

7 February 2012

General Manager  
Business Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Sir/Madam,

**RE: Modernising the Taxation of Trust Income**

The National Farmers' Federation (NFF) was established in 1979 and is the peak national body representing farmers, and more broadly, agriculture across Australia. The NFF's membership comprises all of Australia's major agricultural commodities. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF. Following a restructure of the organisation in 2009 a broader cross section of the agricultural sector is now able to become members of the NFF, including organisations from the breadth and the length of the supply chain.

The NFF notes positively that the discussion paper highlights that the review is not a '*crack down*' on the use of trusts and has clearly indicated that the Government views trusts as a legitimate structure through which Australians should be able to conduct their personal and business affairs. Through the reform process, the NFF is keen to reinforce the important role that trust structures play for the agriculture sector. Benefits include:

- Helping farmers to manage complex asset and succession issues,
- Assisting farmers to protect the family group's assets from the liabilities of one or more of the family members (e.g. in the event of a family member's bankruptcy or insolvency), or the death of a senior member of the family,
- Providing a mechanism to pass the family farm and other assets onto future generations; and
- Providing flexibility to distribute income earned by the trust to prescribed beneficiaries in an appropriate manner. Trust structures allow for this distribution to vary from year to year.

The NFF is therefore keen to reinforce the importance of retaining the core elements of the existing trust taxation model, while being open to considered and cost effective improvements to fix proven material problems with the mechanism. In the view of the NFF, the existing trust model should be broadly retained, and the review should

focus on fixing known problems and clarifying uncertainties in the existing law. The NFF is yet to see evidence of the need for substantial changes to the taxation of trusts.

In recent years, the NFF notes that there have been a number of adjustments to the taxation of trusts (e.g.: relating to non-commercial loans and following the Bamford case). A number of these changes have had unintended adverse affects for the administration of farm trusts that have needed follow up legislation to remedy. While the NFF has been grateful for the Government's resolution of such issues, collectively these changes have created the perception that the future taxation treatment of trusts is uncertain.

For this reason, the NFF hopes that once the current reform process is complete, that further modifications to the taxation of trusts will cease (at least in the short to medium term). This will allow farmers and their accountants to have an increased level of certainty over how they administer their trust structures and plan their future financial business structures with confidence.

The NFF notes that the Treasury consultation paper is an initial step in a larger ongoing process to facilitate public discussion about how to improve the operation of the current trust income tax provisions. The NFF believes that a staged approach to this reform process is positive in that it is extremely difficult to accurately ascertain from the Treasury discussion paper how recommended changes impact farm trust structures.

The NFF warns against the dangers of proposing simplistic solutions to the complex issue of trust taxation. Members have noted that unintended outcomes and additional complexity often unintentionally emerge when changes to the tax system are made. Therefore, the suggestion that NFF will have further opportunities to engage and provide feedback into the review as more tangible recommendations for change come to light, is a welcome one.

In relation to specific suggestions within the consultation paper, NFF members have provided the following feedback:

- *Taxing trusts as companies* - The NFF supports the commitment by the Government that it will not be considering taxing trusts as companies through this reform process.
- *Variations in the treatment of trusts* - The consultation paper has floated the option of recognising different categories of trusts and treating these in different ways (e.g.: trusts as a vehicle for holding wealth [including for asset protection], carrying on business or investment activities, or a combination of both OR trusts for family succession planning, including through the use of both inter vivos and testamentary trusts.)

While the NFF is open to looking at options to vary the treatment of different types of trusts, we note that there may be instances where farmers hold trusts for a number of reasons (e.g.: both for asset protection and succession reasons). The NFF therefore encourages the Government to ensure that farm businesses are not faced with having multiple, varying tax treatments

applicable for the administration of their trust structure. This could add significant complexity to the administration of a farm trust.

- *Transitional costs* - The Government has positively indicated that it is aware that changes to the tax law can impose transitional costs on individuals who have structured their affairs under existing rules. For example, if significant changes are made to the trust income tax provisions, trustees may seek to amend their trust deeds to adapt to the updated law. The NFF is keen to ensure that any transitional costs emerging as a result of policy changes in this area are not born by farmers.

The NFF remains committed to engaging in the Government's process of *Modernising the Taxation of Trust Income* and is open to considered and cost effective suggestions to fix proven material problems with the mechanism and simplify the administration of the structures. For further information regarding the NFF views on this matter, please contact the NFF General Manager – Policy, Charlie McElhone on (02) 6269 5666.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'M. Linnegar', with a large, stylized flourish at the end.

**MATTHEW LINNEGAR**  
**Chief Executive Officer**