provided to a shareholder under a right-to-use or a licence (but not a lease of real property) will be disregarded from the amount of any

"payment" made to shareholders as they will be deemed to be otherwise deductible.

*Example:* "payments" made to farmer-shareholders that involve the provision of farmland that is owned by their private company for use by a related business entity to conduct their farming business would be disregarded and would therefore not attract a requirement to pay for the use; or "payments" made to hotel operator-shareholders that involve the provision of furniture and fittings in the hotel which are owned by their private company, would be disregarded.

- a "residence exemption" for certain payments – any residence that is an integral part of the business real property and is owned by a private company but is lived in under a right-to-use or a licence as part of the carrying on the business is disregarded.

*Example:* in addition to covering a farmer's use of a farmhouse owned by a private company, this carve-out would include, for example, a residence co-located with a hotel and owned by a private company, which is occupied by the shareholders of that private company.

"These new features will improve the targeting of the measure and will have no impact on projected revenue estimates as the original measure did not envisage raising revenue from the circumstances now exempted," said the Assistant Treasurer.

"I am very grateful for the time and open dialogue the Government has had with stakeholders to achieve this outcome – I believe it shows our commitment to consult, listen and act."

Exposure Draft legislation amending Division 7A of the *Income tax Assessment Act 1936* to give effect to the final form of the measure will be released shortly for public consultation.

CANBERRA  
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