Section 31 - Restricted Farm Losses:

This section of the *Income Tax* Act sets out circumstances under which the taxpayer's losses will be restricted, "Where a taxpayer's chief source of income for a taxation year is neither farming nor a combination of farming and some other source of income."

This restriction, unique to agriculture, has remained a source of controversy and difficulty for many part-time farm operators until the 2012 Supreme Court decision in Canada v. Craig. Prior to this decision, if a part-time farmer wanted to claim all of his/her losses against other income without restriction, farming income had to be the predominate source of his/her income.

In Canada v. Craig, the Supreme Court of Canada recognized that this interpretation was incorrect, and that it prevented the very combination of farming and other incomes identified in the legislation. Thus, the Supreme Court outlined an appropriate interpretation for this restriction. This included a comprehensive examination of time, investment, industry engagement, and proportion of one's daily routine to determine whether a farm was in fact the chief source of income or a component of that chief source. If not, that farmer's ability to claim farm losses would then be restricted to a maximum of $8,750.

After the Supreme Court of Canada ruling that finally created fair treatment for tax losses and clear language in support of the agriculture industry; the 2013 Federal Budget adopted the previous interpretation of this section, requiring subordinate off-farm income to claim all farm losses.

For new entrants, part-time operators and outside investors this unique restriction poses the following serious challenges:

- A disincentive for potential new farmers considering entering the industry on a part-time basis,
- An additional financial difficulty for farm start-ups to overcome,
- A source of competitive inequality with similar farmers in other countries, and
- A discouragement for angel investors and venture capital getting involved with agricultural start-ups.

Stats to Consider:

The most common entry point into agriculture continues to be through small operations:

- Looking at operators under 50 years of age, 70% of new farms have less than $50,000 in Gross Farm Revenues[1,2]
- More than 50% of farms with at least one young operators were micro (17%) or small (39%) farms[2]

Young farmers, on average, earn less than half of their family income from the farm[2]:

- 22,527 farm operators under 35 years old still cite other occupations as their major source of income[2]
- 14,765 farm operators under 40 years old work more than 40 hours off-farm[2]

Recommendations:

To ensure that small, innovative operations continue to provide the next generation of Canadian farmers, CFA recommends that the comprehensive income test outlined in Canada v. Craig be maintained.

Craig provides a fair and accurate test that promotes agriculture to the next generation of Canadian farmers. Furthermore, this investment in Canada's rural communities will lead to: increased consumption spending; increased employment opportunities; and increased tax revenue. The proposed legislation will return this section of Canada's tax rules to the point where it will deter investment and place start-up farmers and investors at a disadvantage relative to global competitors.

[1] 2001 Census of Agriculture
[2] 2006 Census of Agriculture

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