

INCOME TAX ASSESSMENT AMENDMENT ACT 1976

No. 50 of 1976

An Act to amend the Law relating to Income Tax.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:—

1. (1) This Act may be cited as the *Income Tax Assessment Amendment Act 1976*.¹ Short title
and citation.

(2) The *Income Tax Assessment Act 1936-1975*² is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the *Income Tax Assessment Act 1936-1976*.

2. This Act shall come into operation on the day on which it receives the Royal Assent.¹ Commence-
ment.

3. Section 6 of the Principal Act is amended—

(a) by omitting from sub-section (1) the definition of “Commonwealth securities” and substituting the following definition:—

“ ‘Commonwealth securities’ means bonds, debentures, stock or other securities issued under an Act, but does not include—

(a) securities (not being securities to which paragraph (b) applies) issued in respect of a loan raised outside Australia unless there is in force a declaration by the Treasurer, published in the *Gazette*, that those securities shall be Commonwealth securities for the purposes of this Act; or

(b) securities issued after 12 April 1976 by a bank;”;

and

(b) by omitting from sub-section (1) the definition of “public securities” and substituting the following definition:—

“ ‘public securities’ means—

(a) Commonwealth securities;

(b) bonds, debentures, stock or other securities issued by—

(i) a State;

(ii) a Territory; or

Interpretation.

- (iii) a municipal corporation, other local governing body or public authority constituted by or under an Act or by or under a law of a State or Territory; and
- (c) securities issued in respect of a loan to a company the principal business of which is the supply and distribution, by a system of reticulation, in Australia or in a Territory, of water, gas or electricity,
but does not include—
 - (d) securities referred to in paragraph (b) (not being securities to which paragraph (e) applies) issued in respect of a loan raised outside Australia and the Territories unless there is in force a declaration by the Treasurer, published in the *Gazette*, that those securities shall be public securities for the purposes of this Act; or
 - (e) securities issued after 12 April 1976 by a bank;”.

Officers to observe secrecy.

4. Section 16 of the Principal Act is amended by omitting from paragraph (h) of sub-section (4) the words “the Secretary, Department of the Navy, the Secretary, Department of the Army, or the Secretary, Department of Air,”.

5. Before section 32 of the Principal Act the following section is inserted:—

Transitional provision relating to trading stock of winemakers.

“31B. (1) In this section, ‘prescribed trading stock’, in relation to a taxpayer, means trading stock owned by the taxpayer at the end of the year of income in relation to which the expression is used, being trading stock to which section 31A of the *Income Tax Assessment Act* 1936 as amended and in force immediately before the commencement of the *Income Tax Assessment Act* (No. 5) 1973 would have applied or would apply if that section had not been repealed.

“(2) For the purposes of this section—

- (a) except for the purposes of sub-section (1), a taxpayer shall not be taken to have a taxable income in respect of a year of income if no tax is payable in respect of that taxable income;
- (b) a taxpayer has a notional taxable income in respect of a year of income if he would, apart from this section, have a taxable income in respect of that year of income (being a taxable income in respect of which tax would have been payable), and the amount of that notional taxable income shall be taken to be the amount that would have been his taxable income in respect of that year of income if this section had not been enacted; and
- (c) a reference to a taxpayer to whom sub-section (4) applies is a reference to a taxpayer who owned prescribed trading stock the

value of which that was taken into account at the end of the year of income that commenced on 1 July 1973 exceeded the value of that trading stock that would have been so taken into account if section 31A of the *Income Tax Assessment Act* 1936 as amended and in force immediately before the commencement of the *Income Tax Assessment Act (No. 5)* 1973 had not been repealed.

“(3) For the purposes of paragraph (2) (b), in determining whether a taxpayer, being a company that is a resident, would, apart from this section, have a taxable income in respect of a year of income and in calculating the amount that would have been the taxpayer’s taxable income in respect of that year of income if this section had not been enacted, any dividends that were derived by the taxpayer during that year of income and in respect of which the taxpayer received, or is entitled to receive, a rebate under section 46 in the taxpayer’s assessment in respect of income of that year of income shall be deemed not to have been derived by him.

“(4) Where, by reason of the repeal of section 31A of the *Income Tax Assessment Act* 1936 as amended and in force immediately before the commencement of the *Income Tax Assessment Act (No. 5)* 1973, the value of any prescribed trading stock owned by a taxpayer that was taken into account at the end of the year of income that commenced on 1 July 1973 exceeded the value of that trading stock that would have been so taken into account if that section had not been repealed—

- (a) the value of that trading stock to be taken into account at the end of that year of income shall be deemed to have been reduced by four-fifths of the excess;
- (b) the value of any prescribed trading stock owned by the taxpayer to be taken into account at the end of the year of income that commenced on 1 July 1974 shall be deemed to have been reduced by so much of that value as did not exceed seven-tenths of the excess;
- (c) the value of any prescribed trading stock owned by the taxpayer to be taken into account at the end of the year of income that commenced on 1 July 1975 shall be reduced by so much of that value as does not exceed six-tenths of the excess;
- (d) the value of any prescribed trading stock owned by the taxpayer to be taken into account at the end of the year of income that commences on 1 July 1976 shall be reduced by so much of that value as does not exceed five-tenths of the excess;
- (e) the value of any prescribed trading stock owned by the taxpayer to be taken into account at the end of the year of income that commences on 1 July 1977 shall be reduced by so much of that value as does not exceed four-tenths of the excess;
- (f) the value of any prescribed trading stock owned by the taxpayer to be taken into account at the end of the year of income that

commences on 1 July 1978 shall be reduced by so much of that value as does not exceed three-tenths of the excess;

- (g) the value of any prescribed trading stock owned by the taxpayer to be taken into account at the end of the year of income that commences on 1 July 1979 shall be reduced by so much of that value as does not exceed two-tenths of the excess; and
- (h) the value of any prescribed trading stock owned by the taxpayer to be taken into account at the end of the year of income that commences on 1 July 1980 shall be reduced by so much of that value as does not exceed one-tenth of the excess.

“(5) Notwithstanding section 204, where—

- (a) a taxpayer to whom sub-section (4) applies has a taxable income in respect of a year of income (in this sub-section referred to as the ‘year of income concerned’), being the year of income that commenced on 1 July 1974 or any of the next 7 following years of income, and also has a notional taxable income in respect of the year of income concerned; and
- (b) the amount of the tax payable by the taxpayer in respect of his taxable income of the year of income concerned exceeds the sum of the amount of the tax that would have been payable by him in respect of his notional taxable income in respect of the year of income concerned and 10 per centum of that notional taxable income,

then, subject to sub-sections (7) and (9), the time for payment of so much of the tax payable by him in respect of his taxable income of the year of income concerned as is equal to the excess is postponed until the time when tax becomes due and payable by him in respect of the next year of income in respect of the taxable income of which tax is payable by him.

“(6) Notwithstanding section 204, where a taxpayer to whom sub-section (4) applies has a taxable income in respect of a year of income (in this sub-section referred to as the ‘year of income concerned’), being the year of income that commenced on 1 July 1974 or any of the next 7 following years of income, but does not have a notional taxable income in respect of the year of income concerned, then, subject to sub-sections (8) and (9), the time for payment of the tax payable by him in respect of his taxable income of the year of income concerned is postponed until the time when tax becomes due and payable by him in respect of the next year of income in respect of the taxable income of which tax is payable by him.

“(7) Notwithstanding section 204, where—

- (a) a taxpayer to whom sub-section (4) applies has a taxable income in respect of a year of income (in this sub-section referred to as the ‘year of income concerned’), being the year of

income that commenced on 1 July 1975 or any of the next 6 following years of income, and also has a notional taxable income in respect of the year of income concerned;

- (b) by virtue of the application of sub-section (5), (6) or (8) or of this sub-section in relation to a preceding year of income, an amount of tax (in this sub-section referred to as the 'relevant amount of tax') or amounts of tax (in this sub-section referred to as the 'relevant amounts of tax') would, but for this sub-section, be payable by him at the same time as tax is payable by him in respect of the taxable income of the year of income concerned; and
- (c) the sum of the amount of the tax payable by the taxpayer in respect of his taxable income of the year of income concerned and the relevant amount of tax or the relevant amounts of tax exceeds the sum of the amount of the tax that would have been payable by him in respect of his notional taxable income in respect of the year of income concerned and 10 per centum of that notional taxable income,

sub-section (5) does not apply to him in relation to the year of income concerned but, subject to sub-section (9), payment of so much of the sum of the tax payable by him in respect of his taxable income of the year of income concerned and the relevant amount of tax or the relevant amounts of tax as is equal to the excess referred to in paragraph (c) is postponed until the time when tax becomes due and payable by him in respect of the next year of income in respect of the taxable income of which tax is payable by him.

“(8) Notwithstanding section 204, where—

- (a) a taxpayer to whom sub-section (4) applies has a taxable income in respect of a year of income (in this sub-section referred to as the 'year of income concerned'), being the year of income that commenced on 1 July 1975 or any of the next 6 following years of income, but does not have a notional taxable income in respect of the year of income concerned; and
- (b) by virtue of the application of sub-section (5), (6) or (7) or of this sub-section in relation to a preceding year of income, an amount of tax (in this sub-section referred to as the 'relevant amount of tax') or amounts of tax (in this sub-section referred to as the 'relevant amounts of tax') would, but for this sub-section, be payable by him at the same time as tax is payable by him in respect of his taxable income of the year of income concerned,

sub-section (6) does not apply to him in relation to the year of income concerned but, subject to sub-section (9), payment of the sum of the tax payable by him in respect of his taxable income of the year of income concerned and the relevant amount of tax or the relevant amounts of tax is postponed until the time when tax becomes due and payable by him in

respect of the next year of income in respect of the taxable income of which tax is payable by him.

“(9) Notwithstanding section 204, where—

- (a) a taxpayer to whom sub-section (4) applies has a taxable income in respect of a year of income (in this sub-section referred to as the ‘year of income concerned’), being the year of income that commences on 1 July 1982 or a later year of income;
- (b) by virtue of the application of sub-section (5), (6), (7) or (8) or of this sub-section in relation to a preceding year of income, an amount of tax (in this sub-section referred to as the ‘relevant amount of tax’) or amounts of tax (in this sub-section referred to as the ‘relevant amounts of tax’) would, but for this sub-section, be payable by him at the same time as tax is payable by him in respect of his taxable income of the year of income concerned; and
- (c) the relevant amount of tax or the sum of the relevant amounts of tax exceeds 10 per centum of his taxable income of the year of income concerned,

payment of so much of the sum of the tax payable by him in respect of his taxable income of the year of income and the relevant amount of tax or the relevant amounts of tax as is equal to the excess referred to in paragraph (c) is postponed until the time when tax becomes due and payable by him in respect of the next year of income in respect of the taxable income of which tax is payable by him.

“(10) In calculating for the purposes of paragraph (c) of sub-section (9) the amount of the taxable income of a taxpayer, being a company that is a resident, in respect of a year of income, any dividends that were derived by the taxpayer during that year of income and in respect of which the taxpayer received, or is entitled to receive, a rebate under section 46 in the taxpayer’s assessment in respect of income of that year of income shall be deemed not to have been derived by the taxpayer.

“(11) In the application of the definition of ‘the distributable income’ in sub-section (1) of section 103 to a private company (being a taxpayer to whom sub-section (4) applies) in relation to the year of income that commenced on 1 July 1974 or a later year of income, that definition has effect as if the following paragraphs were substituted for paragraph (a) of that definition:—

- ‘(a) the excess (if any) of the taxable income of the company of the year of income over the amount that, but for section 31B, would have been the taxable income of the company of the year of income;
- ‘(aa) any tax (in this paragraph referred to as the “relevant tax”)—
 - (i) payable under this Act before the allowance of any rebate under section 16 of the *Income Tax (International*

Agreements) Act 1953-1975 (other than the tax payable under this Division) in respect of income of the year of income; or

- (ii) payable by reason of sub-section (5), (6), (7), (8) or (9) of section 31B at the same time as tax payable under this Act in respect of income of the year of income,

reduced by any amount of the relevant tax the time for payment of which has been postponed under sub-section (5), (6), (7), (8) or (9) of section 31B (other than tax to the payment of which sub-section (12) or (13) of that section applies) until the time when tax becomes due and payable by the company in respect of income of a later year of income;’.

“(12) Where the Commissioner is satisfied that a taxpayer—

- (a) has changed the nature of his business or the manner in which he conducts his business operations; or
- (b) has commenced to engage in a course of business conduct, or in business transactions, of a kind in which he had not previously engaged,

and that the taxpayer so changed the nature of his business or the manner in which he conducts his business operations, or commenced to engage in that course of business conduct or in those business transactions, for the purpose, or for purposes that included the purpose, of extending a period of postponement under this section of the time for payment of an amount of tax or otherwise receiving any benefit or obtaining any advantage in relation to the application of this section, the Commissioner may inform the taxpayer, by notice in writing, that he is so satisfied and, upon the taxpayer being so informed—

- (c) the amount of any tax payable by the taxpayer the payment of which has been postponed in accordance with sub-section (5), (6), (7), (8) or (9) shall, notwithstanding those sub-sections, be due and payable on such date as the Commissioner specifies in the notice, not being less than 30 days after the service of the notice; and
- (d) those sub-sections do not thereafter operate to postpone the time for payment of any other amounts of tax that become payable by the taxpayer.

“(13) Where—

- (a) at any time an amount of tax payable by a taxpayer the payment of which has been postponed in accordance with sub-section (5), (6), (7), (8) or (9) has not been paid; and
- (b) the Commissioner is satisfied that there is a reasonable probability that the taxpayer will not have a taxable income in respect of any year of income commencing after that time,

the Commissioner may inform the taxpayer, by notice in writing, that he is so satisfied and, upon the taxpayer being so informed, that amount of

tax shall, notwithstanding those sub-sections, be due and payable on such date as the Commissioner specifies in the notice, not being less than 30 days after service of the notice.

“(14) In addition to its application for the purpose of ascertaining the value of prescribed trading stock to be taken into account at the end of a year of income, this section also applies for the purpose of ascertaining the value of prescribed trading stock to be taken into account under section 29 at the beginning of a year of income.”.

Dividends. **6.** Section 44 of the Principal Act is amended by inserting in sub-section (2), after the words “of section 82S”, the words “or sub-section (1) of section 82SA”.

Calculation of depreciation. **7.** Section 56 of the Principal Act is amended by omitting from sub-section (3) the words “or section 70” and substituting the words “, section 70 or Subdivision B of Division 3”.

Special depreciation on new plant first used or installed on or after 1 July 1975 and before 1 July 1976. **8.** Section 57AD of the Principal Act is amended by omitting paragraph (a) of sub-section (2) and substituting the following paragraph:—
 “(a) has been or is first used for the purpose of producing assessable income by the taxpayer on or after 1 July 1975 and before 1 July 1976 (not having been installed ready for use for that purpose before 1 July 1975), or has been or is first installed ready for use for that purpose by the taxpayer on or after 1 July 1975 and before 1 July 1976;”.

Expenditure on scientific research. **9.** (1) Section 73A of the Principal Act is amended by omitting from the definition of “an approved research institute” in sub-section (6) the words “Department of Labour” and substituting the words “Department of Employment and Industrial Relations”.

(2) The amendment made by sub-section (1) shall be deemed to have had effect on and from 22 December 1975.

10. After section 82AAR the following Subdivision is inserted:—

“Subdivision B—Investment Allowance

Property to which Subdivision applies. “82AA. Subject to the following provisions of this Subdivision, this Subdivision applies in relation to a unit of eligible property acquired or constructed by the taxpayer that is—

(a) in the case of any taxpayer, for use by the taxpayer wholly and exclusively—

(i) in Australia; and

(ii) for the purpose of producing assessable income otherwise than by—

(A) the leasing of the eligible property;

- (B) the letting of the eligible property on hire under a hire-purchase agreement; or
 - (C) the granting to other persons of rights to use the eligible property; or
- (b) in the case of a taxpayer being a leasing company, for use wholly and exclusively—
- (i) in Australia; and
 - (ii) for the purpose of producing assessable income, by another person to whom the taxpayer has, on or after 1 January 1976, leased the eligible property under a long-term lease agreement that was entered into by the taxpayer in the course of carrying on business in Australia and was so entered into by the taxpayer and the other person at arm's length.

“82AB. (1) Subject to this Subdivision, where—

- (a) on or after 1 January 1976, a taxpayer has incurred expenditure of a capital nature (in this section referred to as ‘eligible expenditure’) in respect of the acquisition or construction by him of a new unit of eligible property in relation to which this Subdivision applies;
- (b) the eligible expenditure exceeded \$500;
- (c) the eligible expenditure was incurred—
 - (i) in respect of a unit of property acquired by the taxpayer under a contract entered into on or after 1 January 1976 and before 1 July 1983; or
 - (ii) in respect of a unit of property that was constructed by the taxpayer and the construction of which commenced on or after 1 January 1976 and before 1 July 1983; and
- (d) the unit of property was first used or installed ready for use before 1 July 1984,

Deduction in respect of new plant installed on or after 1 January 1976.

there shall be allowed as a deduction from the taxpayer's assessable income of the first year of income during which that unit was either used for the purpose of producing assessable income, or installed ready for use for that purpose, an amount (in this section referred to as the ‘relevant amount’) ascertained in accordance with the following provisions of this section.

“(2) Where the eligible expenditure was incurred—

- (a) in respect of a unit of property acquired by the taxpayer under a contract entered into before 1 July 1978; or
- (b) in respect of a unit of property that was constructed by the taxpayer and the construction of which commenced before 1 July 1978,

and was so incurred in respect of a unit of property that was first used or installed ready for use before 1 July 1979, the relevant amount is such

percentage of the amount of the eligible expenditure as is prescribed by sub-section (3).

“(3) For the purposes of sub-section (2), the prescribed percentage in relation to an amount of eligible expenditure is—

- (a) where the eligible expenditure is less than \$526—2 per centum;
- (b) where the eligible expenditure is not less than \$526 but is less than \$976—2 per centum increased by 2 per centum for each whole \$25 by which the amount of the eligible expenditure exceeds \$501; or
- (c) where the eligible expenditure is not less than \$976—40 per centum.

“(4) Where—

(a) the eligible expenditure was incurred—

- (i) in respect of a unit of property acquired by the taxpayer under a contract entered into before 1 July 1978; or
- (ii) in respect of a unit of property that was constructed by the taxpayer and the construction of which commenced before 1 July 1978,

and was so incurred in respect of a unit of property that was first used or installed ready for use on or after 1 July 1979; or

(b) the eligible expenditure was incurred—

- (i) in respect of a unit of property acquired by the taxpayer under a contract entered into on or after 1 July 1978; or
- (ii) in respect of a unit of property that was constructed by the taxpayer and the construction of which commenced on or after 1 July 1978,

the relevant amount is such percentage of the amount of the eligible expenditure as is prescribed by sub-section (5).

“(5) For the purposes of sub-section (4), the prescribed percentage in relation to an amount of eligible expenditure is—

- (a) where the eligible expenditure is less than \$526—1 per centum;
- (b) where the eligible expenditure is not less than \$526 but is less than \$976—1 per centum increased by 1 per centum for each whole \$25 by which the amount of the eligible expenditure exceeds \$501; or
- (c) where the eligible expenditure is not less than \$976—20 per centum.

“(6) A reference in the foregoing provisions of this section to use, or to the installation ready for use, of a unit of property shall, in the case of a unit of property to which paragraph (b) of section 82AA applies, be construed as a reference to use, or to installation ready for use, of the unit of property by the lessee.

“(7) Where—

- (a) a leasing company leases to another person (in this sub-section referred to as the ‘lessee’) property acquired by the leasing company from that other person;
- (b) the leasing company would not, but for this sub-section, be entitled to a deduction under this Subdivision in respect of the property by reason only that, before the property was acquired by the leasing company, it was used, or held for use, by the lessee;
- (c) the period during which the property was used, or held for use, by the lessee before the property was acquired by the leasing company did not exceed 6 months; and
- (d) the Commissioner is satisfied that the acquisition or construction of the property by the lessee, the acquisition of the property by the leasing company from the lessee and the leasing of the property by the leasing company to the lessee occurred in pursuance of a contract or arrangement entered into on or after 1 January 1976 and that the leasing company and the lessee entered into the contract or arrangement at arm’s length,

then, for the purposes of this Subdivision, the expenditure by the leasing company in respect of its acquisition of the property shall be deemed to have been incurred in respect of the acquisition of a new unit of property and, if the lease of the property by the leasing company to the lessee was entered into after the property was first used, or installed ready for use, by the lessee, the property shall be deemed to have been first used, or installed ready for use, by the lessee on the date on which the lease agreement was entered into.

“(8) A deduction is not allowable under this Subdivision in respect of expenditure incurred by a taxpayer in respect of the acquisition or construction of a unit of property that is leased by the taxpayer to another person (in this sub-section referred to as the ‘lessee’) if, before 1 January 1976, the taxpayer entered into a contract or arrangement to lease the property to the lessee or to a third person.

“82AC. The amount of the deduction, or the total of the amounts of the deductions, allowable under this Subdivision to a taxpayer, being a leasing company, in respect of a year of income, in relation to a unit of eligible property that is, or units of eligible property that are, leased to another person or other persons, shall not exceed the amount (if any) that remains after deducting from the assessable income of the taxpayer of the year of income all allowable deductions other than—

Limitation of deduction in case of leased property.

- (a) deductions allowable under this Subdivision in relation to a unit or units of property leased by the taxpayer to another person or other persons; or
- (b) deductions allowable under section 80 or 80AA.

Lessor may transfer benefit of deduction to lessee.

“82AD. (1) Where a leasing company that would, but for this section, be entitled to a deduction under this Subdivision from the assessable income of the company of the year of income (in this sub-section referred to as the ‘relevant deduction’) in respect of property leased to another person (in this sub-section referred to as the ‘lessee’) has, before the prescribed date, lodged with the Commissioner—

- (a) a declaration in writing, signed by the public officer of the company, stating that the company transfers to the lessee the benefit of the whole, or of a specified fraction, of the relevant deduction, or the benefit of so much of the relevant deduction as does not exceed an amount specified in the declaration; and
- (b) a statement, signed by the public officer of the company, containing the following particulars:—
 - (i) a description of the property;
 - (ii) the date on which the property was acquired or the construction of the property was commenced;
 - (iii) the amount of expenditure incurred by the company in respect of the acquisition or construction of the property;
 - (iv) the date on which the company entered into the relevant lease agreement;
 - (v) the name and address of the lessee; and
 - (vi) the period for which the lessee agreed to take the property on lease,

there shall be allowed as a deduction from the assessable income of the lessee of the year of income during which the property was either first used, or installed ready for use, by the lessee—

- (c) if the declaration by the company stated that the company transferred to the lessee the benefit of the whole of the relevant deduction—an amount equal to the relevant deduction;
- (d) if the declaration by the company stated that the company transferred to the lessee a specified fraction of the relevant deduction—an amount equal to that fraction of the relevant deduction; or
- (e) if the declaration by the company stated that the company transferred to the lessee the benefit of so much of the relevant deduction as does not exceed an amount specified in the declaration—an amount equal to so much of the relevant deduction as does not exceed the amount so specified.

“(2) For the purposes of sub-section (1), the prescribed date, in relation to property leased by a leasing company to another person, is—

- (a) where the agreement for the lease was or is entered into before 1 July 1976—8 July 1976; or
- (b) in any other case—the eighth day after the end of the month in which the agreement for the lease is entered into,

or, if the Commissioner has agreed to an extension of the period for lodgment of a declaration by the leasing company in relation to that property, the last day of the extended period.

“(3) Where—

- (a) a deduction would, but for this section, be allowable to a leasing company under this Subdivision from its assessable income of a year of income in respect of property leased to another person (in this sub-section referred to as the ‘lessee’); and
- (b) by virtue of sub-section (1), a deduction has been allowed or is allowable in respect of the property from the assessable income of the lessee,

the amount of the deduction that would, but for this section, be allowable to the leasing company under this Subdivision in respect of that property shall be reduced by the amount of the deduction so allowed or allowable to the lessee.

“(4) In determining for the purposes of this section whether a deduction would, but for this section, be allowable to a leasing company under this Subdivision from its assessable income of a year of income in respect of a unit of property and the amount of any such deduction, section 82AC shall be disregarded.

“82AE. This Subdivision does not apply in relation to structural improvements other than—

- (a) plumbing fixtures and fittings to which paragraph (c) of sub-section (2) of section 54 applies, not being fixtures or fittings for use in or in connexion with the provision for employees of facilities for entertainment, amusement or gambling or for engaging in cultural, sporting or recreational pursuits or in any similar activities; or
- (b) structural improvements of the following kinds that are on land used for the purpose of carrying on a business of primary production:—
 - (i) fences to exclude live stock from areas affected by soil erosion, where the purpose of excluding the live stock is to prevent or limit any extension or aggravation of soil erosion in those areas and to assist in the reclamation of those areas;
 - (ii) fences enclosing or partly enclosing areas affected by naturally occurring deposits of mineral salt;
 - (iii) fences to subdivide the land for the purpose of carrying on primary production on the land, other than boundary fences, fences enclosing yards or fences along public roads, public stock routes or other public rights of way;
 - (iv) structural improvements for the purpose of conserving water for use in carrying on primary production on the land (including dams, earth tanks, underground tanks,

Subdivision
not to
apply to
certain
structural
improvements.

concrete tanks and stands for tanks), irrigation channels or similar improvements for the purpose of conveying water for such use and bores or wells for water for such use;

- (v) pipes placed underground for the purpose of conveying water for use in carrying on primary production on the land; and
- (vi) buildings or other structural improvements for the purpose of the storage of grain, hay or fodder in the course of carrying on primary production on the land.

Subdivision
not to
apply to
certain other
property.

“82AF. (1) This Subdivision does not apply in relation to—

- (a) appliances (including wireless receivers and television receivers and antennae) of a kind ordinarily used for household purposes, other than such appliances that are—
 - (i) for use in a business carried on by the taxpayer a substantial part of which consists of the provision by the taxpayer of accommodation for tourists or travellers; or
 - (ii) for use in premises used or held for use by the taxpayer principally for the purpose of deriving income in the nature of rent by the provision of accommodation for tourists or travellers; or
- (b) furniture and furnishings, light fittings, partitions, fitting rooms, signs (including neon signs), shelving, cupboards, counters, display models, display cases, display stands and articles of a description, or having a use, similar to that of any of those articles, other than articles that are—
 - (i) for use in a business carried on by the taxpayer a substantial part of which consists of the provision by the taxpayer of accommodation for tourists or travellers;
 - (ii) for use in premises used or held for use by the taxpayer principally for the purpose of deriving income in the nature of rent by the provision of accommodation for tourists or travellers; or
 - (iii) for use by the taxpayer principally for the purpose of providing clothing cupboards, first-aid or rest-room facilities, or meals or facilities for meals, for persons employed by the taxpayer in a business carried on by him or for the care of children of those persons.

“(2) This Subdivision does not apply in relation to—

- (a) motor vehicles (including vehicles known as four wheel drive vehicles) that are—
 - (i) motor cars, station wagons, panel vans, utility trucks or similar vehicles;
 - (ii) motor cycles or similar vehicles; or

- (iii) other road vehicles designed to carry loads of less than 1 tonne or fewer than 9 passengers;
- (b) articles being, or being reproductions of, paintings, sculptures, drawings, engravings or photographs, or articles of a description, or having a use, similar to that of any of those articles;
- (c) books;
- (d) films, tapes, discs or other similar devices in which images or sounds are, or information is, stored or that are designed to be used for the storage of images, sounds or information;
- (e) musical instruments and equipment for use in conjunction with musical instruments;
- (f) plant or articles (other than plant or articles referred to in sub-section (1)) for use in, or primarily and principally in connexion with—
 - (i) amusement or recreation;
 - (ii) sport (including the racing of animals or vehicles) or physical exercise or any similar activities;
 - (iii) gaming or gambling;
 - (iv) circus performances or the performance in public of music, plays, dancing or similar entertainment; or
 - (v) the exhibition to the public of cinematographic films otherwise than by television broadcasting;
- (g) plant or articles referred to in paragraph (h) or (i) of sub-section (3) of section 62AA or in paragraph (h) of sub-section (3) of section 62AB;
- (h) wharves or jetties; or
- (j) wearing apparel (other than wearing apparel designed principally for protective purposes) and accessories to such apparel.

“(3) Except in a case to which sub-section (7) of section 82AB applies, this Subdivision does not apply in relation to property leased by a leasing company as mentioned in paragraph (b) of section 82AA if, before the property was so leased, it was used by the leasing company or by any other person.

“(4) This Subdivision does not apply in relation to property acquired by a taxpayer from another person, being property that was not trading stock of that other person, if that other person acquired the property under a contract entered into before 1 January 1976 or commenced construction of the property before that date.

“82AG. (1) This Subdivision does not apply, and shall be deemed never to have applied, in relation to property acquired or constructed by a taxpayer, not being property that, in the case of a taxpayer being a leasing company, the taxpayer has leased to another person, if, before

Disposal, &c., of property within 12 months after installation.

the expiration of 12 months after the property was first used, or installed ready for use, by the taxpayer—

- (a) the taxpayer disposed of the property or the property was lost or destroyed;
- (b) the taxpayer leased the property, let the property on hire under a hire-purchase agreement or otherwise granted a right to another person to use the property; or
- (c) the taxpayer used the property outside Australia or for a purpose other than the purpose of producing assessable income.

“(2) Where—

- (a) a deduction has been allowed, or would but for this sub-section be allowable, under this Subdivision from the assessable income of a taxpayer of a year of income in relation to property acquired or constructed by the taxpayer, not being property that, in the case of a taxpayer being a leasing company, the taxpayer has leased to another person; and
- (b) before the expiration of 12 months after the property was first used, or installed ready for use, by the taxpayer, the taxpayer disposed of a part of his interest in the property,

so much of the deduction as the Commissioner considers appropriate shall be deemed not to have been, or not to be, allowable, as the case may be.

“(3) This Subdivision does not apply, and shall be deemed never to have applied, in relation to property leased by a leasing company to another person (in this sub-section referred to as the ‘lessee’) if, before the expiration of 12 months after the property was first used, or installed ready for use, by the lessee—

- (a) the property was disposed of by the leasing company to a person other than the lessee or was lost or destroyed;
- (b) the lessee used the property outside Australia or for a purpose other than the purpose of producing assessable income;
- (c) the lease was terminated otherwise than by the acquisition of the property by the lessee;
- (d) while the lease was in force the lessee entered into a contract or arrangement with another person for the use of the property by that other person; or
- (e) the lessee acquired the property and disposed of it.

“82AH. (1) Where—

- (a) a deduction has been allowed, or would but for this sub-section be allowable, under this Subdivision from the assessable income of a taxpayer of a year of income in relation to property acquired or constructed by the taxpayer, not being property that, in the

Disposal,
&c., of
property
after 12
months after
installation.

case of a taxpayer being a leasing company, the taxpayer has leased to another person;

- (b) after the expiration of 12 months after the property was first used, or installed ready for use, by the taxpayer—
 - (i) the taxpayer disposed of the property;
 - (ii) the taxpayer leased the property, let the property on hire under a hire-purchase agreement or otherwise granted a right to another person to use the property; or
 - (iii) the taxpayer used the property outside Australia or for a purpose other than the purpose of producing assessable income; and
- (c) the Commissioner is satisfied that, at the time the property was acquired or constructed by the taxpayer, the taxpayer intended to dispose of the property, to lease the property, let the property on hire under a hire-purchase agreement or otherwise grant a right to another person to use the property, or to use the property as mentioned in sub-paragraph (iii) of paragraph (b), after becoming entitled to a deduction under this Subdivision in respect of the property,

the deduction shall, if the Commissioner so determines, be deemed not to have been, or not to be, allowable, as the case may be.

“(2) Where—

- (a) a deduction has been allowed, or would but for this sub-section be allowable, under this Subdivision from the assessable income of a taxpayer of a year of income in relation to property acquired or constructed by the taxpayer, not being property that, in the case of a taxpayer being a leasing company, the taxpayer has leased to another person;
- (b) after the expiration of 12 months after the property was first used, or installed ready for use, by the taxpayer, the taxpayer disposed of a part of his interest in the property; and
- (c) the Commissioner is satisfied that, at the time the property was acquired or constructed by the taxpayer, the taxpayer intended to dispose of the whole or a part of his interest in the property after becoming entitled to a deduction under this Subdivision in respect of the property,

then, if the Commissioner so determines, so much of the deduction as the Commissioner considers appropriate shall be deemed not to have been, or not to be, allowable, as the case may be.

“(3) Where—

- (a) a deduction has been allowed, or would but for this sub-section be allowable, under this Subdivision from the assessable income of a taxpayer being a leasing company of a year of income in relation to property leased by the taxpayer to another person (in this sub-section referred to as the ‘lessee’);

- (b) after the expiration of 12 months after the property was first used, or installed ready for use, by the lessee and before the expiration of the term of the lease—
 - (i) the taxpayer disposed of the property to a person other than the lessee;
 - (ii) the lessee used the property outside Australia or for a purpose other than the purpose of producing assessable income;
 - (iii) the lease was terminated otherwise than by the acquisition of the property by the lessee;
 - (iv) while the lease was in force the lessee entered into a contract or arrangement with another person for the use of the property by that other person; or
 - (v) the lessee acquired the property and disposed of it; and
- (c) the Commissioner is satisfied that, at the time when the lessee took the property on lease—
 - (i) in a case to which sub-paragraph (i) of paragraph (b) applies—the leasing company intended to dispose of the property to a person other than the lessee before the expiration of the term of the lease; or
 - (ii) in a case to which sub-paragraph (ii), (iii), (iv) or (v) of paragraph (b) applies—the lessee intended to use the property as mentioned in sub-paragraph (ii) of that paragraph, to cause the lease to be terminated as mentioned in sub-paragraph (iii) of that paragraph, to enter into a contract or arrangement as mentioned in sub-paragraph (iv) of that paragraph or to acquire and dispose of the property,

the deduction shall, if the Commissioner so determines, be deemed not to have been, or not to be, allowable, as the case may be.

“(4) Where—

- (a) a deduction has been allowed, or would but for this sub-section be allowable, under this Subdivision from the assessable income of a taxpayer of a year of income in relation to property taken on lease by the taxpayer;
- (b) after the expiration of 12 months after the property was first used, or installed ready for use, by the taxpayer—
 - (i) the taxpayer used the property outside Australia or for a purpose other than the purpose of producing assessable income;
 - (ii) the lease was terminated otherwise than by the expiration of the term of the lease or the acquisition of the property by the taxpayer;

- (iii) while the lease was in force the taxpayer entered into a contract or arrangement with another person for the use of the property by that other person; or
- (iv) the taxpayer acquired the property and disposed of it; and
- (c) the Commissioner is satisfied that, at the time when the taxpayer took the property on lease, the taxpayer intended to use the property as mentioned in sub-paragraph (i) of paragraph (b), to cause the lease to be terminated as mentioned in sub-paragraph (ii) of that paragraph, to enter into a contract or arrangement as mentioned in sub-paragraph (iii) of that paragraph or to acquire and dispose of the property,

the deduction shall, if the Commissioner so determines, be deemed not to have been, or not to be, allowable, as the case may be.

“82AI. For the purposes of sections 82AG and 82AH, if a taxpayer who took property on hire under a hire-purchase agreement does or omits to do any act or thing that results in the person (in this section referred to as the ‘owner’) from whom the taxpayer took the property on hire under that agreement obtaining possession of the property—

Notional disposal of property under hire-purchase.

- (a) the taxpayer shall be deemed to have disposed of the property; and
- (b) the disposal shall be deemed to have taken place at the time when possession of the property was so obtained by the owner.

“82AJ. (1) Where—

- (a) the individual interest of a taxpayer in the net income of a partnership has been or is to be included in the assessable income of the taxpayer of a year of income (in this sub-section and in sub-section (3) in its application in relation to this sub-section referred to as the ‘relevant year of income’), or the individual interest of a taxpayer in a partnership loss has been allowed or is allowable as a deduction from the assessable income of the taxpayer of a year of income (in this sub-section and in sub-section (3) in its application in relation to this sub-section also referred to as the ‘relevant year of income’);
- (b) a deduction (in this sub-section and in sub-section (3) in its application in relation to this sub-section referred to as the ‘relevant deduction’) under this Subdivision in respect of a unit of eligible property was taken into account in calculating the net income of the partnership, or the partnership loss, as the case may be; and
- (c) before the expiration of 12 months after the property was first used or installed ready for use by the partnership, the taxpayer disposed of the whole or a part of his interest in the partnership or in the property,

Special provisions relating to partnerships.

there shall be included in the assessable income of the taxpayer of the relevant year of income—

- (d) where the taxpayer disposed of the whole of his interest in the partnership or in the property—the prescribed amount; or
- (e) in any other case—so much of the prescribed amount as the Commissioner considers appropriate.

“(2) Where—

- (a) the individual interest of a taxpayer in the net income of a partnership has been or is to be included in the assessable income of the taxpayer of a year of income (in this sub-section and in sub-section (3) in its application in relation to this sub-section referred to as the ‘relevant year of income’), or the individual interest of a taxpayer in a partnership loss has been allowed or is allowable as a deduction from the assessable income of the taxpayer of a year of income (in this sub-section and in sub-section (3) in its application in relation to this sub-section also referred to as the ‘relevant year of income’);
- (b) a deduction (in this sub-section and in sub-section (3) in its application in relation to this sub-section referred to as the ‘relevant deduction’) under this Subdivision in respect of a unit of eligible property was taken into account in calculating the net income of the partnership, or the partnership loss, as the case may be;
- (c) after the expiration of 12 months after the property was first used or installed ready for use by the partnership, the taxpayer disposed of the whole or a part of his interest in the partnership or in the property; and
- (d) the Commissioner is satisfied that, at the time the property was acquired or constructed by the partnership, the taxpayer intended to dispose of the whole or a part of his interest in the partnership or in the property after the partnership became entitled to a deduction under this Subdivision,

there shall, if the Commissioner so determines, be included in the assessable income of the taxpayer of the relevant year of income—

- (e) where the taxpayer disposed of the whole of his interest in the partnership or in the property—the prescribed amount; or
- (f) in any other case—so much of the prescribed amount as the Commissioner considers appropriate.

“(3) For the purposes of sub-sections (1) and (2), the prescribed amount is—

- (a) where the relevant deduction related to expenditure by the partnership in respect of the acquisition or construction of the relevant property and the partners have agreed as to the amount of that expenditure to be borne by the taxpayer—an amount that

bears to the amount of the relevant deduction the same proportion as so much of the amount of that expenditure as the partners agreed was to be borne by the taxpayer bears to the amount of that expenditure; or

- (b) in any other case—an amount that bears to the amount of the relevant deduction the same proportion as the individual interest of the taxpayer in the net income of the partnership of the year of income of the partnership that corresponds to the relevant year of income bears to that net income or, as the case requires, as the individual interest of the taxpayer in the partnership loss for that corresponding year of income of the partnership bears to that partnership loss.

“(4) In calculating the net income of a partnership, or a partnership loss, in accordance with section 90, regard shall not be had to the provisions of this Subdivision in so far as they apply to expenditure incurred in respect of the acquisition or construction by the partnership of a unit of property that is leased by the partnership to another person, but, where a partnership in which any one or more of the partners is a leasing company has incurred such expenditure, then, for the purposes of the application of this Subdivision in respect of such a partner, that partner shall be deemed to have incurred—

- (a) so much of the amount of that expenditure as the partners have agreed is to be borne by that partner; or
- (b) if the partners have not agreed as to the part of that amount that is to be borne by that partner—so much of that amount as bears to that amount the same proportion as the individual interest of the partner in the net income of the partnership of the year of income in which the relevant expenditure was incurred bears to that net income or, as the case requires, as the individual interest of the partner in the partnership loss for that year of income bears to that partnership loss.

“(5) Where—

- (a) a deduction has been allowed, or would but for this sub-section be allowable, under this Subdivision from the assessable income of a taxpayer being a leasing company in relation to property acquired or constructed by a partnership in which the taxpayer is a partner, being property that is leased by the partnership to another person (in this sub-section referred to as the ‘lessee’); and
- (b) before the expiration of 12 months after the property was first used or installed ready for use by the lessee, the taxpayer disposed of the whole or a part of his interest in the partnership or in the property otherwise than to the lessee,

then—

- (c) where the taxpayer disposed of the whole of his interest in the partnership or in the property—the deduction shall be deemed not to have been, or not to be, allowable, as the case may be; or
- (d) in any other case—so much of the deduction as the Commissioner considers appropriate shall be deemed not to have been, or not to be, allowable, as the case may be.

“(6) Where—

- (a) a deduction has been allowed, or would but for this sub-section be allowable, under this Subdivision from the assessable income of a taxpayer being a leasing company in relation to property acquired or constructed by a partnership in which the taxpayer is a partner, being property that is leased by the partnership to another person (in this sub-section referred to as the ‘lessee’);
- (b) after the expiration of 12 months after the property was first used or installed ready for use by the lessee, the taxpayer disposed of the whole or a part of his interest in the partnership or in the property otherwise than to the lessee; and
- (c) the Commissioner is satisfied that, at the time when the lessee took the property on lease, the taxpayer intended to dispose of the whole or a part of his interest in the partnership or in the property after becoming entitled to a deduction under this Subdivision in relation to the property,

then, if the Commissioner so determines—

- (d) where the taxpayer disposed of the whole of his interest in the partnership or in the property—the deduction shall, if the Commissioner so determines, be deemed not to have been, or not to be, allowable, as the case may be; or
- (e) in any other case—so much of the deduction as the Commissioner considers appropriate shall be deemed not to have been, or not to be, allowable, as the case may be.

“(7) This Subdivision does not apply, and shall be deemed never to have applied, in relation to property leased by a partnership to another person (in this sub-section referred to as the ‘lessee’) if, before the expiration of 12 months after the property was first used, or installed ready for use, by the lessee—

- (a) the property was disposed of by the partnership to a person other than the lessee or was lost or destroyed;
- (b) the lessee used the property outside Australia or for a purpose other than the purpose of producing assessable income;
- (c) the lease was terminated otherwise than by the acquisition of the property by the lessee;

- (d) while the lease was in force the lessee entered into a contract or arrangement with another person for the use of the property by that other person; or
- (e) the lessee acquired the property and disposed of it.

“(8) Where—

- (a) a deduction has been allowed, or would but for this sub-section be allowable, under this Subdivision from the assessable income of a taxpayer being a leasing company in relation to property acquired or constructed by a partnership in which the taxpayer is a partner, being property that is leased by the partnership to another person (in this sub-section referred to as the ‘lessee’);
- (b) after the expiration of 12 months after the property was first used, or installed ready for use, by the lessee and before the expiration of the term of the lease—
 - (i) the property was disposed of by the partnership to a person other than the lessee;
 - (ii) the lessee used the property outside Australia or for a purpose other than the purpose of producing assessable income;
 - (iii) the lease was terminated otherwise than by the acquisition of the property by the lessee;
 - (iv) while the lease was in force the lessee entered into a contract or arrangement with another person for the use of the property by that other person; or
 - (v) the lessee acquired the property and disposed of it; and
- (c) the Commissioner is satisfied that, at the time when the lessee took the property on lease—
 - (i) in a case to which sub-paragraph (i) of paragraph (b) applies—the partnership intended to dispose of the property to a person other than the lessee before the expiration of the term of the lease; or
 - (ii) in a case to which sub-paragraph (ii), (iii), (iv) or (v) of paragraph (b) applies—the lessee intended to use the property as mentioned in sub-paragraph (ii) of paragraph (b), to cause the lease to be terminated as mentioned in sub-paragraph (iii) of that paragraph, to enter into a contract or arrangement as mentioned in sub-paragraph (iv) of that paragraph or to acquire and dispose of the property,

the deduction shall, if the Commissioner so determines, be deemed not to have been, or not to be, allowable, as the case may be.

Private use of property by employees, &c., of private company.

“82AK. Where property that was acquired or constructed, or taken on lease, by a taxpayer being a private company is used at any time for a private or domestic purpose by—

- (a) an employee of the company;
- (b) a director of the company;
- (c) a member of the company; or
- (d) a relative of a person referred to in paragraph (a), (b) or (c), the property shall be deemed for the purposes of this Sub-division to have been used at that time by the company for a purpose other than the purpose of producing assessable income.

Property acquired, &c., in substitution for other property.

“82AL. (1) Where the Commissioner is satisfied that—

- (a) a contract or arrangement was entered into by a taxpayer before 1 January 1976 for the acquisition, or taking on lease, by the taxpayer of a unit of property (in this sub-section referred to as the ‘original unit’);
- (b) on or after that date—
 - (i) the taxpayer entered into a contract (whether with the same or another person) for the acquisition or taking on lease (whether with or without the acquisition or taking on lease of other property) of the original unit or of another unit of property (in this sub-section referred to as the ‘substituted unit’) identical with, or having a purpose similar to that of, the original unit and intended by the taxpayer to be in lieu of the original unit; or
 - (ii) the taxpayer commenced the construction of a unit of property (in this sub-section also referred to as the ‘substituted unit’) identical with, or having a purpose similar to that of, the original unit and intended by the taxpayer to be in lieu of the original unit; and
- (c) the taxpayer entered into the contract for acquisition or taking on lease of the original unit or of the substituted unit, or commenced the construction of the substituted unit, for the purpose, or for purposes that included the purpose, of obtaining a deduction under this Sub-division,

the Commissioner may refuse to allow a deduction under this Sub-division—

- (d) in a case to which sub-paragraph (i) of paragraph (b) applies—in relation to the original unit or the substituted unit; or
- (e) in a case to which sub-paragraph (ii) of paragraph (b) applies—in relation to the substituted unit.

“(2) Where the Commissioner is satisfied that—

- (a) a taxpayer commenced construction of a unit of property (in this sub-section referred to as the ‘original unit’) before 1 January 1976;

- (b) on or after that date—
- (i) the taxpayer commenced the construction of a unit of property (in this sub-section referred to as the ‘substituted unit’) identical with, or having a purpose similar to that of, the original unit and intended by the taxpayer to be in lieu of the original unit; or
 - (ii) the taxpayer entered into a contract for the acquisition or taking on lease (whether with or without the acquisition or taking on lease of other property) of the original unit or of another unit of property (in this sub-section also referred to as the ‘substituted unit’) identical with, or having a purpose similar to that of, the original unit and intended by the taxpayer to be in lieu of the original unit; and
- (c) the taxpayer commenced the construction of the substituted unit, or entered into the contract for the acquisition or taking on lease of the original unit or the substituted unit, for the purpose, or for purposes that included the purpose, of obtaining a deduction under this Subdivision,

the Commissioner may refuse to allow a deduction under this Subdivision—

- (d) in a case to which sub-paragraph (i) of paragraph (b) applies—in relation to the substituted unit; or
- (e) in a case to which sub-paragraph (ii) of paragraph (b) applies—in relation to the original unit or the substituted unit.

“(3) A reference in this section to a unit of property includes a reference to a portion of a unit of property.

“82AM. (1) Notwithstanding the provisions of section 82, 122N, 123E or 124AN, but subject to sub-section (2), the deduction allowable under this Subdivision in respect of expenditure in respect of a unit of property is allowable in addition to any deduction that is allowable in respect of that unit of property under any other provision of this Act.

Deduction under Subdivision to be in addition to other deductions.

“(2) A deduction under this Subdivision is not allowable in respect of expenditure in respect of a unit of property where a deduction in respect of the expenditure has been allowed or is allowable under section 122J, 123B or 124AH.

“82AN. (1) Where, under a contract for the acquisition or construction of property that includes a unit of eligible property, an amount (in this sub-section referred to as the ‘total cost’) is expressed to be payable in respect of the acquisition or construction of the whole of the property and no separate amount is allocated to the eligible property, the amount payable in respect of the acquisition or construction of the unit of eligible property shall, for the purposes of this Subdivision, be taken to be such part of the total cost as the Commissioner determines.

Ascertainment of amount of eligible expenditure.

“(2) Where, under a contract for the acquisition or construction of eligible property or under a contract for the acquisition of materials for use in the construction of eligible property, an amount is expressed to be payable in respect of the acquisition or construction of the property or in respect of the acquisition of the materials, as the case may be, but the Commissioner is satisfied that that amount exceeds—

- (a) in the case of a contract for the construction of eligible property for the taxpayer by another person or persons on premises of the taxpayer—the market value of the property at the time of completion of the construction; or
- (b) in any other case—the market value of the eligible property or materials at the date of the contract,

the amount payable in respect of the acquisition or construction of the eligible property or in respect of the acquisition of the materials, as the case may be, shall, if the Commissioner so determines, be deemed, for the purposes of this Subdivision, to be the market value referred to in paragraph (a) or (b), whichever is applicable.

Recoupment
of
expenditure.

“82AO. (1) This Subdivision does not apply, and shall be deemed never to have applied, in relation to a taxpayer, to expenditure in respect of which the taxpayer is recouped, or becomes entitled to be recouped, by the Commonwealth, by a State, by the Administration of a Territory, by an authority constituted by or under a law of the Commonwealth, of a State or of a Territory or by any other person.

“(2) Where a taxpayer receives, or becomes entitled to receive, an amount that constitutes to an unspecified extent a recoupment of expenditure of a capital nature in respect of a unit of property in relation to which this Subdivision applies, the Commissioner may, for the purposes of sub-section (1), determine the extent to which the amount constitutes a recoupment of that expenditure.

Transitional.

“82AP. (1) Where—

- (a) on or after 1 January 1976 and before the date of commencement of this Subdivision, a taxpayer being a leasing company entered into an agreement (in this sub-section referred to as the ‘original agreement’) with another person (in this sub-section referred to as the ‘lessee’) under which the lessee agreed to take property on lease for a period of less than 4 years; and
- (b) on or before 30 June 1976 or such later date as the Commissioner determines, the lessee agreed or agrees to take the property on lease for a further period commencing at the expiration of the period referred to in paragraph (a) and ending not earlier than 4 years after the commencement of the period referred to in that paragraph,

then, for the purposes of this Subdivision, the lessee shall be deemed to have agreed to take the property under the original agreement for a period of not less than 4 years.

“(2) Where—

- (a) on or after 1 January 1976 and before the date of commencement of this Subdivision—
 - (i) a taxpayer entered into an agreement with another person not being a leasing company under which the taxpayer agreed to take property on lease; or
 - (ii) a taxpayer entered into an agreement with another person being a leasing company under which the taxpayer agreed to take property on lease for a period of less than 4 years; and
- (b) on or before 30 June 1976 or such later date as the Commissioner determines, the taxpayer entered into an agreement with that other person for the acquisition of that property by the taxpayer,

then, in determining for the purposes of this Subdivision whether expenditure in respect of the acquisition of that property by the taxpayer was incurred in respect of the acquisition of a new unit of property, regard shall not be had to any use or holding for use of that property by the taxpayer on or after 1 January 1976 and before the date on which the agreement referred to in paragraph (b) was entered into.

“82AQ. (1) In this Subdivision—

- ‘construction’ includes manufacture and ‘constructed’ has a corresponding meaning;
- ‘eligible property’ means plant or articles within the meaning of section 54 and includes earth tanks constructed for the purpose of conserving water for use in carrying on a business of primary production;
- ‘hire-purchase agreement’ means an agreement for letting property on hire under which the person taking the property on hire has a right (either absolutely or subject to conditions) to purchase the property but does not include such an agreement under which, in determining whether any sum is payable upon the exercise of that right and, if a sum is so payable, in determining the amount so payable, no regard is had to any part of any payment made under the agreement before the right is exercised;
- ‘lease’, in relation to property, means grant a lease of the property or let the property on hire otherwise than under a hire-purchase agreement, and cognate expressions have corresponding meanings;
- ‘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 providing finance, not being a business the whole of the income from which is exempt income;

Interpretation.

‘long-term lease agreement’, in relation to property, means an agreement under which a person agrees to take the property on lease for a period of not less than 4 years;

‘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.

“(2) The reference in the definition of ‘leasing company’ in subsection (1) to providing finance is a reference to—

- (a) lending money, with or without security;
- (b) letting property on hire under a hire-purchase agreement; or
- (c) leasing property.

“(3) In this Subdivision—

- (a) a reference to the acquisition of property by a person is a reference to—
 - (i) the person becoming the owner of the property or taking the property on hire under a hire-purchase agreement; or
 - (ii) the construction of the property for the person by another person or other persons on premises of the first-mentioned person;
- (b) a reference to property being installed ready for use is a reference to property being installed ready for use and held in reserve; and
- (c) a reference to taking property on lease is a reference to taking property on lease or on hire otherwise than under a hire-purchase agreement.”

11. After section 82KB of the Principal Act the following section is inserted:—

Interest deductible only if paid during first 5 years of loan connected with first residence owned by taxpayer or his spouse.

“82KBA. (1) A deduction is not allowable under this Subdivision in respect of an amount by way of interest paid by the taxpayer on or after 1 July 1976 in respect of a loan connected with a dwelling used by the taxpayer as his sole or principal residence if—

- (a) another dwelling was used by the taxpayer as his sole or principal residence in Australia at a time before he commenced to use the first-mentioned dwelling as his sole or principal residence; and
- (b) at the time mentioned in paragraph (a) the taxpayer, or a person who was the spouse of the taxpayer at that time, held a relevant interest in the other dwelling.

“(2) A deduction is not allowable under this Subdivision in respect of an amount by way of interest paid by a taxpayer on or after 1 July 1976 in respect of a loan connected with a dwelling to the extent (if any) that the liability to pay that amount arose after the expiration of—

- (a) in a case to which paragraph (b) does not apply—the period of 5 years commencing on whichever was the earlier of the following days:—
- (i) the day on which the taxpayer first acquired a relevant interest in the dwelling; or
 - (ii) if another person who is or has been the spouse of the taxpayer holds or has held a relevant interest in the dwelling and that other person—
 - (A) acquired such an interest at a time when that other person was the spouse of the taxpayer; or
 - (B) became the spouse of the taxpayer at a time when that other person held such an interest,the day on which that other person first acquired such an interest; or
- (b) if the dwelling was or is first used by the taxpayer as his sole or principal residence in a year of income of the taxpayer later than the year of income of the taxpayer in which the earlier of the days mentioned in paragraph (a) occurred or occurs—the period of 5 years commencing on the first day of the year of income of the taxpayer in which the dwelling was or is first used by the taxpayer as his sole or principal residence.

“(3) A deduction is not allowable under this Subdivision in respect of an amount by way of interest paid by a taxpayer on or after 1 July 1976 in respect of a loan connected with a dwelling where, if the amount had been paid by the spouse of the taxpayer, a deduction would not, by reason of sub-section (1) or (2), have been allowable under this Subdivision in respect of the payment.

“(4) For the purposes of this section—

- (a) a person shall be deemed to hold or acquire a relevant interest in a dwelling if the person holds or acquires, whether alone or together with another person or other persons—
- (i) a prescribed interest in the land on which the building constituting or containing the dwelling is constructed;
 - (ii) a prescribed interest in a stratum unit in relation to the dwelling; or
 - (iii) if the dwelling is a flat or home unit—a proprietary right in respect of the dwelling;
- (b) a reference to the spouse of a taxpayer shall be construed as a reference to—
- (i) the husband or wife of the taxpayer other than a person living separately and apart from the taxpayer; or
 - (ii) a person living with the taxpayer as the husband or wife of the taxpayer on a *bona fide* domestic basis although not legally married to the taxpayer; and

- (c) an amount paid before 1 July 1976 on account of interest falling due on or after that date shall be taken to be paid at the time when it falls due and not at the time when it was in fact paid.”

Bonus share allotments.

12. Section 82P of the Principal Act is amended—

- (a) by inserting in sub-section (2), after the words “of section 82S”, the words “and sub-paragraph (ii) of paragraph (d) of sub-section (1) of section 82SA”; and
- (b) by inserting in sub-section (3), after the words “of section 82S”, the words “and sub-paragraph (ii) of paragraph (d) of sub-section (1) of section 82SA”.

Interest on certain convertible notes not to be an allowable deduction.

13. Section 82R of the Principal Act is amended by omitting from sub-section (1) the words “the next succeeding section” and substituting the words “sections 82S and 82SA”.

Interest on certain convertible notes to be an allowable deduction—where loan made before 1 January 1976.

14. Section 82S of the Principal Act is amended—

- (a) by omitting sub-paragraph (i) of paragraph (b) of sub-section (1) and substituting the following sub-paragraph:—
- “(i) after this section came into operation but before 1 January 1976; and”; and
- (b) by omitting from sub-paragraph (xiii) of paragraph (d) of sub-section (1) the words “in accordance with the next succeeding section” and substituting the words “in accordance with section 82T”.

15. After section 82S of the Principal Act the following section is inserted:—

Interest on certain convertible notes to be an allowable deduction—where loan made on or after 1 January 1976.

“82SA. (1) Subject to the succeeding provisions of this section, section 82R does not apply in relation to a convertible note issued by a company where—

- (a) the loan to the company to which the note applies is, under section 82M, to be treated as a new loan or an approved replacement loan for the purposes of this Division;
- (b) the loan was made on or after 1 January 1976;
- (c) the convertible note was issued before the expiration of 2 months after the loan was made; and
- (d) the terms applicable to the convertible note are, at the time the note was issued and at all subsequent times, such that—
- (i) an option is given to the holder or owner of the convertible note (in this Division referred to as the ‘option to convert’) to have allotted or transferred to him shares in the capital of the company or of another company;

- (ii) no provision is made for the allotting or transferring of shares in the capital of the company or of another company to the holder or owner of the convertible note except in pursuance of the exercise of the option to convert or except in pursuance of a right that, under section 82P, is an approved right relating to the allotting or transfer of bonus shares to the holder or owner of the note;
- (iii) the convertible note would not, but for the option to convert and any right of the kind referred to in subparagraph (ii), be a convertible note;
- (iv) the earliest date on which the option to convert may be exercised is a date not later than 2 years after the date of offer;
- (v) the latest date on which the option to convert may be exercised is a date not later than the maturity date of the loan or, if the date of offer is more than 10 years earlier than the maturity date, a date not later than 10 years after the date of offer;
- (vi) the rate of interest payable in respect of the loan is, subject to sub-section (5), the same in respect of all periods occurring before the maturity date of the loan;
- (vii) subject to sub-section (6), the obligations and rights of the holder or owner of the convertible note (including, but without limiting the generality of the foregoing, obligations and rights with respect to the amount payable on repayment, redemption or satisfaction of the loan and the terms on which shares are to be allotted or transferred in pursuance of the exercise of the option to convert) do not vary in his favour by reason that he exercises the option, or he or the company exercises any other right in relation to the note, at a later rather than at an earlier time after the issue of the note;
- (viii) the rights of the holder or owner of the convertible note with respect to the amount payable on repayment, redemption or satisfaction of the loan do not vary according to whether or not he exercises the option to convert;
- (ix) the shares to be allotted or transferred upon the exercise of the option to convert—
 - (A) are to be allotted or transferred within 2 months after the exercise of the option;
 - (B) in the case of shares to be allotted, are, upon payment of the amount payable in respect of the allotment, to be fully paid shares or, in the case of

- shares to be transferred, are, at the time of transfer, to be fully paid shares; and
- (C) are to be shares of the same class as shares in the capital of the company that, not later than 6 weeks before the date that is the date of offer in relation to the loan, had been allotted and were fully paid;
- (x) the shares to be allotted or transferred upon the exercise of the option to convert are to be shares with respect to which no provision is made (whether by the memorandum, or memorandum and articles, of the company, or other instrument constituting or defining the constitution of the company, or otherwise) for changing or converting them into shares of another class, except for the purpose of enabling, in accordance with any law relating to companies, the consolidation and division of all or any of the share capital of the company or of another company or the sub-division of all or any of the shares in the capital of the company or of another company; and
- (xi) the amount payable in respect of the allotment or transfer of a share in pursuance of the exercise of the option to convert is to be paid not later than 1 month after the allotment or transfer, and is to be not less than the amount that, for the purposes of this sub-section, is the minimum amount applicable to the share, that is to say, whichever amount is the greater of the nominal value of the share or 90 per centum of the amount that, in accordance with section 82T, is the value as at the valuation date of a fully paid share included in the class of shares in which the share to be allotted or transferred will be, or is, included.

“(2) Where sub-section (1) ceases to have effect in relation to a convertible note by reason of a change in the terms applicable to the note (not being a change resulting from a compromise or arrangement approved by a court), sub-section (1) shall be deemed never to have had effect in relation to the note.

“(3) Where a note is a convertible note in relation to which sub-section (1) has effect and the right to exercise the option to convert relating to the note becomes exercisable by a person other than the holder or owner of the note by reason of an assignment of that right, the assignment shall, for the purposes of this section, be disregarded.

“(4) Where, in relation to a convertible note issued by a company, the company or a director of the company does any act or thing for the purpose of, or purposes that include the purpose of, and having the effect of, causing the amount that, for the purposes of sub-section (1), is the minimum amount applicable to a share to be allotted or transferred in pursuance of the exercise of the option to convert relating to the note, to

be less than it would otherwise have been, sub-section (1) does not have effect in relation to the note.

“(5) Where, under the terms applicable to a convertible note, the rate of interest payable in respect of the loan to which the note applies is to be varied from time to time (otherwise than with retrospective effect) in accordance with changes, or changes exceeding a specified percentage, in the rate of interest prevailing from time to time—

- (a) where the loan is a foreign loan, at a specified place outside Australia in respect of a specified class of transactions; or
- (b) where the loan is not a foreign loan, in respect of a specified class of Commonwealth securities,

the term shall, for the purposes of sub-paragraph (vi) of paragraph (d) of sub-section (1), be deemed not to be a term providing for a variation in the rate of interest payable in respect of the loan.

“(6) For the purposes of sub-paragraph (vii) of paragraph (d) of sub-section (1), the obligations and rights of the holder or owner of a convertible note shall not be deemed to vary in a manner referred to in that sub-paragraph by reason only that any dividend payable in respect of a share in the capital of a company to be allotted upon the exercise of the option to convert relating to the note, being a dividend payable during the period of 1 year after the allotment of the share, will or may vary according to the time when, in relation to the period to which the dividend relates, the option to convert is exercised.”

16. Section 82T of the Principal Act is amended by omitting from sub-section (1) the words “the last preceding section” and substituting the words “sections 82S and 82SA”.

Value of shares.

17. Section 170 of the Principal Act is amended—

- (a) by omitting from sub-section (10) the words “of section 23AB” and substituting the words “of section 23AB, section 31B,”; and
- (b) by omitting from that sub-section the words “sub-section (3) of section 82S” and substituting the words “Subdivision B of Division 3 of Part III, sub-section (3) of section 82S, sub-section (2) of section 82SA”.

Amendment of assessments.

18. (1) Section 221AC of the Principal Act is amended—

- (a) by omitting from paragraph (a) of sub-section (1) the word “and”; and
- (b) by omitting paragraph (b) of sub-section (1) and substituting the following paragraphs:—
 - “(b) 2 instalments of tax in respect of income of the year of income that commenced on 1 July 1974; and
 - (c) 3 instalments of tax in respect of income of the year of income that commences on 1 July 1976 and in respect of income of each subsequent year of income.”

Liability to pay instalments of tax.

(2) The *Income Tax Act* 1975 has effect as if section 11 of that Act had not been enacted.

Release of taxpayers from liability in cases of hardship.

19. Section 265 of the Principal Act is amended by omitting from sub-section (1) the words "Comptroller-General of Customs" and substituting the words "Permanent Head of the Department dealing with matters arising under the *Customs Act* 1901-1975".

Amendment of section 7 of Assessment Act (No. 5) of 1973 consequential on enactment of section 5 of this Act.

20. Section 7 of the *Income Tax Assessment Act (No. 5)* 1973 is amended by omitting sub-sections (2), (3) and (4) and those sub-sections shall be deemed never to have had effect.

Release of taxpayers in cases of hardship.

21. Section 30 of the *Income Tax Assessment Act (No. 2)* 1975 is repealed.

Additional amendments.

22. The Principal Act is amended as set out in the Schedule.

SCHEDULE

Section 22

ADDITIONAL AMENDMENTS

Provision amended	Amendments
Sub-section 6 (1)	From the definition of "income tax laws of Papua New Guinea", omit "Australia", substitute "the Commonwealth".
Sub-section 6C (5)	Omit "Australia" (wherever occurring), substitute "the Commonwealth".
Paragraph 23 (q)	(a) Omit "(a)", substitute "(i)". (b) Omit "(b)", substitute "(ii)".
Paragraph 24L (1) (a)	Omit "Australia" (first, second, third and fifth occurring), substitute "the Commonwealth".
Paragraph 24L (3) (a)	Omit "Australia" (wherever occurring), substitute "the Commonwealth".
Paragraph 24L (3) (b)	Omit "Australia" (first and third occurring), substitute "the Commonwealth".
Sub-section 24L (4A)	Omit "Australia" (wherever occurring), substitute "the Commonwealth".
Sub-section 24L (5)	Omit "(when used in a geographical sense)".
Sub-section 54 (1)	Omit "plant, or" (first occurring), substitute "plant or".
Paragraph 75A (2) (b)	Omit "Australia" (wherever occurring), substitute "the Commonwealth".
Sub-section 122T (1)	Omit "Australia" (wherever occurring), substitute "the Commonwealth".
Sub-section 123A (2)	Omit "Australia" (wherever occurring), substitute "the Commonwealth".
Section 123F	Omit "(1)".
Sub-section 124AQ (1)	Omit "Australia" (wherever occurring), substitute "the Commonwealth".

SCHEDULE—continued

Provision amended	Amendments
Sub-section 128B (1A)	Omit "Australia" (wherever occurring), substitute "the Commonwealth".
Sub-section 159J (6)	From sub-paragraph (i) of paragraph (b) of the definition of "separate net income", omit "Australia", substitute "the Commonwealth".
Sub-paragraph 159R (1) (b) (ii)	Omit "Australia", substitute "the Commonwealth".
Sub-section 159T (6)	From the definition of "scholarship benefits", omit "Australia", substitute "the Commonwealth".
Paragraph 159x (2) (c)	Omit "Australia" (wherever occurring), substitute "the Commonwealth".
Sub-section 221YC (5)	Omit "applied", substitute "applies".
Sub-section 221YL (2C)	Omit "Australia" (wherever occurring), substitute "the Commonwealth".

NOTES

1. Act No. 50, 1976; assented to 4 June 1976.
2. Act No. 27, 1936, as amended by No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 46, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 60, 70, 87 and 148, 1968; Nos. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; Nos. 5, 46, 47, 65 and 85, 1972; Nos. 51, 52, 53, 164 and 165, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 26 and 126, 1974; and Nos. 80 and 117, 1975.