The Honourable Member of Parliament

Parliament house Canberra

ACT 2600

Dear Sir

RE: Government Decision to remove the Tax deductibility of a rural enterprise

by an individual who earns more $ 250,000 per year (2009).

Sir, I write to you to reconsider this legislation.

I have written to the Deputy Commissioner of the ATO, Barnaby Joyce, Senator Mathias Cormann, Tony Abbott, Joe Hockey and Andrew Nikolic before ( Oct.2013, and Feb. 2014 and May 2015), regarding the tax deductibility of a rural enterprise legislation which was “to prevent people carrying on loss making businesses that are more in nature of hobbies or life style choices and claiming the losses against their professional income to reduce their tax burden”. Surely if the tax payer can provide evidence the primary production is a fair dinkum business, regardless of the profit and loss balance, the deductions should be allowed. If the facts are disputed then the Tax Department should at least inspect the farm and judge it on its merits.

I doubt that you would find a single person who purchased 700 acres of prime agricultural land just to have fun. Nor would you find a sane person who makes a $100,000 loss on purpose with no aim to make the business enterprise profitable as soon as possible.

**I have three issues that I believe need to be reviewed.**

1. That a business must demonstrate that it will make a profit within 5 years for losses to be tax deductible from the individual’s primary income.

2. That an individual who earns more than $250,000 from his /hers profession is treated differently than those that earn less.

3. The wages paid in a Primary production, that the tax department disallowed to be deducted, i.e. for which the employer has already paid 43% tax, is taxed again as the normal income tax for the employee.

1. The five-year rule is unreasonable when one considers; Tree Farming, Mining, Fish farming or Viticulture. It may be difficult for urbanites that never worked in a primary industry enterprise to fully understand how much time, effort and money is spent setting up a decent business where there are so many unpredictable variables. For example; the Australian dollar exchange rate , the ever increasing farm wages, the increasing worker compensation insurance, the costly workplace safety issues, the limited hours the workers can do a particular job before a break, the cheap overseas imports, the ever increasing cost of petrol, oil, diesel, superphosphate, spays, medicines and finally the unpredictable weather. I am sure that you are aware that many primary industries in Tasmania are struggling, now that Coles, Woolworths and the Japanese feedlot have a monopoly and can manipulate the local meat market and import cheaper products from New Zealand and now even from China. Similarly Edgells, McCain and Simplot have severely reduced their involvement with the Tasmanian vegetable industry and are importing cheaper raw products from overseas. Edgells being the only one left that buys the local vegetables.

Not only is it almost impossible to compete with the cheap imports but also we are being screwed by the Mega Companies that won’t give us a fair price for our product (eg. milk).

It is not my intention to make a loss and I have spent a lot of my own hard earned money modifying my farm to become profitable again soon and remain so as long as the quality I have developed is retained. It is not my fault that the farming costs have risen sharply whilst the price for our product has not. Unfortunately potatoes, poppies, serials and seed are not as profitable as they used to be, and I expect that, with the cheaper imports from New Zealand and Turkey, the poppy farming will get worse.

In addition the ‘Greens and Wilderness Society’ have almost killed off our Forest Industry, which makes it impossible for me (and other private forest owners) to sell my trees and recover my costs to date. This was a handy buffer to cover the cattle, sheep or cropping losses. In 1987 I received $13 for a ton of chipping wood and am now offered $8. We were encouraged by the Federal Government to invest in trees. Now that they are big enough to harvest, we have no buyer. I was told by one of your colleagues “don’t worry the trees keep growing and your green gold‘s worth keeps increasing”. Obviously he didn’t know that most of the plantation trees have a finite life after which they become diseased, loose value or become too big for the modern machinery used for harvesting. So what am I to do with these trees now that caring for them is no longer Tax deductible?

I appealed to the Tax Commissioner to exercise **discretion** regarding my predicament. Unfortunately the Deputy Commissioner has used the **literal interpretation** of the legislation rather than a sympathetic **spirit of the law assessment** of my business. Hence my appeal for a reasonable determination has been denied. I have been identified as a “ Hobby Farmer ”. My farm losses are now covered by my after tax savings. To assume that I am a ”Collins Street or Pitt St. farmer” and only use the farm for my own pleasure so that my Family can have fun at the government’s (tax department’s) expense is an insult. I am seriously involved in primary industry and have spent a lot of time and money to employ people (who pay income tax) and the product of the farm contributes to the Gross National Product. This unfounded proposition does not take into account what sort of rural or farming enterprise one participates in, let alone the circumstances of all the unfortunate and unpredictable variables that one encounters in this business.

Why is the Tax determination so drastically different and discriminatory? The five-year rule does not apply to housing or mining or even self-employed tradesmen, why then should it apply to primary production? I strongly reject that my farm is a hobby farm and that my losses were **non-commercial**. It is nonsensical and totally unfair to the honest and uncomplicated individual who has a proper farm, employs people and creates a significant amount of produce per year.

Had I known the Tax department would eventually review my tax returns since 2009 and refuse to allow my farm losses to be deductible; I would have avoided this unpredictable industry and purchased some flats or shares. This legislation, if enforced literally will discourage most people with money to invest in Primary production. The Taxman’s decision gives me no choice but to sell. Since it is now a Hobby I expect not to have to pay ‘capital gains tax’.

2. It makes no real sense to discriminate against 11,000 of middle class Australians who; work hard to earn over $250,000 of taxable income and own a primary industry. I earn over $250,000 per year because I work over 60 hours each week as a clinician, university teacher, clinical manager and community work.

Since 2009 I am denied my legitimate farm related expenses. It is irrational and counterproductive to allow me the deductions if I work less hard in my job and earn below $249,999 per year, or if I organise a family trust and/or a Company to do the farming for me. I am being penalized for my honesty and my simple financial arrangements. I have never played the numbers game and artificially manipulated my tax responsibilities. I don’t live in Pitt or Collins Street but am wrongly judged by the Commissioner of Taxation because I have elected to continue to work as a Surgeon to keep my farm and the two hard working farmhands.

Barnaby Joyce and the prime Minister have often stated that the Liberal Party’s policy is to encourage, whenever possible and however probable, to invest locally and keep our businesses in Australian hands and avoid the exploitation of foreign investors of our natural resources and keep the earnings in Australia. The Prime Minister in his address to the G20 in Davos (23.1.2014) clearly stated the “no government has ever taxed itself to prosperity” he went on to state that “the way to prosperity is to allow private business to do what they need to do to make a profit”. (He did not say we will penalise them if they don’t make a profit). Why is the liberal party’s rhetoric so different to the Tax Commissioners behaviour? The Government is in favour of a free market but does little to support the local rural industry.

3. Is the Tax department doubly dipping? The Taxman refuses to allow the wages I pay my employees to be deducted from my pre-tax earnings, but then insist I take tax out of the wages I pay them?

I am told that 11,000 people now find themselves in my predicament, and if they all downsize their primary production enterprise that will cost the country at least $200 million per year. Surely we must protect the farmers and their jobs on the land. My current Tax predicament makes no sense.

Most of my farming friends in Tasmania are struggling to make ends meet, especially those that had to purchase their property (and need to pay interest to the banks) rather than having inherited the business. It is a person like me who has a decent income that can help to keep the marginal primary production alive and the farm prices reasonable. The Government needs to encourage rather than discourage the middle class professionals who have money to invest in primary production and fulfil Barnaby’s prediction ‘to double agricultural production in Australia’ so that we can become the breadbasket of South East Asia.

I thought the State and Federal Governments were trying to promote employment by encouraging businesses to be bold, optimistic and invest to increase production and thus our Gross National Product. If my two-farm worker’s wages are not deductible then I will have to let them go. I doubt that either man would get a job to which they are suited by education and special skills. This will convert my two employees from taxpayers (approximately $140 per week each) to tax receivers through unemployment benefits (about $260 per week each). The net loss to the country will be over $800 per week (over $40,000 per year) instead of contributing to the Gross National Product they will be idle. Obviously the “flow on effect” is that they won’t be spending much money in town and their dependants will also be on handouts. For each person that loses his job, another in the service industry loses theirs. This makes it at least $80,000. That means my current situation is costing the country more than the extra tax you are getting from me. In addition 4 families are now idle instead of happily contributing to our society.

I am sure that your Government is aware that; because of the new rules limiting the tax deductibility of farm expenses, the ‘professionals with money’ (to buy and improve farms, upgrade the equipment and sophisticate the product) are no longer in the market to purchase a primary production enterprise. This has led to a significant reduction in the value of the average sized farm in Australia (20% less than 4 years ago rather than 5%increase per year) and this has reduced the ‘equity’ needed by the ‘family farmer’ to get financial help from our banks. Obviously this is a windfall for the foreign investors who will probably spend their profits overseas. Tasmania already has too many overseas-owned industries whose main aim is to reward their shareholders from elsewhere, rather than circulate their money within the State.

It is unreasonable to base deductibility of farm losses only; ‘if one can prove that the farming enterprise will make a taxable income within five years’. It is obviously discrimination and a great disincentive to deny a deduction purely on the base that an individual earns more than $250,000.

It is obviously fair and reasonable to disallow a deduction on losses from a real ‘hobby farm’.

I appreciate that at the conclusion of the review; the resulting White Paper will change the some components of the Tax Legislation and instruct the Taxation Department to modify their interpretation of my liabilities.

I respectfully request that you consider my predicament when changing the rules regarding ‘City Farmers’. The negative ramifications, of the current legislation had obviously not been realised in 2009.

The farming community are doing it tough most of the time and need our investments and the Government’s support, especially if Australia is to become the “food bowl” in our side of the globe.

**The Taxation Commissioner wrongly assumes that that pople in my situation are “Pitt Street Farmer”. I assure you that in most cases it is not so.**

**I respectfully request that the Government review these unreasonable tax laws and give honest hard workers a fair go!**

Your faithful servant and loyal countryman

Bernard J. Einoder. AM

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