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4 December 2019

TAX UPDATE - SECTION 113 REQUEST

Allied Farmers Limited Group (**Allied** NZX:ALF) advises that on the evening of 4 December 2019 it received communication from the Commissioner of Inland Revenue that she has declined a request to exercise her discretion to issue amended income tax assessments in respect of each of the 2016, 2017 and 2018 income tax returns in relation to payments that were incorrectly classified as subvention payments.

In January 2016 Allied purchased a block of shares in its subsidiary NZ Farmers Livestock Limited (**NZFLL**), resulting in it returning to the 66.66% common ownership that it had in August 2014. Based on advice received at the time, subvention payments were recommenced to Allied from NZFLL in 2016.

However, because commonality of ownership was not maintained at all times from the time the losses were incurred until the recommencement of the subvention payments, the payments could not have been treated as subvention payments.

The Commissioner was asked to allow a correction of the position by permitting a late loss offset election to deal with the resulting additional taxable income to NZFLL where the subvention payments are removed from its taxable income calculation. The request was declined.

Allied's tax advisors are optimistic that after discussion and clarification of the key issues, there is a reasonable expectation that the Commissioner may reverse her initial decision and allow the late offset request. At this stage no formal assessment has been received by NZFLL. An assessment can be disputed, as can a decision to deny an actual request to offset the losses.

An assessment to NZFLL denying the subvention payment deductions for the 2016-2018 income years would be tax of \$1,193,948, plus interest and penalties (late payment and, if applicable, shortfall penalties). Such a payment, if required, can be funded from Allied's current cash balances. If such payment is made, Allied shareholders would benefit from imputation credits on future dividend as a result of that additional tax paid.

Mark Benseman

Chairperson