Canadian Pork Council
Conseil canadien du porc

October 2, 2017

Minister of Finance
The Honourable William Francis Morneau
Department of Finance Canada
90 Elgin Street
Ottawa, Ontario
K1A 0G5

Email: fin.consultation.fin@canada.ca

Consent to the disclosure of the content in this document

TAX PLANNING USING PRIVATE CORPORATIONS

The Canadian Pork Council (CPC) represents the views of Canada's 7,000 hog producers. In this role, the Council is pleased to provide feedback on the tax changes proposed by the Department of Finance.

The CPC, like many other groups representing small businesses, has serious concerns about the proposed changes. It would seem they have been brought forward with little understanding of the agriculture sector and the impact these would have on farm families. Canadian Agriculture don't make widgets but rather nurture animals and crops that make food to feed Canadians and the World. With respect to the proposed tax changes the Council offers the following for your consideration.

INCOME SPRINKLING

Most farm business operations that are incorporated rely on family support for labour, bookkeeping, and financial support. Often capital from family members is required to help finance start-up farmers who need loans, financing and/or guarantees. The outcome from these tax proposals would now unfairly penalize family members who support their family's business by providing labour and or capital.

The proposals also introduce a "reasonableness" test. This added complexity will undoubtedly require producers to divert resources towards their accountants and tax specialists in an attempt to comply. The creation of additional red tape in pursuit of the undefined objective of tax fairness does nothing to improve business competitiveness.

HOLDING PASSIVE INVESTMENTS INSIDE A PRIVATE CORPORATION

Farming is very cyclical in nature due to weather (e.g. drought/flood), disease (e.g. Porcine Epidemic Diarrhea), market conditions (e.g. increased USA pork supplies) and trade policies (closure of the Russian market to Canadian pork exports). The Business Risk Management suite offered by federal, provincial and territorial governments is helpful, but insufficient to manage all this risk. In fact, the AgriStability program anticipates that producers will absorb the first 30% of a revenue drop. In addition, it is not clear how the proposed changes will impact funds held within the context of the AgriInvest program. Any passive income rules must take into account that family farms need to build war chests to survive these challenging events.

Passive income is also used to pay for intergenerational restructuring, redeeming partners' shares, expanding operations and major renovations or upgrades. Tax changes should not result in a situation where prudence is punished and poor business planning is encouraged.

CONVERTING INCOME INTO CAPITAL GAINS

Family farming today requires many acres of land or head of livestock in order to be economically viable. The old stereotype of farmers being “land rich money poor” has some basis in fact. Underlying farm assets have appreciated significantly without corresponding increases in cash flow. Often this creates a struggle when doing intergenerational transfers for family members that want to farm. This asset base is required to be maintained for family farms to continue - many of these assets being held for generations with no intention of selling.

The proposed tax changes fail to take into account the reality of farming and family contributions to the operation that are not traditionally economic (e.g. spousal contributions). It is of note that family law does take this into consideration.

In fact, the proposed changes create a situation where it is economically advantageous to sell the farm business to strangers that are outside the family and/or the local community.

The rule changes also create substantial problems upon death. Traditionally businesses could undertake a pipeline transaction to eliminate double taxation at death. This would no longer be a possibility and potentially, depending on the circumstances, force the operation to be sold to pay taxes after the first generation has died. The tax burden upon death and through postmortem restructuring could now be at a significantly higher rate (45% or more, depending on the circumstances) if the proposed changes are enacted.

The baby boom generation exists not only in the general public – but in the farming community as well. A majority of producers have or are rapidly approaching retirement. Most farm families and small business owners don’t have a pension plan and selling the farm/business has been historically their pension plan. This generation has structured its affairs under the existing tax regime in an effort to ensure orderly transition to the following generation. The succeeding generation, rather than facing a tax rate of approximately 25%, is now looking effectively at dividend tax rates to access business value (if it is to stay in family).

…/2

In many cases existing insurance policies will be insufficient to cover this added burden and given the age of the typical first-generation farmer he or she may no longer be able to obtain additional insurance coverage.

The proposed changes to the Income Tax Act jeopardize the succession planning already in place and will result in family farms being sold to non-family members or downsized to non-feasible structures. Notwithstanding the negative impact this will have on the growth of the agriculture and agri-food sectors, it also places at risk the ultimate sustainability of Canada's agriculture resource as outside investors will not have the same long-term, multigenerational view of the farm.

CONCLUSION

The proposed tax changes seem disconnected from the Government of Canada's stated desire to expand the economy in a sustainable, environmentally friendly manner. In Budget 2017, the agriculture and agri-food sector was positioned as an engine of growth. We believe this to be true and look forward to contributing to achieving the target of $75 billion in exports. However, individual producers are now being subjected to the federal government's imposition of a Carbon Tax and, with the current proposal, higher taxes that threaten the long-term viability of their family business. Making it easier for imported products that are not impacted by these taxes and more difficult for Canadian producers is not the way to encourage sustainable growth in the sector.

Given the potential consequences of the changes and that they were dropped on producers in the summer when we are focussed on the challenges of raising crops in Canada's short growing season, the Canadian Pork Council asks that they:

1. be set aside, and
2. that an industry-government working group be established to fully discuss the concerns of the tax department and develop potential solutions to clearly identified problems.

Quite simply, there is too much at risk to push forward with the proposals that have been presented. The CPC stands willing to participate as needed and would be pleased to provide additional information.

We thank you for considering our concerns.
Sincerely,

Rick Bergmann

Rick Bergmann,
Chair

Cc Honourable Lawrence MacAulay, PC, MP, Minister of Agriculture and Agri-Food

…/3