

TAXATION LAWS AMENDMENT (DROUGHT RELIEF MEASURES) ACT 1995

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LONG TITLE

An Act to amend the law relating to taxation

Short title

1. This Act may be cited as the Taxation Laws Amendment (Drought Relief Measures) Act 1995.

(Minister's second reading speech made in -
House of Representatives on 29 March 1995
Senate on 30 March 1995)

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Schedules

3. The Acts specified in the Schedules to this Act are amended in accordance with the applicable items in the Schedules, and the other items in the Schedules have effect according to their terms.

SCHEDULE 1 Section 3

AMENDMENTS OF THE INCOME TAX ASSESSMENT ACT 1936 RELATING TO DROUGHT INVESTMENT ALLOWANCE

PART 1 - ADDITION OF NEW PART

1. After Part XI:

Insert:

"PART XII - DROUGHT INVESTMENT ALLOWANCE

"Division 1 - Object, key principle and overview

Object

"625. (1) The object of this Part is to provide a tax incentive, in the form of an allowable deduction, to encourage primary producers and lessors of property to primary producers to invest in drought mitigation property.

"(2) The tax incentive may be referred to as drought investment allowance.

The key principle

"626. A taxpayer incurring capital expenditure of at least \$3,000 on a new item of drought mitigation property for use in producing assessable primary production income qualifies for a drought investment allowance deduction of 10% of the expenditure. There is a \$5,000 limit in relation to deductions.

Note: The key concept of drought mitigation property is defined in Division 4.

Overview of Part

"627. The following table summarises the contents of this Part:

OVERVIEW

Division Coverage

- | | |
|---|--|
| 1 | Object, key principle and overview |
| 2 | Deductions for primary producers |
| 3 | Deductions for leasing companies |
| 4 | Key concepts: drought mitigation property and associated terms |
| 5 | Special provisions about primary producers |
| 6 | Special provisions about leasing companies |
| 7 | Transitional |
| 8 | Definitions etc. (including a list of terms defined in the Part) |

"Division 2 - Primary producer deduction

"Subdivision A - Entitlement to deduction

Expenditure qualifying for the deduction Capital expenditure of at least \$3,000 on new drought mitigation property

"628. (1) A taxpayer is entitled to the deduction under this Part if the taxpayer incurs expenditure of a capital nature of at least \$3,000 in acquiring or constructing a new item of drought mitigation property, and the conditions in this section are met.

Note: Other provisions of this Part may remove the entitlement.

Use for producing assessable primary production income

"(2) The item must be for use by the taxpayer wholly and exclusively in Australia for the purpose of producing assessable primary production income other than by:

- (a) leasing it; or
- (b) letting it on hire-purchase; or
- (c) granting rights to other persons to use it.

Time limit for incurring the expenditure

"(3) If the expenditure is incurred in acquiring the item, it must be incurred after 23 March 1995 and before 1 July 2000. If the expenditure is incurred in constructing the item, the construction must begin after 23 March 1995 and before 1 July 2000.

Time limit for first use

"(4) The item must be first used or installed ready for use by the taxpayer before 1 July 2001.

Timing of deduction

"629. The deduction is allowable for the year of income when the item is first used or installed ready for use by the taxpayer.

Amount of the deduction

"630. The amount of the deduction is, subject to section 631 (which limits total deductions for any year of income), 10% of the expenditure.

\$5,000 limit on total deductions

Application of the limit

"631. (1) The deduction, or the total of the deductions, allowable to the taxpayer under this Division for one or more items of drought mitigation property for a year of income is limited to \$5,000.

Proportionate allocation of limit

"(2) If:

(a) because of subsection (1), only a proportion (the eligible proportion) of a deduction or of the total deductions for expenditure of the taxpayer on one or more items of drought mitigation property is allowable; and

(b) it is necessary for the purpose of any other provision (e.g. section 633 or 635) to know:

(i) how much of the deduction for a particular item was allowable; or

(ii) which expenditure on a particular item was taken into account in working out the deduction allowable for that item; then:

(c) only the eligible proportion of the deduction for the particular item is taken to have been allowable; and

(d) only the eligible proportion of each dollar of the expenditure on the particular item was taken into account in working out the deduction.

Example for purposes of proportionate allocation of limit

"(3) An example for the purposes of subsection (2) is where, of a total of \$15,000 in deductions on 2 items (item 1 and item 2), only \$5,000 (i.e. one third) was allowable because of subsection (1). If the deductions were:

(a) \$9,000 (expenditure of \$90,000) for item 1; and

(b) \$6,000 (expenditure of \$60,000) for item 2; then:

(c) only one third of the deduction for item 1 (i.e. \$3,000) is taken to have been allowable, and one third of every dollar of the \$90,000 expenditure was taken into account in working out the \$3,000 deduction; and

(d) only one third of the deduction for item 2 (i.e. \$2,000) is taken to have been allowable, and one third of every dollar of the \$60,000 expenditure was taken into account in working out the \$2,000 deduction.

Relationship with other deductions

Deduction generally an additional deduction

"632. (1) In spite of sections 82, 122N, 123E and 124AN, but subject to this section, the deduction is allowable in addition to any deduction allowable in respect of the expenditure under any other provision of this Act.

Deduction not allowable if certain other deductions allowable

"(2) The deduction is not allowable if a deduction in respect of the expenditure has been allowed or is allowable under section 70A, 73B, 122J, 122JF or 124AH.

Deduction not allowable for certain depreciable property

"(3) The deduction is not allowable if:

(a) a deduction is allowable for depreciation in relation to the item; and

(b) for that purpose, the annual depreciation percentage for the item under subsection 55(2) (disregarding subsection 55(8)) is 100%.

"Subdivision B - Loss of entitlement to deduction

Disposal etc. of item within 12 months

"633. (1) The taxpayer is not entitled to the deduction if, before the end of 12 months after the item of drought mitigation property is first used, or installed ready for use, by the taxpayer, the taxpayer does any of the things set out in this section.

Loss if disposal etc.

"(2) The taxpayer is not entitled to the deduction if the taxpayer disposes of the item or loses it, or if the property is destroyed, within the 12 months.

Loss if disposal of partial interest

"(3) Subject to subsection (4), if the taxpayer, within the 12 months, disposes of part of the taxpayer's interest in the item, the taxpayer is not entitled to the deduction.

Commissioner may determine that entitlement not wholly lost

"(4) If the Commissioner determines that the taxpayer should not lose the entitlement to the whole or part of the deduction, subsection (3) does not apply to the whole or the part.

Loss if lease etc.

"(5) The taxpayer is not entitled to the deduction if, within the 12 months, the taxpayer:

- (a) leases the item; or
- (b) lets the item on hire under a hire-purchase agreement; or
- (c) otherwise grants a right to another person to use the item.

Loss if use outside Australia etc.

"(6) The taxpayer is not entitled to the deduction if, within the 12 months, the taxpayer uses the item outside Australia or for a purpose other than that of producing assessable primary production income.

Disposal etc. of item after 12 months

"634. (1) Subject to subsection (3), the taxpayer is not entitled to the deduction if, 12 months or more after the item of drought mitigation property is first used, or installed ready for use, by the taxpayer, the taxpayer:

- (a) disposes of the item; or
- (b) leases the item, lets it on hire under a hire-purchase agreement or otherwise grants a right to another person to use it; or
- (c) uses the item outside Australia or for a purpose other than that of producing assessable primary production income; and the taxpayer intended to do so at the time of acquiring or constructing the item.

Loss if disposal of partial interest

"(2) Subject to subsection (3), if:

- (a) 12 months or more after the item is first used, or installed ready for use, by the taxpayer, the taxpayer disposes of a part of his or her interest in it; and
- (b) when the taxpayer acquired or constructed the item, the taxpayer intended to dispose of the whole or a part of his or her interest in it after becoming entitled to the deduction; the taxpayer is not entitled to the deduction.

Commissioner may determine that entitlement not wholly lost

"(3) If the Commissioner determines that the taxpayer should not lose the entitlement to the whole or part of the deduction under subsection (1) or (2), that subsection does not apply to the entitlement to the whole or the part.

Recoupment of expenditure

"635. (1) If the taxpayer is, or becomes entitled to be, recouped by any person (whether a government or otherwise) for expenditure for which the deduction is allowable, the taxpayer is taken never to have incurred the expenditure.

"(2) If the taxpayer receives, or becomes entitled to receive, an amount that represents to an unspecified extent:

- (a) a recoupment of expenditure (the deductible expenditure) for which the deduction is allowable; and

(b) a recoupment of other expenditure; then, for the purposes of subsection (1), the amount is a recoupment of the proportion of the deductible expenditure worked out using the formula:

$$\frac{\text{Deductible expenditure}}{\text{Sum of deductible expenditure and other expenditure}}$$

"Division 3 - Leasing company deduction

"Subdivision A - Entitlement to deduction

Expenditure qualifying for the deduction

Capital expenditure of at least \$3,000 on new drought mitigation property

"636. (1) A taxpayer is entitled to the deduction under this Part if the taxpayer is a leasing company that incurs expenditure of a capital nature of at least \$3,000 in acquiring or constructing a new item of drought mitigation property, and the conditions in this section are met.

Note: Other provisions of this Part may remove the entitlement.

Use for producing assessable primary production income

"(2) The item must be for use wholly and exclusively in Australia, for the purpose of producing assessable primary production income, by another person.

Lease for at least 4 years

"(3) The taxpayer must have leased the item to the other person for 4 years or more under a lease that:

- (a) was entered into by the taxpayer in the course of carrying on business in Australia; and
- (b) was entered into by the taxpayer and the other person at arm's length.

Time limit for incurring the expenditure

"(4) If the expenditure is incurred in acquiring the item, it must be incurred after 23 March 1995 and before 1 July 2000. If the expenditure is incurred in constructing the item, the construction must begin after 23 March 1995 and before 1 July 2000.

Time limit for first use

"(5) The item must be first used or installed ready for use by the other person before 1 July 2001.

Timing of deduction

"637. The deduction is allowable for the year of income when the item is first used or installed ready for use by the other person.

Amount of the deduction

"638. The amount of the deduction is, subject to sections 639 and 640 (which limit deductions on any one item and for any one year of income), 10% of the expenditure.

\$5,000 limit on deduction for any one item

"639. The deduction allowable to the taxpayer for the item is limited to \$5,000.

Limit on total deductions

Deductions not to exceed net amount

"640. (1) If the taxpayer would be entitled to one or more deductions under section 636 for a year of income, the deduction, or the total of the deductions, allowable to the taxpayer (after applying section 639) for the year of income is limited to the net amount in subsection (2).

Meaning of net amount

"(2) The net amount is:

- (a) the assessable income of the taxpayer for the year of income; reduced by:
- (b) all deductions allowable from the assessable income, other than those allowable:
 - (i) under this Part; or

- (ii) under Subdivision B (development allowance) or BA (general investment allowance) of Division 3 of Part III in relation to units of property leased by the taxpayer to other persons; or
- (iii) under section 79E, 79F, 80, 80AAA or 80AA (which relate to previous years' losses).

Proportionate allocation of limits

"641. If:

(a) because of section 639 or 640, only a proportion (the eligible proportion) of a deduction or of the total deductions for expenditure of the taxpayer on one or more items of drought mitigation property is allowable; and

(b) it is necessary for the purpose of any other provision (e.g. section 646 or 647) to know:

(i) how much of the deduction for a particular item was allowable; or

(ii) which expenditure on a particular item was taken into account in working out the deduction allowable for that item; then:

(c) only the eligible proportion of the deduction for the particular item is taken to have been allowable; and

(d) only the eligible proportion of each dollar of the expenditure on the particular item was taken into account in working out the deduction.

Note: For an example of the operation of this provision, see subsection 631(3).

Relationship with other deductions

Deduction generally an additional deduction

"642. (1) In spite of sections 82, 122N, 123E and 124AN, but subject to this section, the deduction is allowable in addition to any deduction allowable in respect of the expenditure under any other provision of this Act.

Deduction not allowable if certain other deductions allowable

"(2) The deduction is not allowable if a deduction in respect of the expenditure has been allowed or is allowable under section 70A, 73B, 122J, 122JF or 124AH.

Deduction not allowable for certain depreciable property

"(3) The deduction is not allowable if:

(a) a deduction is allowable for depreciation in relation to the item; and

(b) for that purpose, the annual depreciation percentage for the item under subsection 55(2) (disregarding subsection 55(8)) is 100%.

"Subdivision B - Loss of entitlement to deduction

Contracts or arrangements before lease entered into

"643. The taxpayer is not entitled to the deduction if, before the item of drought mitigation property was leased to the lessee, the lessee entered into a contract or arrangement with another person for the use of the item by the other person.

Disposal etc. of item within 12 months

"644. The taxpayer is not entitled to the deduction if, before the end of 12 months after the item of drought mitigation property is first used, or installed ready for use, by the lessee:

(a) the taxpayer disposes of the item to a person other than the lessee, or the property is lost or destroyed; or

(b) the lessee uses the item outside Australia or for a purpose other than that of producing assessable primary production income; or

(c) the lease is terminated other than by the acquisition of the item by the lessee; or

(d) while the lease is in force, the lessee enters into a contract or arrangement with another person for the use of the item by that other person; or

(e) the lessee acquires the item and disposes of it; or

(f) the lessee acquires the item and enters into a contract or arrangement with another person for the use of the property by the other person.

Disposal etc. of item after 12 months

Loss of entitlement

"645. (1) Subject to subsection (3), the taxpayer is not entitled to the deduction if subsection (2) applies and, 12 months or more after the item of drought mitigation property is first used, or installed ready for use, by the lessee but before the end of the term of the lease:

- (a) the taxpayer disposes of the item to a person other than the lessee; or
- (b) the lessee uses the item outside Australia or for a purpose other than that of producing assessable primary production income; or
- (c) the lease is terminated other than by the lessee acquiring the item; or
- (d) the lessee enters into a contract or arrangement with another person for the use of the item by that other person; or
- (e) the lessee acquires the item and disposes of it; or
- (f) the lessee acquires the item and enters into a contract or arrangement with another person for the use of the item by the other person.

Additional requirement for loss

"(2) For the taxpayer not to be entitled, it is also necessary that, when the lessee took the item on lease:

- (a) the taxpayer intended to dispose of the item; or
- (b) the lessee intended to do the thing mentioned in paragraph (1)(b), (d), (e) or (f); or
- (c) the lessee intended to cause the lease to be terminated as mentioned in paragraph (1)(c); as the case requires.

Commissioner may determine that entitlement not wholly lost

"(3) If the Commissioner determines that the taxpayer should not lose the entitlement to the whole or part of the deduction, this section does not apply to the whole or the part.

Recoupment of expenditure

"646. (1) If the taxpayer is, or becomes entitled to be, recouped by any person (whether a government or otherwise) for expenditure for which the deduction is allowable, the taxpayer is taken never to have incurred the expenditure.

"(2) If the taxpayer receives, or becomes entitled to receive, an amount that represents to an unspecified extent:

- (a) a recoupment of expenditure (the deductible expenditure) for which the deduction is allowable; and
- (b) a recoupment of other expenditure; then, for the purposes of subsection (1), the amount is a recoupment of the proportion of the deductible expenditure worked out using the formula:

$$\frac{\text{Deductible expenditure}}{\text{Sum of deductible expenditure and other expenditure}}$$

"Subdivision C - Transfer of entitlement to deduction

Leasing company may transfer entitlement to lessee

"647. (1) If, before the 8th day after the end of the month in which the agreement for the lease concerned is entered into, the taxpayer gives the lessee a declaration in accordance with subsection (2) transferring the entitlement to some or all of the deduction, the entitlement is transferred.

Note: Despite being transferred, the entitlement may be reduced under section 648 or lost under section 649.

The declaration

"(2) The declaration must:

- (a) be in writing, signed by the public officer of the taxpayer, and state that the taxpayer transfers to the lessee the entitlement to the deduction or to a specified amount of the deduction; and

(b) be accompanied by a statement, also signed by the public officer of the taxpayer, setting out the following:

- (i) a description of the item of drought mitigation property;
- (ii) the date on which the item was acquired by the taxpayer or the construction of the item began;
- (iii) the amount of expenditure incurred by the taxpayer for the acquisition or construction of the item;
- (iv) the date on which the taxpayer entered into the lease;
- (v) the name and address of the lessee;
- (vi) the term of the lease.

Section applies after section 639 but before section 640 and disentitling provisions

"(3) In working out the amount of the deduction for the purposes of this section, section 639 is to be taken into account, but the following provisions are to be disregarded:

- (a) section 640 (which reduces the deduction);
- (b) Subdivision B (which takes away the deduction);
- (c) sections 663 to 666 (which take away the deduction).

The provisions in paragraphs (a) to (c) will then apply only to the taxpayer's deduction as reduced by any amount transferred under this section.

Transferred deduction taken into account in applying \$5,000 limit under section 631

"648. Section 631 applies as if the lessee's entitlement to the deduction were a deduction of the lessee under Division 2.

Loss of lessee entitlement

"649. (1) Subject to subsection (3), the lessee is not entitled to the deduction if subsection (2) applies and, 12 months or more after the item is first used, or installed ready for use, by the lessee but before the end of the term of the lease:

- (a) the lessee uses the item outside Australia or for a purpose other than that of producing assessable primary production income; or
- (b) the lease is terminated other than because:
 - (i) its term ended; or
 - (ii) the lessee acquired the item; or
- (c) while the lease is in force, the lessee enters into a contract or arrangement with another person for the use of the item by the other person; or
- (d) the lessee acquires the item and disposes of it; or
- (e) the lessee acquires the item and enters into a contract or arrangement with another person for the use of the item by the other person.

Additional requirement for loss

"(2) For the lessee to be not entitled, it is also necessary that, when the lessee took the item on lease, the lessee intended:

- (a) to do the thing mentioned in paragraph (1)(a), (c), (d) or (e); or
- (b) to cause the lease to be terminated as mentioned in paragraph (1)(b); as the case requires.

Commissioner may determine that entitlement not wholly lost

"(3) If the Commissioner determines that the lessee should not lose the entitlement to the whole or the part of the deduction, this section does not apply to the whole or the part.

Note: If the lessee does lose the entitlement under this section, this does not mean that the taxpayer who transferred it regains it.

"Division 4 - Key concepts: drought mitigation property and associated terms

Meaning of drought mitigation property

"650. There are 4 kinds of drought mitigation property:

- (a) a fodder storage facility (see section 651); and
- (b) a water storage facility (see subsection 652(1)); and
- (c) a water transport facility (see subsection 652(2)); and
- (d) minimum tillage equipment (see section 654).

Note: In order for drought investment allowance to be available, the drought mitigation property must be for use in producing assessable primary production income (and other requirements must be satisfied).

Meaning of fodder storage facility

"651. A fodder storage facility is a building or other structure for use exclusively for the storage of grain, hay or fodder.

Meaning of water storage facility and water transport facility

Meaning of water storage facility

"652. (1) A water storage facility is:

- (a) a dam, earth tank, underground tank or above-ground tank; or
- (b) a base, stand or cover for such a tank; or
- (c) any other structure or improvement; that is for use on particular land in storing water predominantly for livestock.

Meaning of water transport facility

"(2) A water transport facility is:

- (a) a bore or well; or
- (b) a pump or windmill; or
- (c) a pipe; or
- (d) a water tower or header tank; or
- (e) any other structure or improvement; that is for use on particular land in transporting water.

Use in accordance with approved water conservation plan

"(3) The use mentioned in subsection (1) or (2) must be in accordance with an approved water conservation plan in relation to the land (see section 653).

Meaning of approved water conservation plan and associated terms

"653. (1) An approved water conservation plan is a water conservation plan (see subsection (2)) in relation to land that has been approved in writing as being a suitable water conservation plan for the land by:

- (a) an officer of a water conservation agency (see subsection (3)) with authority to do so; or
- (b) an approved farm water resource consultant (see subsection (4)).

Meaning of water conservation plan

"(2) A water conservation plan is a plan for land that describes:

(a) the location and type of structures or improvements on the land, for storing water for livestock or for transporting water, that:

- (i) will be effective and efficient in improving the drought preparedness of the land and of the natural environment of which it forms part; and
- (ii) will not have a significant adverse effect on water quality or availability in areas outside the land; and
- (b) the way in which the structures or improvements will achieve that result.

Meaning of water conservation agency

"(3) A water conservation agency is a State or Territory Government department, or authority, that has responsibility for management of water resources.

Meaning of approved farm water resource consultant

"(4) An approved farm water resource consultant is a person in respect of whom an approval under subsection (5) is in force.

Approval of farm water resource consultants

"(5) The following persons may, in writing, approve a person as a farm water resource consultant for the purposes of this section:

- (a) the Secretary to the Department of Primary Industries and Energy;
- (b) an officer of that Department authorised in writing by its Secretary for the purpose of giving such approvals.

Qualifications for approval

"(6) In deciding whether to approve a person as a farm water resource consultant, the following matters are to be taken into account:

- (a) the qualifications, experience and knowledge of the person in relation to the management of water resources on land used for primary production;
- (b) the standing of the person in the professional community;
- (c) any other relevant matters.

AAT review

"(7) Subject to the Administrative Appeals Tribunal Act 1975, applications may be made to the Tribunal by a person for review of a decision (within the meaning of that Act) under subsection (5):

- (a) to refuse approval of the person as a farm water resource consultant; or
- (b) to revoke approval of the person as a farm water resource consultant.

Meaning of minimum tillage equipment

"654. (1) Equipment is minimum tillage equipment if it is for use in planting or cultivation and involves:

- (a) no tillage of the soil; or
- (b) tillage of the soil that does not seriously affect soil structure and that retains a high degree of organic matter or surface cover.

Examples of equipment covered

"(2) The following are examples of minimum tillage equipment, provided the equipment satisfies the requirements of subsection (1):

- (a) trash tillage implements;
- (b) boom sprays and markers;
- (c) zero and reduced tillage planters;
- (d) trash seeders;
- (e) deep ploughs;
- (f) seed drills.

Examples of equipment excluded

"(3) The following are examples of equipment that is not minimum tillage equipment:

- (a) one-way disc ploughs;
- (b) offset disc ploughs;
- (c) mouldboard ploughs;
- (d) tined tillage implements and seeding implements, with low capacity for trash clearance;
- (e) rotary hoes;
- (f) tined harrows;
- (g) rollers that cause significant compaction of the soil.

"Division 5 - Special provisions about primary producers

"Subdivision A - Partnerships

No primary producer deduction for partnership that leases out item

"655. A deduction is not allowable to a partnership under Division 2 for expenditure incurred in acquiring or constructing an item of drought mitigation property that it leases to any person (the lessee).

Amount assessable where disposal of partner interest

When section applies

"656. (1) This section applies if a deduction under Division 2 in respect of an item of drought mitigation property was taken into account in working out the net income, or partnership loss, of a partnership for a year of income.

Disposal of partner interest within 12 months

"(2) If a partner disposes of the whole or part of the partner's interest in the partnership, or in the item, less than 12 months after the item is first used, or installed ready for use, by the partnership, the amount worked out under subsection (4) is included in the partner's assessable income of the year of income.

Disposal of partner interest after 12 months

"(3) If:

- (a) the disposal took place 12 months or more after the first use or installation; and
- (b) when the partnership acquired or constructed the item, the partner intended to dispose of the interest after the partnership became entitled to the deduction; the amount worked out under subsection (4) is included in the partner's assessable income of the year of income.

Amount assessable

"(4) Subject to subsection (5), the amount included in the assessable income is:

- (a) if the partners have agreed that a proportion of the expenditure comprising the deduction was to be borne by the partner - that proportion of the deduction; or
- (b) in any other case - a proportion of the deduction equal to the partner's partnership interest (see section 677) for the year of income.

Commissioner may determine that amount not wholly assessable

"(5) If the Commissioner determines that the whole or part of the amount should not be included in the assessable income, the whole or the part is not so included.

"Subdivision B - Group companies

Entitlement to primary producer deduction not lost for disposals in fewer than 12 months within company groups

When section applies

"657. (1) This section applies if a taxpayer that is a company would, as a result of subsection 633(2), lose its entitlement to the deduction to which Division 2 applies because the taxpayer has disposed of the item of drought mitigation property concerned before the end of 12 months after first using it or installing it for use.

No loss of entitlement

"(2) If this section applies and the requirements in subsections (3) to (6) are met, the taxpayer does not lose the entitlement.

Disposal to group company

"(3) The disposal must have been to a group company (the transferee) of the taxpayer.

Note: Group company is defined in section 682.

Ownership restriction

"(4) The item must not, at any time (the test time) during the period of 12 months, have been owned by a person other than:

- (a) if the transferee was the holding company of the taxpayer - the transferee or a group company of the transferee at the test time; or
- (b) if the transferee was a wholly-owned subsidiary of the taxpayer - the taxpayer or a group company of the taxpayer at the test time; or
- (c) if the transferee was a wholly-owned subsidiary of another company of which the taxpayer was also a wholly-owned subsidiary - the other company or a group company of it at the test time; or
- (d) if the transferee was a wholly-owned subsidiary of other companies of which the taxpayer was also a wholly-owned subsidiary - a company that, at the test time, was a wholly-owned subsidiary of the other companies.

Eligible public company requirement

"(5) At any time during the 12 months when the item was owned by:

- (a) if the transferee was the holding company of the taxpayer - the transferee; or
- (b) if the transferee was a wholly-owned subsidiary of the taxpayer - the taxpayer; or
- (c) if the transferee was a wholly-owned subsidiary of another company of which the taxpayer was also a wholly-owned subsidiary - that other company; the transferee, the taxpayer or that other company, as the case may be, must have been an eligible public company in relation to the year of income in which that time occurred.

Restriction on leasing etc.

"(6) At no time during the period of 12 months must a person who owned the item have:

- (a) leased the item to another person; or
- (b) let the item on hire to another person under a hire-purchase agreement; or
- (c) otherwise granted a right to another person to use the item; or
- (d) used the item outside Australia or for a purpose other than that of producing assessable primary production income.

Group company exception to paragraph (6)(a) or (c) requirement

"(7) The requirement in paragraph (6)(a) or (c) does not apply if:

- (a) the other person mentioned in that paragraph is a group company of the person who owned the item and is an eligible public company in relation to the year of income in which the leasing or granting of rights concerned happens; and
- (b) in a case where the required time (see subsection (8)) happens in a year of income after the one in which the leasing or granting happens
 - the group company is also an eligible public company in relation to that later year of income; and
 - (c) at all times from the grant of the lease or rights until the required time (see subsection (8)), the group company remains a group company of the person who owned the item and uses the item wholly and exclusively both in Australia and for the purpose of producing assessable primary production income other than by leasing it or otherwise granting a right to another person to use it.

Meaning of required time

"(8) The required time is the earlier of:

- (a) the end of the term of the lease or period of the grant; and
- (b) the end of the period of 12 months mentioned in subsection (1).

Effect of dissolution of certain companies by court order

"(9) If:

- (a) a company (the original company) is any of the following companies:
 - (i) the transferee referred to in paragraph (4)(a);
 - (ii) the taxpayer referred to in paragraph (4)(b);
 - (iii) the other company referred to in paragraph (4)(c);
 - (iv) any of the other companies referred to in paragraph (4)(d); and
- (b) under an order of a court made under the law of a State or

Territory relating to companies:

- (i) the whole of the undertaking, property and liabilities of the original company is vested in another company (the substituted company); and
- (ii) the persons who beneficially owned shares in the original company become the beneficial owners of all of the shares in the substituted company without a reduction in their respective interests; and
- (iii) the original company is dissolved; subsections (4) and (5) apply, in relation to any time after the order of the court takes effect, as if the substituted company were the transferee, the taxpayer or the other company, as the case may be.

Deduction not lost to primary producer despite leasing etc. item during 12 month period
When section applies

"658. (1) This section applies if the taxpayer is a company that would lose the entitlement to the deduction to which Division 2 applies:

- (a) under paragraph 633(5)(a) because the taxpayer leased the item of drought mitigation property to another person; or
- (b) under paragraph 633(5)(c) because the taxpayer granted rights to another person to use the item; and the other person is a group company (see section 682) of the taxpayer.

Conditions for not losing the deduction

"(2) The taxpayer does not lose the entitlement to the deduction if, at all times during the required period (see subsection (3)):

- (a) the group company remains a group company of the taxpayer; and
- (b) the group company uses the item wholly and exclusively both in Australia and for the purpose of producing assessable primary production income other than by:
 - (i) leasing the item; or
 - (ii) otherwise granting a right to another person to use the item.

The required period

"(3) The required period is so much of the term of the lease or period of the grant as happens before the end of the period of 12 months after the taxpayer first uses the item or installs it ready for use.

Deduction not lost to primary producer despite leasing etc. item after 12 month period

When section applies

"659. (1) This section applies if the taxpayer is a company that would lose the entitlement to the deduction to which Division 2 applies under paragraph 634(1)(b) because the taxpayer:

- (a) leased the item of drought mitigation property to another person; or
- (b) granted rights to another person to use the item; and the other person is a group company (see section 682) of the taxpayer.

Conditions for not losing the deduction

"(2) The taxpayer does not lose the entitlement to the deduction if the use of the item under the contract or arrangement was:

- (a) to take place while the group company remains a group company of the taxpayer; and
- (b) to be wholly and exclusively both in Australia and for the purpose of producing assessable primary production income other than by leasing the item or granting a right to another person to use it.

Deduction not lost to primary producer taking item on lease despite contract etc. for use of item after 12 month period

When section applies

"660. (1) This section applies if the taxpayer would lose the entitlement to the deduction to which Subdivision C of Division 3 applies:

- (a) under paragraph 649(1)(c) because the taxpayer entered into a contract or arrangement with another person for the use of the item of drought mitigation property by the other person; or
- (b) under paragraph 649(1)(e) because the taxpayer acquired the item of drought mitigation property and entered into a contract or arrangement with another person for its use by the other person; and the other person is a group company (see section 682) of the taxpayer.

Conditions for not losing the deduction

"(2) The taxpayer does not lose the entitlement to the deduction if the use of the item under the contract or arrangement was:

- (a) to take place while the group company remains a group company of the taxpayer; and
- (b) to be wholly and exclusively both in Australia and for the purpose of producing assessable primary production income other than by leasing the item or granting a right to another person to use the item.

"Division 6 - Special provisions about leasing companies

"Subdivision A - Partnerships

Partner deduction for property leased out by partnership

"661. If:

- (a) a partnership incurs expenditure in acquiring or constructing an item of drought mitigation property that it leases to any person (the lessee); and
- (b) any of the partners is a leasing company; section 636 applies to any such partner as if the partner had incurred:
- (c) if the partners have agreed that a proportion of the expenditure is to be borne by the partner - that proportion of the expenditure; or
- (d) if not - a proportion of the deduction equal to the partner's partnership interest (see section 677) in the expenditure.

Loss of partner deduction if pre-lease contract etc.

"662. A partner is not entitled to a deduction as a result of section 661 if, before the partnership leased the item of drought mitigation property to the lessee, the lessee entered into a contract or arrangement with another person for the use of the item by the other person.

Loss of partner deduction where disposal by partner within 12 months

"663. (1) Subject to subsection (2), if:

- (a) as a result of section 661, a partner is entitled to a deduction; and
- (b) less than 12 months after the lessee of the item of drought mitigation property first uses the item or installs it ready for use, the partner disposes of the whole or part of the partner's interest in the partnership, or in the item, other than to the lessee; the partner is not entitled to the deduction.

Commissioner may determine that entitlement not wholly lost

"(2) If the Commissioner determines that the partner should not lose the entitlement to the whole or part of the deduction, subsection (1) does not apply to the whole or the part.

Loss of partner deduction where disposal by partnership etc. within 12 months

"664. A partner is not entitled to a deduction resulting from section 661 if, before the end of 12 months after the item of drought mitigation property is first used, or installed ready for use, by the lessee:

- (a) the partnership disposes of the item to a person other than the lessee, or the item is lost or destroyed; or
- (b) the lessee uses the item outside Australia or for a purpose other than that of producing assessable primary production income; or
- (c) the lease is terminated other than by the lessee acquiring the item; or
- (d) while the lease is in force, the lessee enters into a contract or arrangement with another person for the use of the item by the other person; or

- (e) the lessee acquires the item and disposes of it; or
- (f) the lessee acquires the property and enters into a contract or arrangement with another person for the use of the item by the other person.

Loss of partner deduction where disposal by partner after 12 months

"665. (1) Subject to subsection (2), if:

- (a) as a result of section 661, a partner is entitled to a deduction; and
- (b) 12 months or more after the item of drought mitigation property is first used, or installed ready for use, by the lessee and before the end of the term of the lease, the partner disposes of the whole or a part of the partner's interest in the partnership, or in the item, to a person other than the lessee; and
- (c) when the lessee took the property on lease, the partner intended to dispose of the interest; the partner is not entitled to the deduction.

Commissioner may determine that entitlement not wholly lost

"(2) If the Commissioner determines that the partner should not lose the entitlement to the whole or part of the deduction, subsection (1) does not apply to the whole or the part.

Loss of partner deduction where disposal by partnership etc. after 12 months

"666. (1) Subject to subsection (2), a partner is not entitled to a deduction resulting from section 661 if:

- (a) 12 months or more after the item of drought mitigation property is first used, or installed ready for use, by the lessee and before the end of the term of the lease, the partnership disposes of the item to a person other than the lessee or any of the things mentioned in paragraphs 664(b) to (f) happens; and
- (b) when the lessee took the item on lease:
 - (i) the partnership intended to dispose of the item; or
 - (ii) the lessee intended to do the thing mentioned in paragraph 664(b), (d), (e) or (f); or
 - (iii) the lessee intended to cause the lease to be terminated as mentioned in paragraph 664(c); as the case requires.

Commissioner may determine that entitlement not wholly lost

"(2) If the Commissioner determines that the partner should not lose the entitlement to the whole or part of the deduction, subsection (1) does not apply to the whole or the part.

"Subdivision B - Group companies

Deduction not lost to leasing company despite lessee contract etc. for use of property before start of 12 month period

When section applies

"667. (1) This section applies if:

- (a) the taxpayer would lose the entitlement to a deduction under section 643 or 662 because the lessee entered into a contract or arrangement with another person for the use of the item of drought mitigation property by the person; and
- (b) the other person is a group company (see section 682) of the lessee.

Conditions for not losing the deduction

"(2) The taxpayer does not lose the entitlement to the deduction if:

- (a) the use of the item under the contract or arrangement was:
 - (i) to take place while the group company remains a group company of the lessee; and
 - (ii) to be wholly and exclusively both in Australia and for the purpose of producing assessable primary production income other than by leasing the item or granting a right to another person to use the item; and
- (b) at all times during the required period (see subsection (3)), the use of the item was in accordance with paragraph (a).

The required period

"(3) The required period is so much of the term of the contract or arrangement as happens before the end of the period of 12 months after the lessee first used the item or installed it ready for use.

Deduction not lost to leasing company despite lessee contract etc. for use of item within 12 month period

When section applies

"668. (1) This section applies if the taxpayer would lose the entitlement to the deduction to which this Division applies:

(a) under paragraph 644(d) or 664(d) because the lessee entered into a contract or arrangement with another person for the use of the item of drought mitigation property by the other person; or

(b) under paragraph 644(f) or 664(f) because the lessee acquired the item of drought mitigation property and entered into a contract or arrangement with another person for its use by the other person; and the other person is a group company (see section 682) of the lessee.

Conditions for not losing the deduction

"(2) The taxpayer does not lose the entitlement to the deduction if, at all times during the required period (see subsection (3)):

(a) the group company remains a group company of the lessee; and

(b) the group company uses the item wholly and exclusively both in Australia and for the purpose of producing assessable primary production income other than by:

(i) leasing the item; or

(ii) otherwise granting a right to another person to use the item.

The required period

"(3) The required period is so much of the term of the contract or arrangement as happens before the end of the period of 12 months after the lessee first used the item or installed it ready for use.

Deduction not lost to leasing company despite lessee contract etc. for use of property after 12 month period

When section applies

"669. (1) This section applies if the taxpayer would lose the entitlement to the deduction to which this Division applies:

(a) under paragraph 645(1)(d) or subsection 666(1) because the lessee entered into a contract or arrangement with another person for the use of the item of drought mitigation property by the other person; or

(b) under paragraph 645(1)(f) or subsection 666(1) because the lessee acquired the item of drought mitigation property and entered into a contract or arrangement with another person for its use by the other person; and the other person is a group company (see section 682) of the lessee.

Conditions for not losing the deduction

"(2) The taxpayer does not lose the entitlement to the deduction if the use of the item under the contract or arrangement was:

(a) to take place while the other person remains a group company of the lessee; and

(b) to be wholly and exclusively both in Australia and for the purpose of producing assessable primary production income other than by leasing the item or granting a right to another person to use the item.

"Subdivision C - Lease-back of used property

Deduction for property used by lessee

When section applies

"670. (1) This section applies if:

(a) a leasing company acquires an item of drought mitigation property from another person (the lessee) who had used it, or held it for use, for not more than 6 months; and

(b) the leasing company then leases the item to the lessee.

Deduction still allowable

"(2) If:

(a) the only reason for the leasing company not being entitled to a deduction under Division 3 for the item is the use or holding for use by the lessee; and

(b) under a contract or arrangement entered into by the lessee at arm's length after 23 March 1995, all of the following happened:

(i) the lessee acquired or constructed the item;

(ii) the leasing company acquired the item from the lessee;

(iii) the leasing company leased the property to the lessee; then the leasing company is entitled to the deduction under Division 3.

"Division 7 - Transitional

Modification of date in section 647

"671. If:

(a) Division 3 applies to the deduction; and

(b) the agreement for the lease concerned was entered into after 23 March 1995 and before the commencement of this Part; subsection 647(1), instead of referring to the 8th day after the end of the month in which the agreement for the lease is entered into, refers to the 8th day after the end of the month in which this Part commences.

"Division 8 - Definitions etc.

Meaning of acquire

"672. A person acquires an item of property if:

(a) the person becomes the owner of the property; or

(b) the person takes the property on hire under a hire-purchase agreement; or

(c) the property is constructed for the person, on the person's premises, by another person.

Ownership of item of property where Crown lease

"673. If:

(a) a person is the lessee (as defined in section 54AA) of land under a Crown lease (as defined in that section); and

(b) an item of property is affixed to the land; and

(c) because of section 54AA, the provisions of this Act relating to depreciation apply as if the person, instead of another person, were the owner of the item; the person, instead of the other person, is taken to own the item.

Meaning of hire-purchase agreement

"674. (1) Subject to subsection (2), a hire-purchase agreement is an agreement for letting an item of property on hire under which the person taking the item on hire has a right (either absolutely or subject to conditions) to purchase the item.

"(2) An agreement that would otherwise be covered by subsection (1) is not a hire-purchase agreement if, under the agreement:

(a) in determining whether any sum is payable on the exercise of the right to purchase the item; and

(b) if a sum is so payable, in determining its amount; no regard is had to any part of any payment made under the agreement before the right is exercised.

Special meaning of dispose in the case of hire-purchase

"675. If a person (the purchaser) who takes an item of property on hire under a hire-purchase agreement does or fails to do anything that results in the person from whom the purchaser took the item on hire under the agreement obtaining possession of the item:

(a) the purchaser is taken to have disposed of the item; and

(b) the disposal is taken to have happened when the other person obtained possession from the purchaser.

Meaning of assessable primary production income

"676. (1) The expression assessable primary production income of a person means:

- (a) assessable income derived by the person in the course of carrying on a business of primary production; or
- (b) other assessable income derived by the person as a result of the person carrying on a business of primary production.

Effect of private or domestic use on production of assessable primary production income

"(2) If:

- (a) at a particular time a company, whose shares are not listed for quotation in the official list of a stock exchange in Australia or elsewhere, is using an item of property for the purpose of producing assessable primary production income; and
- (b) at that time, an employee, director or member of the company, or a relative of any of those people, is using the item for a private or domestic purpose that is not incidental to the purpose of producing the assessable primary production income; the item is taken not to be used at that time as mentioned in paragraph (a).

Deemed use of minimum tillage equipment for producing assessable primary production income

"(3) If:

- (a) in performing a contract, a person uses minimum tillage equipment; and
- (b) the use is for the purpose of producing assessable income that is not assessable primary production income; the use is taken to be for the purpose of producing assessable primary production income.

Meaning of partner's partnership interest

"677. A partner in a partnership has a partner's partnership interest for a year of income of an amount worked out by dividing:

- (a) the individual interest of the partner in the partnership's net income or partnership loss for the year of income; by:
- (b) the net income or partnership loss.

Meaning of install ready for use

"678. The expression install ready for use means install ready for use and hold in reserve.

Meaning of lease

"679. The expression lease includes let on hire other than under a hire-purchase agreement.

Meaning of leasing company

"680. (1) Subject to subsection (2), the expression leasing company means a corporation that carries on in Australia as its sole or principal business:

- (a) the business of banking; or
- (b) the business of borrowing money and:
 - (i) lending money, with or without security; or
 - (ii) letting property on hire under a hire-purchase agreement; or
 - (iii) leasing property.

"(2) The corporation is not a leasing company if the whole of the income of the business is exempt income.

Meaning of new

"681. The expression new means not having previously been either used by any person or acquired or held by any person for use by that person, but does not include reconditioned or wholly or mainly reconstructed.

Meaning of group company and associated terms

"682. (1) A company (the first company) is a group company of another company (the second company) at a particular time if:

- (a) the first company is the holding company (see subsection (2)) of the second company; or
- (b) the first company is a wholly-owned subsidiary (see subsection (3)) of the second company; or
- (c) the first company is a wholly-owned subsidiary of another company of which the second company is also a wholly-owned subsidiary; or
- (d) the first company is a wholly-owned subsidiary (see subsection (4)) of other companies of which the second company is also a wholly-owned subsidiary.

Meaning of holding company

"(2) A company (the first company) is the holding company of another company (the second company) at a particular time (the test time) if:

- (a) the first company is an eligible public company (see subsection (6)) in relation to its year of income in which the test time occurred; and
- (b) the second company is an eligible subsidiary (see subsection (5)) in relation to its year of income in which the test time occurred; and
- (c) at the test time, all of the shares in the second company were beneficially owned by:
 - (i) the first company; or
 - (ii) another company that is an eligible subsidiary in relation to its year of income in which the test time occurred; or
 - (iii) 2 or more companies of the kind mentioned in subparagraph (ii) or the first company and a company or companies of the kind mentioned in that subparagraph; and
- (d) in a case where, at the test time, any of the shares in the second company were beneficially owned by a company other than the first company - the first company would have had a right to receive, indirectly, or directly and indirectly, for its own benefit the whole of a dividend if:
 - (i) the second company had declared the dividend at the relevant time; and
 - (ii) there have been successive distributions of the relative parts of the dividend to and by each company, and any trustee, interposed between the second and the first company.

Meaning of wholly-owned subsidiary of one company

"(3) A company is a wholly-owned subsidiary of another company if the other company is its holding company.

Meaning of wholly-owned subsidiary of 2 or more companies

"(4) A company (the first company) is a wholly-owned subsidiary of 2 or more other companies (the parent companies) at a particular time (the test time) if:

- (a) the first company is an eligible subsidiary in relation to its year of income in which the test time occurred; and
- (b) each of the parent companies is an eligible public company in relation to its year of income in which the test time occurred; and
- (c) at the test time, all of the shares in the first company were beneficially owned by:
 - (i) the parent companies; or
 - (ii) another company that is an eligible subsidiary in relation to its year of income in which the test time occurred; or
 - (iii) 2 or more companies of the kind mentioned in subparagraph (ii) or any one or more of the parent companies and a company or companies of the kind mentioned in that subparagraph; and
- (d) in a case where, at the test time, any of the shares in the first company were beneficially owned by a company other than one of the parent companies - the parent companies would have had rights

between them to receive, indirectly, or directly and indirectly, for their benefit, the whole of a dividend if:

- (i) the first company had declared a dividend at the test time; and
- (ii) there had been successive distributions of the relative parts of the dividend to and by each company, and any trustee, interposed between the first company and the parent companies.

Meaning of eligible subsidiary

"(5) A company is an eligible subsidiary in relation to a year of income if, because of subsection 103A(4), the company is a subsidiary of a public company in relation to the year of income for the purposes of subparagraph 103A(2)(d)(v).

Meaning of eligible public company

"(6) A company is an eligible public company in relation to a year of income if, because of paragraph 103A(2)(a), the company is a public company in relation to the year of income for the purposes of subsection 103A(1).

Adjustment of excessive amounts in respect of drought mitigation property

Where excessive amount allocated to the item of property

"683. (1) Subject to subsection (3), if, under a contract:

- (a) an item of drought mitigation property is to be acquired or constructed; and
- (b) an amount is expressed to be payable for the acquisition or construction of the item; and
- (c) the amount exceeds:
 - (i) if the contract is for the construction of the item for a person by someone else on the person's premises - the market value of the item when construction is completed; or
 - (ii) in any other case - the market value of the item at the date of the contract; the amount payable for the acquisition or construction of the item is taken to be the same as the market value applicable under paragraph (c).

Where excessive amount allocated to materials

"(2) Subject to subsection (3), if, under a contract:

- (a) materials for use in constructing an item of drought mitigation property are to be acquired; and
- (b) an amount is expressed to be payable for the acquisition of the materials; and
- (c) the amount exceeds:
 - (i) if the contract is for the construction of the item for a person by someone else on the person's premises - the market value of the item when construction is completed; or
 - (ii) in any other case - the market value of the materials at the date of the contract; the amount payable for the acquisition of the materials is taken to be the same as the market value applicable under paragraph (c).

Commissioner may determine that subsection does not apply

"(3) If the Commissioner so determines, subsection (1) or (2) does not apply to the amount payable.

Index of definitions

"684. The following table lists the definitions in this Part and shows their location:

Definition	Provision
Acquire	672
Assessable primary production income	676
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Leasing company	680
Minimum tillage equipment	654
New	681
Partner's partnership interest	677
Water storage facility	652(1)
Water transport facility	652(2)."

PART 2 - CONSEQUENTIAL AMENDMENTS

2. Subparagraph 50C(3)(d)(ii):

After "Division 3" insert "or under Part XII".

3. After paragraph 50F(1)(b):

Insert:

"(ba) if the company is a leasing company, any deduction allowable to the company under Part XII, in relation to the year of income, in respect of an item of drought mitigation property leased by the company to another person or other persons;"

4. Subsection 56(3):

Omit "or Subdivision B or BA of Division 3", substitute ", Subdivision B or BA of Division 3 or Part XII".

5. After paragraph 82AC(a):

Insert:

"(aa) deductions allowable under Part XII in relation to an item or items of drought mitigation property leased by the taxpayer to another person or persons; or".

6. Subparagraph 159GJ(1)(a)(i):

After "Division 3" insert ", or Part XII,".

7. Paragraph 159GJ(1)(a):

Omit ", as the case may be, of Division 3", substitute "of Division 3, or Part XII, as the case may be,".

8. Subsection 170(10):

Omit "or subsection 221YRA(2)", substitute ", subsection 221YRA(2) or Part XII".

SCHEDULE 2 Section 3

AMENDMENTS OF THE LOAN (INCOME EQUALIZATION DEPOSITS) ACT 1976 RELATING TO FARM MANAGEMENT BONDS

1. Section 3 (definition of farm management bond percentage):

Omit "80%", substitute "100%".

2. Subsection 4B(5):

Omit "\$80,000", substitute "\$150,000".

3. Paragraph 15(4)(b):

Omit "\$80,000", substitute "\$150,000".

4. Section 18:

Omit "15A,".

5. Section 19:

Add at the end:

"(3) If:

(a) the whole or a part of the deposit is a farm management bond; and

(b) the declaration was made in a case where paragraph (1)(b) applied; then subsections (4) to (6) apply.

"(4) If subsection (3) applies, the deposit or part is taken for the purposes of this Act never to have been a farm management bond.

"(5) Also, the interest that, because of subsection (4), should not have been paid to a person is, for the purposes of section 27B, an amount that exceeds the amount properly payable.

"(6) Any amount that, because of subsection (4), should not have been paid into the Income Equalisation Deposits Trust Account and added to the balance of a deposit is taken for the purposes of this Act not to have been so paid and added."

6. Section 20A:

Add at the end:

"(3) This section does not apply to a deposit to the extent that it consists of a farm management bond."

7. Section 20B:

Add at the end:

"(4) This section does not apply to a deposit to the extent that it consists of a farm management bond."

8. Application

(1) The amendment made by item 1 applies to interest payable in respect of any period after the day on which this Schedule commences.

(2) The amendment made by item 2 applies to the adding of interest after the day on which this Schedule commences.

(3) The amendment made by item 3 applies to the making of an election after the day on which this Schedule commences.

(4) The amendment made by item 4 applies to a repayment request made after the day on which this Schedule commences.

(5) The amendment made by item 5 applies to a deposit or a part of a deposit, where the deposit is made after the day on which this Schedule commences.

(6) The amendment made by item 6 applies to a deposit where the declaration in relation to the repayment of the deposit is made after the day on which this Schedule commences.

(7) The amendment made by item 7 applies to a deposit or a part of a deposit where the request or declaration in relation to the repayment of the deposit or part is made after the day on which this Schedule commences.