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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INCOME TAX ASSESSMENT AMENDMENT BILL (NO. 4) 1980
INCOME TAX (INDIVIDUALS) BILL 1980
INCOME TAX (COMPANIES AND SUPERANNUATION FUNDS) BILL 1980

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,
the Hon. John Howard, M.P.)

Introductory note

The Income Tax Assessment Amendment Bill (No. 4) 1980 will give effect to certain taxation proposals announced in the 1980-81 Budget Speech. These are the superannuation proposals for self-employed and employed people in respect of whom no other person is providing superannuation benefits; the general 20 per cent increase in plant depreciation allowances; the special deduction in respect of expenditure on stockyards and fences associated with the campaign to eradicate brucellosis and tuberculosis in cattle; the extension of the scope of special provisions that permit a primary producer to offset profits from disposal of live stock against the cost of replacement stock over a 5 year period to cover live stock that die from a disease or are destroyed under a destocking order in respect of an animal disease; and the provision of deductibility in respect of gifts to certain tertiary educational institutions. Measures to provide exemption from Australian tax for remuneration of Australians working overseas on approved projects will be the subject of another Bill.

The Bill also proposes the arrangements that are to apply for the purposes of calculating provisional tax for the 1980-81 income year.

The Income Tax (Individuals) Bill 1980 and the Income Tax (Companies and Superannuation Funds) Bill 1980 will impose the rates of income tax payable for 1980-81.

An outline of the amendments contained in the Income Tax Assessment Amendment Bill (No. 4) 1980 is given below.

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Superannuation for certain self-employed and employed persons
(Clauses 3, 9, 10, 12 and 13)

It is proposed to provide a special deduction, up to a maximum of $1200 in any income year, for contributions made after 19 August 1980 by a person who is self-employed or employed or is otherwise engaged in a gainful occupation, but in respect of whom no employer or other person contributes or is to contribute towards superannuation benefits (clause 10). The special deduction will be available where the contributions are paid to a fund that meets tests of eligibility for exemption of its income under paragraph (ja) of section 23 of the Income Tax Assessment Act 1936, or that is a fund to which section 79 of that Act applies.

To the extent that a person who is allowed deductions under the new provisions receives a lump sum superannuation benefit in accordance with the approved terms and conditions of such a fund, the Bill proposes that 5 per cent of so much of the benefit as is attributable either to contributions made to the fund after 19 August 1980 or to any income of, or other accretions to, the fund attributable to those contributions, is to be included in the assessable income of the person. As an anti-avoidance measure, benefits received or obtained after that date from a paragraph 23(ja) or section 79 fund otherwise than in accordance with approved terms and conditions of the fund will be fully assessable (clause 3).

Proceeds from the death or compulsory destruction of live stock due to disease
(Clause 4)

Existing provisions of the Income Tax Assessment Act allow a primary producer to elect to have any profit derived on a forced sale of live stock due to fire, drought or flood excluded from assessable income of the year in which it is derived, and applied to reduce the cost for income tax purposes of stock acquired, during that year or any of the five succeeding years, to replace the stock disposed of. It is proposed to extend the circumstances in which these provisions apply so that they will also apply where a primary producer receives compensation in consequence of the compulsory destruction of live stock for the purpose of controlling or eradicating stock diseases. The provisions are also to be available in respect of any profits arising from the death of an animal from a disease prescribed by a law that authorises the compulsory destruction of stock to control or eradicate disease.

The amendments are to apply in relation to live stock that die or are destroyed on or after 1 July 1980.

Special depreciation on plant
(Clause 6)

A new section is to be inserted in the depreciation provisions of the income tax law to increase the rate at which depreciation is allowable on new and second-hand plant contracted for after 19 August 1980 (or where it is constructed by the taxpayer, the construction of which commences after that date) by 20 per cent of the rate that would otherwise apply. Excluded from the proposal are motor vehicles of the type now excluded from the investment allowance and plant for which concessional statutory depreciation rates are available. The accelerated rates will apply to eligible plant throughout the period it is used by the taxpayer in the production of assessable income, or until the cost of the plant has been fully written off for income tax purposes.

Deduction of certain expenditure on fences
(Clause 7)

It is proposed to enact a new section to allow primary producers a deduction for expenditure on stockyard and subdivisional fencing, in the year in which the expenditure is incurred, in circumstances where the Secretary to the Department of Primary Industry has certified that it is desirable to construct the fence to assist in the control or eradication of bovine brucellosis or tuberculosis. The deduction will be available in respect of expenditure incurred following the issue of such a certificate and before 1 July 1984.

Gifts
(Clause 8)

This clause proposes to make tax deductible, gifts of the value of $2 or more made after 19 August 1980 to institutions certified by the Minister for Education as technical and further education institutions and to the Marcus Oldham Farm Management College, where the gifts are for certified purposes or for the provision of certified facilities (including residential accommodation) for the bodies concerned.

The clause will also authorise a deduction for gifts to an institution that is a prescribed Commonwealth institution under the Tertiary Education Commission Act 1977, and to a residential educational institution affiliated with such a prescribed institution. At present, the only prescribed Commonwealth institution is the Australian Maritime College.

The removal of the certification processes that presently apply in respect of gifts to colleges of advanced education, but which are no longer necessary, is also proposed.

Provisional tax for financial year 1980-81
(Clauses 15 and 16)

Provisional tax for 1980-81 is to be calculated, basically, by applying the 1980-81 rates of tax to 1979-80 taxable income as increased by 7.5 per cent, and by allowing dependant rebates at 1980-81 levels.

The second Bill, the Income Tax (Individuals) Bill 1980, will formally impose tax payable for the 1980-81 financial year by individuals and trustees, at the rates of tax, as indexed by 3.8 per cent, already declared for that year.

The third Bill, the Income Tax (Companies and Superannuation Funds) Bill 1980 will declare and impose the rates of income tax payable for 1980-81 by companies and trustees of superannuation funds. These rates are the same as for 1979-80 (46 per cent on the taxable income of companies), except that the rate for one category of taxable superannuation fund is reduced from 61.07 per cent to 60 per cent to reflect the reduction in the maximum rate of tax payable by an individual for 1980-81.

Detailed explanations of each clause of the Bills follow.

INCOME TAX ASSESSMENT AMENDMENT BILL (NO. 4) 1980

Clause 1 : Short title, etc.

This clause contains formal provisions for the citation of the amending Act and the Principal Act (the Income Tax Assessment Act 1936).

Clause 2 : Commencement

Against the background that section 5(1A) of the Acts Interpretation Act 1901 causes an amending Act to come into operation on the twenty-eighth day after Royal Assent, unless contrary provision is made, this clause provides for the amending Act to come into operation on the date of Royal Assent. As there are provisions in the Bill that have effect in respect of 1979-80 income year assessments involving the calculation of 1980-81 provisional tax, the early commencement will facilitate the preparation of those assessments.

Clause 3 : Benefits from certain superannuation funds

Introductory note

Clause 3 proposes to introduce 2 new sections - sections 26AE and 26AF - into the Principal Act to complement measures proposed by clause 10 of the Bill for the introduction of special income tax deductions for certain personal superannuation contributions made by eligible persons after 19 August 1980.

Superannuation contributions made by an employer for employees are an allowable deduction to the employer, and give rise to the derivation of income by such "supported" employees only when benefits are paid out of the funds. In contrast, self-employed persons and persons otherwise engaged in gainful occupations but for whom superannuation benefits are not supported by an employer or anyone else, are not entitled to tax deductions for their personal contributions but are entitled to the same tax concessions for such contributions as supported employees are for theirs. These are that the contributions are, within an overall limit of $1,200 applicable to life insurance premiums and superannuation contributions, rebatable under the arrangements whereby rebatable expenditure in excess of $1,590 attracts a rebate of 32 per cent. The position is proposed to be changed by clause 10 which, as explained in the notes on the clause, will introduce a new income tax deduction under section 82AAT for "unsupported" persons who make provision for their own retirement by contributing to a qualifying superannuation fund.

At the same time, the tax treatment of such "unsupported" contributors to superannuation funds also differs in another respect from that of an employee who is a member of an employer-supported retirement benefit scheme. Benefits paid in a lump sum or other capital form from a superannuation fund for self-employed persons (broadly, a fund whose income is exempt from tax under paragraph (ja) of section 23 of the Principal Act or one that qualifies for a special deduction under section 79) are not subject to tax under the present law, whereas (under paragraph (d) of section 26) 5 per cent of the amount of lump sum payments received on retirement are subject to tax when received by an employee from a superannuation fund or scheme to which an employer has made contributions.

In line with the new scheme of deductions proposed by clause 10, clause 3 proposes amendments that will have the effect of imposing tax on 5 per cent of presently tax-free payments that are made from a qualifying superannuation fund after 19 August 1980 in accordance with the approved terms and conditions of the fund. Broadly, this will affect payments which are not received in the form of income, such as pensions or annuities which are taxable in full under the general law. The amendments will not apply, however, unless the taxpayer has been allowed a deduction under proposed new section 82AAT for a personal contribution to the relevant fund, and will then apply only to the extent that the payment is attributable to post-Budget contributions and earnings from them.

Proposed section 26AF, also being introduced by clause 3, is an anti-avoidance provision to cover payments made after 19 August 1980 out of a paragraph 23(ja) or section 79 fund, and made otherwise than in accordance with the approved terms and conditions of the fund. In this case, the payments will be fully included in assessable income.

Notes on proposed sections 26AE and 26AF follow.

Section 26AE : Assessable income to include 5% of certain superannuation benefits

Proposed section 26AE relates to benefits received by a taxpayer from a "paragraph 23(ja) fund" or a "section 79 fund". These expressions are defined in proposed sub-section (4). Broadly stated, a "paragraph 23(ja) fund" is a superannuation fund established and maintained exclusively for the benefit of self-employed persons, not less than 20 in number, or their dependants. The terms and conditions applicable to such a fund are required to be approved by the Commissioner of Taxation having regard to the classes of persons eligible for membership, the reasonableness of the benefits provided for, the amount of the fund in relation to those benefits and such other matters as the Commissioner considers appropriate, i.e., matters such as the level of contributions paid to the fund and the age at which benefits are payable.

The income of a fund that satisfies the requirements of paragraph 23(ja) of the Principal Act is exempt from tax provided it complies with the 30/20 ratio, i.e., broadly, that at least 30 per cent of the assets of the fund are invested in public securities and not less than 20 per cent of the assets are invested in Commonwealth securities. (Failure of a fund to meet the 30/20 ratio under section 121C of the Principal Act will not take the fund outside the scope of new sections 26AE or 26AF.)

A "section 79 fund" is one the terms of which require that each of its members be engaged in some business, trade, profession, vocation, calling, occupation or employment. It must satisfy certain requirements specified in the section that, broadly stated, stamp the fund as a bona fide superannuation fund. For instance, strict terms and conditions are imposed as to when benefits may be drawn from the fund. Approval of a section 79 fund must be obtained from the Commissioner of Taxation on a year-to-year basis. A section 79 fund does not have to comply with the 30/20 rules that apply to paragraph 23(ja) funds. The income of a section 79 fund does not attract exemption from tax but the fund is allowed a special deduction equal to 5 per cent of the cost of its assets.

Paragraphs (a) to (e) of sub-section (1) of section 26AE specify the conditions under which a benefit received by a contributor will fall to be assessed under sub-section (3) as to 5 per cent of the amount of the benefit.

Such a benefit is one that is paid after 19 August 1980 (paragraph (a)) by reason of the recipient taxpayer being, or having been, a member of a paragraph 23(ja) fund or a section 79 fund (paragraph (b)). The limitation contained in paragraph (b) means that it is only benefits paid to a member that will attract tax under section 26AE. Where benefits are payable to dependants of a member, e.g., on the death of the member, the dependant will not be liable to pay tax on the benefit under section 26AE. (Of course, if the benefit is paid by way of a pension or annuity it would be taxable as income under ordinary concepts.)

Paragraph (c) of sub-section (1) will restrict the kinds of benefits from superannuation funds to which the new section applies to those paid in accordance with the terms and conditions applicable to the fund at the time of payment. Benefits from funds that are received or obtained otherwise than in accordance with the approved terms and conditions applicable to the fund at the time when the benefit is received or obtained will fall to be taxed in full under proposed section 26AF.

Paragraph (d) means that benefits received in the form of income, e.g., by way of pensions or annuities, are not benefits to which this section applies. As explained, such amounts are taxable in full under general principles.

Benefits of a kind that are already assessable as to 5 per cent under section 26(d), as being allowances, gratuities or compensations paid in a lump sum as a consequence of retirement from or the termination of any office or employment, or which will be fully assessable under the proposed section 26AF, are under paragraph (e) also excluded from the scope of section 26AE.

It is intended that payments of superannuation benefits from a paragraph 23(ja) fund or section 79 fund will not attract tax under the proposed section 26AE unless a deduction has been allowed or is allowable to the taxpayer in respect of any year of income under new section 82AAT in respect of an amount contributed to that fund. Sub-section 26AE(2) accordingly limits the operation of section 26AE to that effect. Thus, a contributor who has not been allowed deductions for his or her contributions because he or she is a "supported" employee member of another fund will not be affected.

Where a taxpayer receives in a year of income a benefit which satisfies the tests in paragraphs (a) to (e) of sub-section (1) and sub-section (2) described above, sub-section (3) will have the effect of including in the assessable income of the taxpayer 5 per cent of so much of the amount of the benefit as is attributable to contributions made to the fund after 19 August 1980 by the taxpayer or any other person, together with any income or other accretions to the fund that are attributable to those post-19 August 1980 contributions.

Amounts of benefits paid in "lump sums" from paragraph 23(ja) or section 79 funds arising from contributions to those funds which were made on or prior to 19 August 1980, and from income derived by the fund or other accretions to the fund that are attributable to those previous contributions will, if paid in accordance with the approved terms and conditions applicable to the fund, continue to be free from tax. If, of course, they comprise an allowance, gratuity or compensation paid in consequence of retirement from, or the termination of an office or employment, they are assessable as to 5 per cent in terms of paragraph (d) of section 26 of the Principal Act.

Sub-section (4) of section 26AE, as already explained, will define for the purposes of the section the meanings of "paragraph 23(ja) fund" and "section 79 fund".

Section 26AF : Assessable income to include value of benefits received from or in connection with certain superannuation funds

The second section which clause 3 proposes to introduce is section 26AF. The purpose of this section is to render taxable in full any benefit which a taxpayer receives or obtains from a paragraph 23(ja) fund or a section 79 fund after 19 August 1980 other than in accordance with approved terms and conditions applicable to the fund at the time the benefit is received or obtained. The section will operate as a safeguard against abuses of the concession to be provided to contributors under new section 82AAT as well as of those provided to the funds themselves under paragraph 23(ja) and section 79.

Sub-section (1) will ensure that the sanction of taxation in full is available where benefits of any kind are received from a paragraph 23(ja) or section 79 fund, or are obtained and are attributable to assets of such funds, and are not received or obtained in accordance with approved terms and conditions. By being expressed in this way, the section will be capable of striking at arrangements under which, for example, there is an unauthorised payment of benefits in the guise of loans to the members. It will also apply if there is a disbursement of assets of a fund before the authorised time according to the terms and conditions upon which the exempt or concessional status of the fund is based. In this context, the second condition for the application of the section is, under paragraph (b), that the benefit is received or obtained otherwise than in accordance with the terms and conditions of the fund as approved by the Commissioner of Taxation.

A further pre-condition for the application of section 26AF is that the Commissioner must be satisfied that there be a causal connection between the benefit being received or obtained and membership of the fund. It will be a sufficient connection if the payment, etc., was received or obtained because the taxpayer was a member of the fund (paragraph (c)(i)); because the taxpayer was a dependant of a member of the fund (paragraph (c)(ii)) or because the taxpayer was associated with a member of the fund (paragraph (c)(iii)), e.g., a related company. If the conditions specified in paragraphs (a), (b) and (c) are satisfied then the taxpayer's assessable income of the year of income will, under sub-section (1), include the amount or value of the benefit received or obtained.

There is to be a further safeguard to meet the situation where a taxpayer seeks to avoid the operation of sub-section (1) by assigning for value (or otherwise disposing of) his right to receive a benefit from a paragraph 23(ja) or section 79 fund, thus gaining an effective benefit not from the superannuation fund direct, but from the transference of the rights of the taxpayer to a person who pays the taxpayer for that transfer. To deal with this situation, sub-section (2) proposes to include in a taxpayer's assessable income the amount or value of any consideration received after 19 August 1980 in respect of the transfer of such entitlements, whether the rights be vested or contingent on a subsequent event (such as the transferor attaining a specified age).

Sub-section (3) contains definitions of some of the terms used in section 26AF. "Approved terms and conditions" are, as the case requires, the terms and conditions approved by the Commissioner under sub-paragraph (ii) of paragraph 23(ja) or section 79(2) of the Principal Act.

"Paragraph 23(ja) fund" is defined as a fund the income of which is or has been exempt from tax in any year of income under that paragraph of the Principal Act or which would have been exempt had the fund complied with the 30/20 ratio. Similarly, "section 79 fund" means a fund to which that section of the Principal Act has applied in relation to any year of income.

Clause 4 : Alternative election in case of forced disposal, death or compulsory destruction of live stock

Introductory note

This clause proposes a number of amendments to section 36AAA of the Principal Act to provide an alternative basis on which a primary producer may account, for income tax purposes, for the proceeds the producer derives from the compulsory destruction of live stock in compliance with a law for the control or eradication of a disease or from the death of stock from such a disease.

At present in such cases, unless the producer elects to have section 36AA of the Principal Act applied in relation to the proceeds from the disposal or death of the stock, those proceeds are included in the assessable income of the producer of the year in which they are received. Where a producer elects to have section 36AA applied the proceeds are assessable in the income year in which the live stock died or were destroyed, no matter when received, and four-fifths of the profit made on the live stock concerned is deducted from the producer's assessable income for that year and assessed by equal instalments over the next four years.

The alternative basis on which the primary producer is to be entitled to account for the proceeds in question is to be the same as that applying at present, under section 36AAA of the Principal Act, in circumstances where a primary producer derives a profit on the forced sale of live stock due to fire, drought or flood. Section 36AAA permits a primary producer to elect to have such a profit excluded from assessable income of the year in which it is derived and to have the profit applied to reduce the cost for income tax purposes of stock acquired, during that year or any of the five succeeding years, to replace the stock disposed of.

In some cases, it may occur that replacement stock are bred by the producer instead of being purchased. Where this is so, the producer is able to elect to exclude the profit on the forced disposal from assessable income of the year of disposal and to bring it to account in appropriate instalments, over the period already mentioned, as the replacement stock are bred.

If, at the end of the fifth year after the year in which the disposal occurred, any balance of the profit on the disposal has not been applied to reduce the cost of new stock purchased, or has not otherwise been included in assessable income, the amount unapplied is included in the assessable income of the producer of that year.

Section 36AAA has the broad effect of deferring payment of tax on the profit from a forced sale until stock acquired in replacement of the stock disposed of are disposed of in the normal course of business. The section contains a number of measures to safeguard the revenue and to take account of events which may occur during the years in which the consequences of an election operate, e.g., where a producer who has made an election as a sole trader enters into a partnership, or where the interests in a partnership which has made an election are varied.

The proposed amendments will apply in relation to the proceeds of the death of live stock that died or were destroyed on or after 1 July 1980.

Explanations of the provisions to be inserted in section 36AAA of the Principal Act follow.

Sub-clause (1) of clause 4 sets out the proposed amendments to section 36AAA of the Principal Act that will be made by that clause.

Paragraph (a) of sub-clause (1) will insert a new sub-section - sub-section (1A) - in section 36AAA.

New sub-section (1A) formally provides the right of a primary producer to elect to have section 36AAA applied in relation to the proceeds received from the death or destruction of stock arising from a disease prescribed by law, and states the circumstances in which that right is available.

Paragraph (a) of proposed sub-section (1A) will be satisfied where live stock included in the assets of a business of primary production carried on in Australia die from a disease for the purpose of controlling or eradicating which, a law of the Commonwealth, of a State or of a Territory authorises the compulsory destruction of live stock suffering from the disease (sub-paragraph (i)) or the live stock are destroyed in compliance with such a law (sub-paragraph (ii)).

Paragraph (b) of new sub-section (1A) provides that the right of election will be available if the proceeds of the death of the live stock would, apart from the new provisions, be included in the primary producer's assessable income of any income year.

By paragraph (c), a primary producer will be entitled to elect to have section 36AAA applied in an assessment in respect of the proceeds from the death of live stock only if a profit is derived from the death of the live stock. No advantage would accrue to the primary producer from the application of the section in other circumstances.

Paragraph (d) will limit the right to make an election under section 36AAA in respect of the proceeds from the death of live stock to cases where an election has not been lodged under section 36AA of the Principal Act to have those proceeds taxed over a period of five years.

Paragraph (e) requires the Commissioner of Taxation to be satisfied that the proceeds from the death of the live stock will be used by the elector wholly or principally for the purpose of re-stocking. A statement of the primary producer's intentions will normally be sufficient for this purpose.

Where the conditions specified in sub-section (1A) are satisfied, the sub-section provides that an election may be made that section 36AAA of the Principal Act apply in respect of the proceeds and profit. The proceeds and profit will then be dealt with in accordance with the provisions of sub-section (2) and the other sub-sections of 36AAA in the same way that the profit made by a primary producer on the forced sale of live stock due to fire, drought or flood is dealt with under those provisions.

Sub-section (2) of section 36AAA of the Principal Act as amended by paragraphs (b) and (c) of sub-clause (1) provides the basis upon which an election under new sub-section (1A) has effect.

New paragraph (a) of section 36AAA(2) which, together with paragraph (aa), is being substituted for existing paragraph (a) of that sub-section by paragraph (c) of sub-clause (1) is, in effect, a restatement of existing paragraph (a) of that sub-section. It will apply only in respect of profit derived from the forced sale of live stock due to fire, drought or flood.

New paragraph (aa) of section 36AAA(2) will apply where a primary producer makes an election under new sub-section (1A) of section 36AAA. It will, in the year of income to which the election relates, include in the assessable income of the producer the proceeds received from the death or destruction of the live stock concerned (paragraph (a)(i)) and reduce that assessable income by the amount of the profit on the death of the live stock concerned (paragraph (a)(ii)).

Under paragraph (b) of section 36AAA(2) the profit on the disposal or death of the live stock will be applied to reduce, for income tax purposes, the cost of live stock purchased by the elector during the income year in which the disposal or death occurred, and any of the five succeeding income years, to replace that stock. The amount by which the cost of any replacement animal is reduced is generally the average profit on each animal disposed of or that dies or is destroyed, or the actual cost price of the replacement animal whichever is the less.

Where the stock that are disposed of or that die or are destroyed are replaced by natural increase, paragraph (c) of section 36AAA(2) will include in the assessable income of the elector any amount specified in an election made under sub-section (4) of section 36AAA. If at the end of the last of the five years succeeding the year of disposal or death there is any profit not applied in accordance with paragraphs (b) and (c), paragraph (d) will operate to include the balance in the assessable income of that year.

Except for the amendments proposed by paragraphs (zt) and (zx) of sub-clause (1), the remaining amendments proposed by the sub-clause are technical amendments to extend the operation of particular provisions of section 36AAA, to cover the proceeds derived by a primary producer from the death or destruction of live stock as a result of a disease prescribed by law.

Paragraph (zt) of sub-clause (1) will insert a new paragraph - paragraph (aa) - in section 36AAA(14) of the Principal Act which specifies the date by which elections under new sub-section (1A) are to be made for the purposes of section 36AAA. That date varies depending on whether the whole of the proceeds of the death of the live stock are received in one income year or not. Where the proceeds are received in the one income year, new paragraph (aa)(i) of section 36AAA(14) will require that the election be made on or before the date of lodgment of the return of income for that year. Where the proceeds to which the election relates are received in two or more income years, paragraph (aa)(ii) will require the election to be made on or before the date of the lodgment of the return of income for the last of those years. The Commissioner is authorised by existing provisions to extend the date for the lodgment of elections.

Paragraph (zx) of sub-clause (1) will insert four new sub-sections - sub-sections (20), (21), (22) and (23) - in section 36AAA. New sub-section (20) will define the term "the proceeds of the death of any live stock". By that sub-section the term will mean compensation moneys received by the owner of the live stock from the Commonwealth, a State or a Territory or their authorities for the death or destruction of the live stock (paragraph (a)) and any amount received by the owner of the live stock as payment for the carcases or any part of the carcases (paragraph (b)).

New sub-section (21) of section 36AAA defines the term "profit on the death of any live stock" which is used in the new provisions. In relation to any of the live stock that the primary producer held at the beginning of the income year in which the live stock died or were destroyed, the term means the value at which that stock is, for income tax purposes, to be taken into account at the beginning of that income year. In relation to any live stock that were purchased by the primary producer during the income year the term is to be taken to mean the purchase price of the live stock, and in relation to any live stock that were acquired by the producer during the income year other than by purchase (but not including live stock bred by the producer who owned them at the time they died or were destroyed) the amount that is deemed to be the purchase price of the live stock for the purposes of other provisions of the income tax law.

New sub-sections (22) and (23) are drafting measures. Sub-section (22) makes it clear that sub-section (21) has effect in determining the profit on the death of a particular species of live stock included in live stock that died or were destroyed and that where the profit on such a species is to be determined the reference in sub-section (21) to live stock shall be taken to be a reference to live stock of that species.

New sub-section (23) provides that in section 36AAA the term "year of income to which an election under sub-section (1A) relates" is to be taken as a reference to the year of income in which the live stock to which the election relates died or were destroyed. The purpose of this sub-section is to ensure that the proceeds of the death of the live stock will be assessable income of the year of death. The sub-section complements the proposed new paragraph (aa) to be inserted in sub-section (2) by paragraph (c) of clause 4(1).

Sub-clause (2) of clause 4 proposes that the amendments made by sub-clause (1) apply in relation to live stock that die or are destroyed on or after 1 July 1980.

Clause 5 : Depreciation

This clause proposes an amendment to section 54 of the Principal Act that is consequential upon the proposed insertion by clause 7 of a new section in the Principal Act - section 75C - that will provide for the immediate deductibility of expenditure in respect of certain stockyards and fences considered necessary to assist in the eradication and control of bovine brucellosis and tuberculosis.

Section 54 authorises deductions for depreciation in respect of plant used in producing assessable income. The section defines "plant" as including certain structural improvements on land used for the purposes of agricultural or pastoral pursuits where the cost of those items does not qualify for deduction under other specified sections of the Principal Act.

The cost of stockyards and fences that will qualify for immediate deductibility under the proposed section 75C is to be similarly excluded from the operation of section 54.

The clause will insert two new sub-sections - sub-sections (7) and (8) - in section 54. Sub-section (7) is designed, subject to sub-section (8), to preclude the allowance of a deduction for depreciation of a unit of property where expenditure incurred in respect of that property has been allowed, or, but for the expenditure having been recouped, would have been allowed, as a deduction to any person in any year of income under the provisions of the new section 75C.

This will mean that where a taxpayer is allowed a deduction under proposed section 75C, in respect of expenditure incurred on the acquisition or construction of fencing or of an extension, alteration or addition thereto, depreciation allowances will not be available in respect of that fencing to the taxpayer or to a subsequent purchaser of the fencing. The proposed denial of depreciation to a subsequent purchaser of a fence that has qualified for immediate deductibility in the hands of the vendor recognises that the vendor is not to be subject to any balancing adjustment on disposal of such a unit.

Sub-section (8) will, by rendering the provisions of sub-section (7) inoperative to the necessary extent, permit deductions by way of depreciation in respect of so much of the expenditure incurred by a taxpayer in respect of a unit of property as is not deductible under section 75C for a reason other than that the expenditure has been recouped. This situation could arise where a taxpayer enters into a contract to acquire a fence before a certificate is issued by the Secretary to the Department of Primary Industry as provided for by new section 75C but incurs additional expenditure on it, perhaps on an extension which is certified by the Secretary, and which is allowable under proposed section 75C.

In such a case, expenditure incurred under the original contract will qualify for normal depreciation under section 54 while the expenditure incurred before 1 July 1984 on the certified extension will qualify for deduction under section 75.

Clause 6 : Special depreciation on plant

This clause proposes the insertion in the Principal Act of a new section - section 57AG. The new section will authorise higher depreciation allowances in respect of most plant (including second-hand plant) acquired after 19 August 1980 and used by the taxpayer in the production of assessable income or installed ready for use for that purpose and held in reserve. It will enable taxpayers to be allowed deductions for depreciation on eligible plant at a rate that is 20 per cent higher than the rate that would otherwise apply under the depreciation provisions of the income tax law for plant of the relevant class.

Sub-section (1) of proposed section 57AG contains a definition of "plant" for the purposes of the section. "Plant" is given the meaning that it has in section 54 of the Principal Act, except that certain classes of motor vehicles are to be expressly excluded from the operation of the new section by virtue of paragraphs (a) to (c) of sub-section (1).

The term "plant" as defined in section 54(2) of the Principal Act has a wide meaning. In addition to property normally encompassed by the term, it includes, within limits, fences, dams and other structural improvements where used for agricultural or pastoral pursuits and structural improvements used for the purposes of forestry or pearling operations. Certain plumbing fixtures and fittings also fall within the definition of "plant".

The classes of motor vehicles (including such vehicles within those classes that are four wheel drive vehicles) that are to be ineligible for the accelerated depreciation allowances by virtue of the definition of "plant" in proposed section 57AG(1) are as follows -

(i) paragraph (a) - motor cars, station wagons, panel vans, utility trucks and similar vehicles;

(ii) paragraph (b) - motor cycles and similar vehicles; and

(iii) paragraph (c) - any other road vehicle designed to carry a load of less than 1 tonne or less than 9 passengers.

Trucks and lorries, for example, will qualify for the accelerated depreciation allowance if they are designed to carry loads of 1 tonne or more and meet the other requirements of the section. Buses, tourist coaches and similar vehicles that are designed to carry 9 persons or more will also qualify for the increased rate if they meet the other requirements of the section.

The classes of vehicles excluded from the definition of "plant" are identical with the classes of vehicles excluded from the operation of the investment allowance by section 82AF(2)(a) of the Principal Act.

Sub-section (2) of new section 57AG outlines the conditions under which that section is to apply. The accelerated depreciation is to be available in respect of "plant" owned by the taxpayer and which is otherwise eligible for normal depreciation under the income tax law.

Paragraph (a) of sub-section (2) further requires that the plant be acquired by the taxpayer under a contract entered into after 19 August 1980 or, where it is constructed by the taxpayer, that the construction be commenced after that date.

Paragraph (b) excludes from the operation of the new section some categories of plant for which concessional statutory rates of depreciation are provided in the income tax law under sections 55(2), 57AE and 73A(5) of the Principal Act. Sections 55(2) and 73A(5) respectively, prescribe depreciation rates of 33-1/3 per cent in relation to certain facilities and amenities provided by employers for employees and children of employees and for certain plant used for scientific research purposes. An annual rate of 20 per cent is set by section 57AE for structural improvements for the on-farm storage of grain, hay or fodder.

Sub-section (3) of proposed section 57AG is the operative provision for the purposes of the new accelerated depreciation allowances. In broad terms, the sub-section provides that property to which section 57AG applies (in these notes referred to as "eligible plant") is to be subject to depreciation for income tax purposes at a rate that is 20 per cent higher than the rate that would otherwise be ascertained as applicable to the plant by reference to its estimated effective life.

Section 54 of the Principal Act authorises deductions for depreciation of plant or articles owned by a taxpayer and used during the year of income for the purpose of producing assessable income or installed ready for use for that purpose and held in reserve. To fix the basic rate of depreciation of a unit of plant the Commissioner of Taxation is required by section 55(1) of the Principal Act to estimate the effective life of the unit concerned. (In practice, standard rates of depreciation for most recognised items of plant have been fixed by the Commissioner and are published in a document titled - "Depreciation, Income Tax Order No. 1217".)

As previously indicated, statutory rates of depreciation are provided in the income tax law for some special classes of plant. Except where statutory rates have effect, a taxpayer is given an option under section 56(1) of the Principal Act to have deductions for depreciation determined by reference to the cost of the plant (the prime cost method) or by reference to the depreciated value of the plant (the diminishing value method). In the latter instance, the rate allowed is one and one-half times the basic rate determined under section 55(1).

An option to adopt the prime cost method of depreciation, once made, will generally apply in assessments for all subsequent years unless the method of calculating the depreciation allowance is changed with the leave of the Commissioner given under section 57 of the Principal Act. A limited exception to this rule is contained in section 56A of the Principal Act which permits a further option to adopt the diminishing value method for certain taxpayers who had opted for the prime cost method up to the 1956-57 income year.

Sub-section (3) of proposed section 57AG provides that, notwithstanding anything contained in sections 55(1), 56(1), 56A or 57, the rate of depreciation that would otherwise apply by reference to the estimated effective life of an item of eligible plant is to be increased by a loading of 20 per cent of that rate. This loading will apply to both the prime cost and diminishing value methods of depreciation. For example, plant which would have been depreciable at a rate of 15 per cent (prime cost method) or 22½ per cent (diminishing value method) under the present law, will be depreciable at 18 per cent or 27 per cent respectively. New sub-section (3) is made subject to those sub-sections of section 56 that are anti-tax avoidance measures or that operate to prevent the taxpayer receiving a greater deduction for depreciation over the life of the plant than the cost to him of the plant, or that operate to reduce the deduction otherwise allowable where the plant is used for part only of the year. Where plant is used only partly for business purposes, an appropriate part of the basic depreciation allowance is deductible and in those cases, of course, section 57AG will result in the higher rate applying to that part.

Sub-sections (4) and (5) of proposed section 57AG are designed as safeguards against the re-arrangement of contracts to make it appear that property has been acquired under a legal obligation entered into after 19 August 1980 in circumstances where a contract for the acquisition of the property or substantially similar property had in fact been entered into by the taxpayer on or before 19 August 1980. The sub-sections are also expressed to apply in a case where the taxpayer commences construction of a 'substituted unit' after 19 August 1980.

Broadly stated, the operation of sub-section (4) will require that the Commissioner be satisfied that -

- the taxpayer entered into a contract on or before 19 August 1980 to acquire a unit of property (paragraph (a));
- after that date the taxpayer had substituted a different contract for the acquisition by the taxpayer, or commenced the construction, of an identical or substantially similar item with the intention that the substituted unit should be acquired or constructed, as the case may be, in lieu of the unit provided for by the pre-20 August 1980 contract (paragraph (b)); and

- the contract was made after 19 August 1980 for a purpose of obtaining a deduction for depreciation at the increased rate allowable under new section 57AG (paragraph (c)).

The sub-section empowers the Commissioner, in any case where he is satisfied that the circumstances are as specified, to refuse to allow the increased depreciation rate in respect of the relevant property.

Any exercise by the Commissioner of this power will be subject to the usual rights of objection and reference to a Taxation Board of Review.

Sub-section (5) of section 57AG provides a safeguard similar to that proposed by sub-section (4) that is designed to apply where a taxpayer, having commenced the construction of a unit of property on or before 19 August 1980 (being property that would not qualify for the increased rate of depreciation) seeks to re-negotiate or re-arrange matters so that the 20 August 1980 commencing date will not preclude a deduction for depreciation of the unit of property concerned at the increased rate allowable under proposed section 57AG.

Broadly, the operation of sub-section (5) will depend upon the Commissioner being satisfied that -

- the taxpayer commenced the construction of a unit of property on or before 19 August 1980 (paragraph (a));
- after 19 August 1980 the taxpayer commenced the construction of an identical unit of property or a substantially similar unit (in these notes referred to as the 'substituted unit') intended to be used by the taxpayer in lieu of the original unit (paragraph (b)(i)); or
- after 19 August 1980 the taxpayer entered into a legal obligation for the acquisition of the original unit, or of another identical or substantially similar unit (also referred to here as the 'substituted unit') intended to be used by the taxpayer in lieu of the original unit (paragraph (b)(ii)); and
- the taxpayer commenced the construction of the substituted unit or entered into the post-19 August arrangement for the acquisition of the original or substituted unit, as the case may be, for the purpose of obtaining the increased rate of depreciation allowable under this section (paragraph (c)).

The sub-section empowers the Commissioner, in any case where he is satisfied that the circumstances are as specified, not to allow the increased rate of depreciation in respect of the relevant unit. The taxpayer will have the same rights of objection, etc., in relation to any refusal of the Commissioner to allow the deduction as where the preceding sub-section is applied.

Sub-section (6) of section 57AG is a drafting measure to ensure that a reference in the section to the acquisition by a taxpayer of property is to be taken to include a reference to the construction of the property for the taxpayer by another person or other persons.

Clause 7 : Deduction of certain expenditure on fences

This clause proposes the insertion in the Principal Act of a new section - section 75C. The new section is designed to allow a taxpayer carrying on a business of primary production on land in Australia, an immediate deduction for expenditure incurred on the construction of stockyard or subdivisional fences where the Secretary to the Department of Primary Industry has certified that he is satisfied that it is desirable to construct the fences on the land for the purpose of assisting in the eradication or control of bovine brucellosis or tuberculosis. The deduction will be available where the expenditure is incurred following the issue of such a certificate and before 1 July 1984.

The new section is to contain appropriate safeguards against any exploitation. These will be patterned on safeguards that presently apply in a number of other provisions in the existing income tax law. The new section will also provide specifically for a reduction in the amount otherwise deductible where a taxpayer receives a total or partial recoupment of the expenditure incurred.

The provisions of the proposed section 75C are explained in more detail in the notes that follow.

Sub-section (1) of the new section 75C defines certain terms that are used in the section. The term "eligible expenditure" is defined in four parts. Paragraphs (a) and (b) relate to expenditure incurred by a taxpayer on the construction by the taxpayer of either a stockyard fence (paragraph (a)) or a subdivisional fence (paragraph (b)) on land in Australia on which, at the time the expenditure was incurred, the taxpayer carried on a business of primary production.

In each case, expenditure on a fence will qualify as "eligible expenditure" if it was incurred by the taxpayer before 1 July 1984 where -

(a) at the time the taxpayer first incurred expenditure in respect of the fence, there was in force in relation to the land a certificate issued by the

Secretary to the Department of Primary Industry relating to the type of fence; and

(b) the construction of the fence commenced on or after the date of issue of the Secretary's certificate and before 1 July 1984.

As a result, if a taxpayer incurs expenditure in respect of a fence to be constructed by him, either in the purchase of materials or on the actual erection of the fence, before a certificate is issued in respect of the fence, none of the expenditure in respect of the materials or the construction of the fence will qualify as "eligible expenditure". On the other hand, if expenditure in respect of a fence is first incurred when a certificate is in operation, the whole of the expenditure incurred before 1 July 1984 on construction by the taxpayer will qualify as "eligible expenditure" even if part of the expenditure is incurred after the date of effect of a notice of revocation given under sub-section (7).

Paragraphs (c) and (d) of sub-section (1) relate to expenditure incurred on the acquisition by a taxpayer of a stockyard fence (paragraph (c)) or a subdivisional fence (paragraph (d)) for use on land in Australia on which at the time the expenditure was incurred, the taxpayer carried on a business of primary production.

In these circumstances, expenditure in respect of a fence will qualify as "eligible expenditure" if it was incurred by the taxpayer before 1 July 1984 where -

(a) the expenditure was incurred under a contract entered into before that date; and

(b) at the time the contract was entered into there was in force in relation to the land a certificate issued by the Secretary.

Any expenditure incurred under a contract entered into after a certificate is revoked will not qualify as "eligible expenditure".

The reference to the acquisition by a taxpayer in paragraphs (c) and (d) of the definition of "eligible expenditure" is, by virtue of sub-section (3), to be read as including a reference to the construction of a fence for the taxpayer by another person or other persons.

Other terms defined in sub-section (1) are -

"prescribed disease" : this expression is defined as the disease of bovine brucellosis or bovine tuberculosis;

"Secretary" is defined as meaning the Secretary to the Department of Primary Industry;

"stockyard fence" is defined as meaning a fence enclosing a stockyard and includes loading ramps, races, cradles, crushes and other similar facilities for handling live stock;

"subdivisional fence" is defined as meaning a fence that subdivides land but does not include a stockyard fence, a boundary fence, or a fence along a public road, public stock route or other public right of way.

Sub-section (2) is a drafting measure designed to ensure that a reference in the section to a stockyard fence or a subdivisional fence includes a reference to an extension, alteration or addition to such a fence.

Sub-section (3) is designed to ensure that a reference in the section to the acquisition by a taxpayer of a stockyard fence or subdivisional fence is to include a reference to the construction of such a fence for the taxpayer by another person or other persons.

Sub-section (4) will authorise the Secretary to the Department of Primary Industry to issue to a person carrying on a business of primary production on any land in Australia a certificate which is necessary for the purposes of the operation of sub-section (1) if expenditure incurred by a taxpayer on stockyard fencing or subdivisional fencing on that land is to be classed as "eligible expenditure" and allowable as a deduction under the section.

Paragraph (a) of sub-section (4) authorises the Secretary to issue a certificate stating that he is satisfied that, on the date specified in the certificate as the date of issue of the certificate, it is desirable for the purpose of assisting in the control or eradication of brucellosis or tuberculosis that stockyard fences be constructed or used on the land specified in the certificate.

In making his decision to issue a certificate relating to stockyards, the Secretary is, in accordance with sub-section (5), to have regard to such matters as he considers relevant, including whether such fences or additional stockyard fences are necessary to facilitate testing for, or identifying a prescribed disease or for the loading of the live stock for transport for the purpose of controlling or eradicating a prescribed disease.

Paragraph (b) of sub-section (4) provides for the issue of a certificate where the Secretary is satisfied that it is desirable for subdivisional fencing to be constructed or used on land to assist in the control or eradication of a prescribed disease. In this case, sub-section (6) directs the Secretary to have regard to such matters as he considers relevant including whether subdivisional fences or additional fences of that type are necessary for the formation of paddocks for the holding or isolating of live stock for the purpose of controlling or eradicating a prescribed disease.

Paragraph (c) authorises the issue of a certificate by the Secretary in relation to both stockyard fences and subdivisional fences.

As outlined in the preceding paragraphs sub-sections (5) and (6) are to assist the Secretary in forming an opinion as to whether it is desirable to issue a certificate in relation to stockyard fences or subdivisional fences or both.

Sub-section (7) will give the Secretary the power to revoke a certificate issued under section (4) if he becomes satisfied that it is no longer necessary to make provision for the construction of relevant stockyard fences or subdivisional fences on the land in respect of which a certificate was issued. The notice of revocation is to be given in writing by the Secretary to the person who is at the time carrying on a business of primary production on the land and the revocation has effect from a date specified in the notice. This power of revocation will limit immediate deductibility in respect of the cost of fences to those fences that are necessary to facilitate the control or eradication of brucellosis or tuberculosis in cattle.

Sub-section (8) will be the operative provision of section 75C. It will authorise, subject to the succeeding provisions of section 75C, a deduction for eligible expenditure in respect of the income year in which it is incurred.

By sub-section (9), section 75C is not to apply to expenditure for which the taxpayer is, or becomes entitled to be, recouped from a government or other source unless the amount recouped forms part of the taxpayer's assessable income. A similar provision is contained in sections 75A and 75B of the Principal Act and aims to restrict the amount deductible to the net expenditure actually borne by the taxpayer.

Where the recoupment is received in a year of income subsequent to that for which the deduction is allowable, the Commissioner of Taxation is to be authorised to amend the taxpayer's earlier assessment (see clause 14).

Sub-section (10) is necessary to ensure that sub-section (9) may operate in a case where a taxpayer is reimbursed a single amount that relates partly to expenditure that other-wise qualifies for immediate deductibility and partly to expenditure that does not so qualify, and the amount in respect of the qualifying expenditure is not specified.

In these circumstances, the Commissioner is to be empowered, by sub-section (10), to determine the extent to which the total amount constitutes a reimbursement of expenditure otherwise eligible for immediate deductibility. A determination made by the Commissioner under sub-section (10) will be subject to the usual rights of objection by the tax-payer, and reference to an independent Taxation Board of Review.

Sub-section (11) is a special provision to cover the case where a partnership incurs the relevant expenditure. In these circumstances, the expenditure is not to be taken into account in the calculation of the net income of a partnership or a partnership loss, but each partner is to be deemed to have incurred so much of the expenditure incurred by the partnership as, by agreement between the partners, has been borne by each partner. Where the partners have not agreed as to the amounts of expenditure to be borne by the partners, the expenditure is deemed to have been incurred by each partner in proportion to his or her individual interest in the net income (or loss) of the partnership of the year of income in which the relevant expenditure was incurred. Each partner's proportion of the expenditure is to be deductible in the partner's own assessment, subject to the other provisions of section 75C.

Sub-sections (12) and (13) are designed as safeguards to counter any arrangements that seek to overcome the limitation of the new deduction to expenditure incurred on the acquisition or construction of a fence (referred to as the "relevant fence") on or after the date of issue of the certificate issued by the Secretary to the Department of Primary Industry.

These sub-sections are modelled on provisions contained in other sections of the Principal Act, for example, section 82AL which applies in relation to the investment allowance scheme. Stated shortly, the purpose of sub-sections (12) and (13) is to prevent the allowance of a deduction under new section 75C in respect of expenditure incurred on or after the date of issue of the Secretary's certificate where the incurrence of that expenditure is in consequence of a commitment made by a taxpayer before that date.

In broad terms, sub-section (12) applies to deny a deduction where a taxpayer has incurred eligible expenditure on a fence (referred to as the "relevant fence") under a contract (referred to as the "relevant contract") and the Commissioner is satisfied that the taxpayer entered into the relevant contract for a purpose of obtaining a deduction under section 75C although -

(a) the taxpayer had entered into a contract or arrangement for the acquisition of the relevant fence before the date of the Secretary's certification as provided for in sub-section (4) or commenced the construction of the relevant fence before that date; or

(b) the taxpayer had entered into a contract or arrangement for the acquisition of, or commenced the construction of, another fence in the same circumstances as outlined in paragraph (a), and the relevant fence is identical with, or has a purpose similar to that of the other fence and was intended by the taxpayer to be in lieu of the other fence.

Sub-section (13) is designed to apply, in similar circumstances to which sub-section (12) applies, where the Commissioner is satisfied that a taxpayer has, before the certificate by the Secretary is issued, acquired or commenced the construction of a fence and the relevant fence in respect of which the eligible expenditure is incurred is identical with or has a purpose similar to that of the other fence.

Sub-section (14) of proposed section 75C contains anti-avoidance provisions designed to overcome any attempted misuse of the new deduction through inflation of the amount of the expenditure incurred. Its provisions closely follow those of section 57AE(3) which governs the special deductions available to primary producers for on-farm structural improvements for the storage of grain, hay or fodder. The sub-section is to apply, broadly, where, in relation to expenditure that is eligible for the new concession, the Commissioner is satisfied that the parties were not dealing with each other at arm's length and the expenditure sought to be deducted exceeds the amount that would have been incurred had the parties dealt with each other on an arm's length basis. In these circumstances, the sub-section operates to deem the arm's length amount to be the amount of expenditure that, subject to the other provisions of the section, will qualify for immediate deductibility.

Clause 8 : Gifts, calls on afforestation shares, pensions, etc.

The purpose of this clause is to amend section 78(1)(a) of the Principal Act to provide an income tax deduction for gifts made to institutions that are certified by the Minister for Education as technical and further education institutions and to the Marcus Oldham Farm Management College, where the gifts are for certified purposes or for the provision of certified facilities (including residential accommodation) for those institutions and that college. The deductibility of gifts to a prescribed Commonwealth institution within the meaning of the Tertiary Education Commission Act 1977 is also proposed. At present the only institution so prescribed is the Australian Maritime College.

The clause also proposes the removal of certification processes that presently apply in respect of gifts to colleges of advanced education but which are no longer required.

Section 78 of the Principal Act authorises an income tax deduction for gifts of the value of $2 and upwards of money, or of property other than money that was purchased by a taxpayer within the 12 months preceding the making of the gift, to a fund, authority or institution specified in paragraph (a) of section 78(1).

Paragraph (a) of sub-clause (1) of clause 8 proposes to omit sub-paragraph (xliii) of paragraph (a) of section 78(1) that presently authorises a deduction for a gift to a prescribed institution of advanced education where the gift is made for purposes or facilities of those institutions that have been certified by the Minister for Education as relating to tertiary education. The institutions covered by this sub-paragraph are colleges of advanced education, which it is proposed will be specifically brought within the gift provisions by the insertion of new sub-paragraph (liv) below. This re-arrangement recognises changes that have occurred over recent years that have had the result that the colleges do not provide education at a level that is lower than that accepted as tertiary education. This has the consequence that it is no longer necessary to have the certification processes that presently attach to colleges of advanced education.

The first of the new sub-paragraphs proposed by paragraph (b) of sub-clause 8(1) is sub-paragraph (liv) which will authorise the allowance of deductions for gifts to a college of advanced education as defined in the Tertiary Education Commission Act 1977. As explained above, this proposed sub-paragraph will replace the present sub-paragraph (xliii) for the reasons that have been explained. Colleges of advanced education that will come within this paragraph are listed in a Schedule to the Tertiary Education Commission Act 1977.

The new sub-paragraph (lv) will permit the allowance of deductions for gifts to an institution that is certified by the Minister for Education as being a technical and further education institution as that term is defined in the Tertiary Education Commission Act 1977. To qualify for deduction it will be necessary for the gifts to be made for purposes or facilities of the institution that have been certified by the Minister as relating, broadly, to tertiary (post-secondary) education. Provision has been made in the certification process for the Minister to approve certain residential accommodation provided at certified technical and further education institutions as being a facility, gifts towards which may qualify for deduction.

Under the Acts Interpretation Act 1901 it is provided that where an Act confers a power to make, grant or issue any instrument, that power shall, unless the contrary intention appears, be construed as including a power to repeal, rescind, revoke, amend or vary any such instrument. Accordingly, as the Minister for Education is to be authorised to certify, by instrument signed by him, that an institution is a technical and further education institution it will be open to him to revoke or vary that certificate. Similar powers will be available to him in relation to certificates issued as to purposes and facilities of those institutions for which eligible gifts may be deductible.

Institutions which the Minister may certify as technical and further education institutions include a number of technical colleges and agricultural colleges.

The new sub-paragraph (lvi) will extend the deductions allowable under section 78(1)(a) in respect of gifts to cover gifts to an institution that is a prescribed Commonwealth institution as defined in the Tertiary Education Commission Act 1977. The only institution presently prescribed is the Australian Maritime College in Launceston.

New sub-paragraph (lvii) will authorise deductibility of gifts to a residential educational institution that is affiliated with a college of advanced education or a prescribed Commonwealth institution.

The new sub-paragraph (lviii) will permit the allowance of deductions for gifts to the Marcus Oldham Farm Management College where the gifts are made for certified purposes or for the provision of certified facilities for the college. "Certified purposes" and "certified facilities" are defined in the proposed new sub-section (5) and are explained in the notes on that new sub-section.

Paragraph (c) of sub-clause (1) proposes to omit sub-section (5) of section 78 of the Principal Act which provides for the certification processes now required to authorise deductions for gifts to prescribed institutions of advanced education, and to insert a new sub-section (5).

New sub-section (5) of section 78 defines "certified purposes" and "certified facilities" for the purposes of the new sub-paragraph (lv) relating to technical and further education institutions and the new sub-paragraph (lviii) that specifies the Marcus Oldham Farm Management College.

"Certified purposes" is defined to mean purposes of a certified technical and further education institution (or the College) as purposes that are certified by the Minister for Education to relate exclusively to tertiary education. The definition recognises that these institutions may provide both tertiary and secondary level courses. In these cases, gifts will be deductible only if made for tertiary education purposes.

"Certified facilities" is defined in relation to a certified technical and further education institution or the Marcus Oldham Farm Management College as meaning facilities (including residential accommodation) that are certified by the Minister for Education as being for use wholly or principally for certified purposes as defined. As explained above, this will mean that the facilities must be for use wholly or principally for purposes that relate exclusively to tertiary education.

By virtue of the operation of the Acts Interpretation Act 1901, the Minister for Education will have the power to revoke or vary a certificate issued by him in relation to such purposes and facilities.

By sub-clause (2) of clause 8, deductions for gifts to the institutions and colleges mentioned in sub-clause (1) will be available for gifts made after 19 August 1980.

Clause 9 : Limitation on certain deductions

Section 79C of the Principal Act operates to ensure that allowable deductions authorised by certain provisions of the Principal Act, broadly deductions that are in the nature of concessions, cannot give rise to a carry-forward loss. It does so by restricting the aggregate of the amounts that may be allowable as deductions under specified sections to the amount that would have been the taxable income for the income year had those deductions not been allowable and had there been no deductible carry-forward losses from previous years. The practical effect of section 79C is that deductions under the specified sections can reduce the taxable income of a person to nil but cannot create, or add to, an income tax loss for the year of income in relation to the taxpayer.

In line with this general approach, it is proposed that section 79C be amended by clause 9 so that the deductions authorised under the proposed section 82AAT (clause 10) in respect of superannuation contributions by certain self-employed or employed persons will also be unable to give rise to an income tax loss that may be carried forward to the next year in respect of the contributor.

Clause 10 : Contributions to superannuation funds by eligible persons

Introductory note

This clause proposes to insert a new Subdivision AB into Division 3 of the Principal Act comprising two new sections - sections 82AAS and 82AAT. The new Subdivision will authorise the allowance of special income tax deductions to eligible persons for amounts contributed after 19 August 1980 to certain classes of superannuation funds.

Broadly stated, persons eligible for the new concession will be persons in gainful occupations for whom no provision for superannuation benefits on retirement or death is funded by an employer or any person other than the taxpayer. Although the new provisions make no specific reference to persons in gainful occupations, the new deduction is restricted to contributions to paragraph 23(ja) funds and section 79 funds. Paragraph 23(ja) funds are available to self-employed persons while section 79 funds are available to self-employed persons and others in gainful occupations.

The special deduction, which is subject to a limit of $1,200 in any year of income, will be allowable in respect of contributions to a superannuation fund that meets basic qualifications necessary for exemption from income tax under paragraph 23(ja) of the Principal Act or that meets the requirements of section 79 of that Act.

Section 82AAS : Interpretation

The proposed section 82AAS contains certain definitions and requirements which relate to the eligibility of a person for the new deduction. For the purposes of the new Subdivision, "dependant" is defined in sub-section (1) to include the taxpayer's spouse and any child of the taxpayer. By section 6 of the Principal Act, a child is defined for general income tax purposes to include an adopted child, a step-child or an ex-nuptial child of the taxpayer.

It is intended that the new deduction only be allowable in respect of amounts paid as contributions to funds which meet the requirements of paragraph 23(ja) or section 79 of the Principal Act. For this purpose, the definition of "qualifying superannuation fund" limits eligible funds to two classes. Firstly, there are those whose income is exempt from tax under paragraph 23(ja) or which would have been exempt from tax had the fund met the requirement to hold 30 per cent of its assets, at cost, in public securities, including 20 per cent of its assets, at cost, in Commonwealth securities. The second category of eligible funds is that of funds which meet the requirements of section 79 of the Principal Act so as to be entitled to the statutory deduction under that section of 5 per cent of the cost of the specified assets of the fund.

Sub-section (2) of the new section 82AAS will deny eligibility for the special deduction to any person who in relation to the year of income is the object of superannuation support from an employer or some other person. This "support" may be given directly by way of specific contributions to a superannuation fund established for the benefit of the person or a class of persons of which he or she is a member. It may arise, indirectly, through the employer, or other person, undertaking through a scheme that a retirement benefit will be paid (whether or not a fund has been set aside) on the person's retirement from an office or employment, for example, as is the situation in some public sector schemes. Such "supported" employees are to be excluded from eligibility to obtain the new deduction, which is directed to persons who, in relation to the income year in which they make contributions to a paragraph 23(ja) or section 79 fund, do not have contributions or other superannuation payments made by someone else on their behalf.

Accordingly, sub-section (2) treats a person as an eligible person in relation to a year of income for the purposes of the new deduction unless paragraphs (a) and (b) are satisfied. These paragraphs, in combination, in effect describe who is a "supported" person. Paragraph (a) will be satisfied if there are circumstances existing in part or the whole of a year that make it reasonable to expect that the person will have superannuation benefits provided for him or her or for his or her dependants. Paragraph (b) will be satisfied if, to the extent that those expected benefits, when paid, are attributable back to the year, they would to any extent relate to contributions made to a superannuation fund for the person by another person, or would to any degree come out of moneys other than those representing the person's own contributions to a superannuation fund or public sector superannuation scheme (or earnings from those latter contributions).

A person who is unsupported in relation to part of the income year but who for another period of the year is supported, would be rendered ineligible for the deduction by virtue of sub-section (2). For the period that the person was without support, otherwise eligible contributions to a qualifying fund may have been made by the person. This could occur where a previously self-employed person takes up employment with an employer who has a staff superannuation scheme. It could also occur where an employee resigns to become self-employed.

To provide a means of dealing with this kind of transitional situation, the Commissioner of Taxation is to be given the power under proposed sub-section (3) to treat such a person as an eligible person in relation to the year of income. Paragraph (a) will require the Commissioner, in exercising this discretion, to have regard to the period of time in the income year or any preceding year for which the person had the benefit of employer support. Paragraph (b) will enable the Commissioner to also have regard to other matters which he considers relevant.

If, in the opinion of the Commissioner, after having regard to relevant matters, it is reasonable to do so, the person may be treated as an eligible person in relation to the year of income and so, accordingly, be able to deduct, within the annual limit of $1,200, amounts contributed to a qualifying fund during that year.

Section 82AAT : Deductions for superannuation contributions by eligible persons

The second section being inserted by clause 10 is proposed section 82AAT which is the operative provision that authorises the special deduction.

Sub-section (1) provides for a deduction against the assessable income of an eligible person, as defined in section 82AAS, for contributions made by that person after 19 August 1980 to a qualifying superannuation fund, as also defined in that section, being contributions made to obtain for the eligible person superannuation benefits or, in the event of the death of the eligible person, superannuation benefits for the dependants of that person. It is to be noted that the term "superannuation benefits" is defined generally in section 6 of the Principal Act to mean individual personal benefits, pensions or retiring allowances.

Sub-section (2) of proposed section 82AAT will prescribe the amount of $1,200 as the maximum annual deduction allowable under the section for superannuation contributions made by eligible self-employed and employed persons. As already explained in relation to clause 9, the deduction available under section 82AAT will not be capable of giving rise to a carry-forward loss for income tax deduction purposes.

It is also to be noted that, by virtue of an amendment to section 159R of the Principal Act proposed by clause 13, any excess of contributions over $1,200 to a qualifying fund in any income year is to be treated as rebatable expenditure within the separate limit of $1,200 covering life insurance premiums and superannuation contributions for purposes of the concessional expenditure rebate.

Clause 11 : Deduction under Subdivision to be in addition to other deductions

This clause proposes an amendment to section 82AM of the Principal Act that is consequential upon the insertion by clause 7 of a new section - section 75C - to authorise a deduction in the year the expenditure is incurred for the acquisition or construction of certain fences. Subject to certain specified exceptions, section 82AM operates so that investment allowance deductions under Subdivision B of Division 3 of Part III are available in addition to any other deduction allowable (e.g., by way of depreciation allowances) in respect of eligible investment allowance plant. At present, the investment allowance deduction is available in addition to normal depreciation for eligible expenditure incurred on subdivisional fences that are on land used for the purpose of carrying on a business of primary production.

By clause 11, a reference to new section 75C is to be inserted in sub-section (2) of section 82AM of the Principal Act. The effect of this amendment will be that an investment allowance deduction will not be allowed to a person in respect of expenditure on subdivisional fences which is allowable in full in the one year under section 75C. This accords with the general rule that the investment allowance is not available in respect of plant that qualifies for immediate deductibility.

Clause 12 : Partnerships

Section 90 of the Principal Act defines the "net income" of a partnership to be the assessable income derived by the partnership, calculated as if it were a resident taxpayer, less all allowable deductions except concessional deductions and deductions allowable in respect of undeducted losses incurred in prior years. "Partnership loss" is similarly defined to mean any excess of allowable deductions over the assessable income of the partnership, again on the footing that the partnership is a resident taxpayer and excluding from the calculation any concessional deductions or deductions in respect of prior years' losses.

The amendment to section 90 which this clause proposes is consequential on the amendments proposed by clause 10 and will make clear that the special deduction in respect of personal superannuation contributions to be provided under proposed section 82AAT is to be allowed only in the assessment of the individual contributor to an eligible superannuation scheme.

The special deduction for superannuation contributions under new section 82AAT is to be confined to payments by the contributor for the provision of superannuation benefits for the contributor and his or her dependants upon his or her retirement or earlier death or permanent incapacity. In other words, the concession is personal to the member of the superannuation scheme.

Clause 13 : Life insurance premiums, etc.

Within an annual overall limit of $1,200, section 159R of the Principal Act authorises the inclusion of life insurance premiums and superannuation contributions in the categories of eligible rebatable expenditure for the purposes of the concessional rebate of 32 per cent of the excess over $1,590 of all rebatable expenditure incurred by a taxpayer.

Clause 13 proposes to amend section 159R so that an amount or amounts contributed to a qualifying superannuation fund by an eligible person that qualifies for the new special deduction under the proposed new section 82AAT (clause 10) do not also qualify as rebatable expenditure under section 159R. In other words, the amendment is required so that one amount of expenditure cannot attract the benefit of both income tax concessions. Where the amount contributed by an eligible person does not attract a deduction under section 82AAT, for example, to the extent that it exceeds the $1,200 annual limit proposed under the new section, the undeducted amount of contribution would, within the separate overall limit of $1,200 for life insurance premiums and superannuation contributions contained in section 159R, qualify as rebatable expenditure for the purposes of that section. Thus, an eligible superannuation contribution of, say, $1,700 made by a taxpayer in an income year would, if other relevant conditions are satisfied, qualify the taxpayer for a deduction of $1,200 under section 82AAT and for the balance of $500 to be treated as rebatable expenditure for the purpose of section 159R.

Clause 14 : Amendment of assessments

This clause will amend section 170 of the Principal Act which governs the power of the Commissioner of Taxation to amend income tax assessments. Sub-section (10) of section 170 provides that nothing in the section is to prevent the amendment of an assessment at any time for the purpose of giving effect to specified provisions of the Principal Act.

Clause 14 will insert in section 170(10) a reference to section 36AAA, which it is proposed by clause 4 to amend to allow an alternative basis of assessment in respect of proceeds from the death or destruction of live stock in relation to the control or eradication of certain diseases. Where an election is lodged under section 36AAA the whole of the proceeds, which would otherwise be assessable in the year of receipt, are assessable in the year of income in which the live stock died or were destroyed. The amendment to section 170(10) will allow the Commissioner to amend an assessment at any time to give effect to the proposed operation of section 36AAA, which may require income to be excluded from the assessable income of a year and included in the assessable income of another year in which the live stock died or were destroyed.

Clause 14 will also insert in section 170(10) a reference to the new section 75C that is proposed to be inserted in the Principal Act by clause 7 of the Bill. As amended, section 170(10) will enable the Commissioner to give effect to section 75C by amending, at any time, an assessment, for example, of a taxpayer who has been recouped expenditure that has been allowed as a deduction under section 75C in an assessment of income of a year of income that preceded that in which the recoupment is received. It will also allow an amendment to give effect to any operation of the safeguarding provisions.

Clause 15 : Reduction of provisional tax

This clause will make two amendments to section 221YDC of the Principal Act, which authorises the Commissioner of Taxation to reduce the amount of provisional tax where due to specified circumstances, it is likely that the income tax that will be payable in respect of a year will be less than the provisional tax that, on the basis of the tax for the previous year, would otherwise be payable. The amendments will insert two additional circumstances in which the provisional tax may be reduced.

The first of the proposed amendments relates to provisional tax to be paid by a beneficiary in a trust estate who is under a legal disability, such as a minor, who also derives income from another source. In such cases, the beneficiary's share of the income of the trust estate which is subject, in the trustee's hands, to tax under section 98 of the Assessment Act (and to provisional tax), is also subject to tax in the beneficiary's hands under section 100 of the Assessment Act (and to provisional tax). Section 100(2) avoids double taxation of the income concerned by allowing credit in the beneficiary's assessment for the tax paid or payable by the trustee, but specific provision is not made for a corresponding credit in relation to provisional tax. The amendment proposed by paragraph (a) of this clause will make it clear that the Commissioner may reduce provisional tax payable by a beneficiary in these circumstances by taking into account provisional tax paid or payable by the trustee on the relevant income.

Paragraph (b) of clause 15 proposes the insertion of new sub-section (2) in section 221YDC to authorise the Commissioner to reduce provisional tax payable by minors, or trustees for minors, who have been liable (under Division 6AA of Part III of the Principal Act) to tax at higher rates on income of one income year, but in respect of whom it is likely that those higher rates will not be applicable for the next year. For example, a taxpayer who was seventeen years of age at the end of one year of income will be eighteen by the end of the succeeding year, and thus no longer a person to whom Division 6AA applies.

Clause 16 : Provisional tax for financial year 1980-81

The purpose of this clause, which does not amend the Principal Act, is to specify the basis for calculating 1980-81 provisional tax of taxpayers who do not "self-assess". Broadly, the provisional tax is to be calculated by applying 1980-81 rates of tax to 1979-80 taxable incomes as increased by 7.5 per cent, with rebates for dependants, to sole parents and for a housekeeper, being taken into account (including for zone allowance purposes) at their increased 1980-81 values.

Where a taxpayer chooses to self-assess, i.e., to have 1980-81 provisional tax based on his or her own estimate of 1980-81 income, the provisional tax will be, basically, the amount calculated by applying 1980-81 rates of tax to that estimated income and by deducting estimated 1980-81 rebates.

For primary producers who do not self-assess, the clause will require that, for provisional tax purposes, any averaging rebate to which the primary producer is entitled be recalculated using 1979-80 taxable income (as adjusted for any income equalisation deposits or withdrawals) as increased by 7.5 per cent. 1980-81 rates of tax will be applied as will the average income for 1979-80 taxation purposes - the average income itself will not be increased to reflect the 7.5 per cent increase in taxable income. If a primary producer qualified for a part only of the averaging benefit in 1979-80 (i.e., where his or her income other than from primary production in that year exceeded $5,000) the clause will require, in effect, that the proportion of the recalculated averaging benefit to be allowed in calculating 1980-81 provisional tax is to be the same as that allowed in calculating 1979-80 tax payable, that is, it is not to be reduced to reflect the notional 7.5 per cent increase in income other than from primary production.

For taxpayers deriving a notional income as specified by section 59AB (depreciation recouped), section 86 (lease premiums), or section 158D (abnormal income of authors or inventors) of the Assessment Act, the clause will have the effect that, unless they self-assess, their provisional tax, before deduction of rebates, is to be calculated by applying to their 1979-80 taxable income increased by 7.5 per cent, the 1980-81 rate of tax applicable to their 1979-80 notional income, that is, the rate of tax is not to be increased to reflect a 7.5 per cent increase in notional income.

For taxpayers who were minors, (i.e., under 18 years of age) at 30 June 1980 and who were liable for tax for 1979-80 under the new arrangements applying to minors (i.e., the minor's eligible taxable income for the purposes of Division 6AA of Part III of the Assessment Act for that year was greater than $1,040) the proportion of the taxable income, as increased by 7.5 per cent, that is to be taken as being eligible taxable income, for purposes of the provisional tax calculation, is to be the same as that which the 1979-80 eligible taxable income of the taxpayer bore to his or her taxable income for that year.

Of course, if a taxpayer derives salary or wage income in addition to income on which provisional tax is payable, section 221YC(1A) of the Principal Act enables the provisional tax otherwise payable to be appropriately adjusted.

INCOME TAX (INDIVIDUALS) BILL 1980

This Bill will formally impose the tax payable in respect of income derived by individuals, and by trustees generally, during the 1980-81 income year and will, as is customary in such a Bill, formally impose 1980-81 provisional tax. It is complementary to the Income Tax (Rates) Act 1976, which declares the rates of tax to apply to such taxpayers.

As the Bill is similar to the Income Tax (Individuals) Act 1979, the following notes are confined to those clauses of the Bill which differ in practical effect from the provisions of that Act.

Clause 5 : Imposition of income tax

Sub-clauses (1) and (2) have the effect, when read with clause 6, of formally imposing income tax payable by individuals and trustees for the 1980-81 financial year at the rates declared for that year by the Income Tax (Rates) Act 1976. The rates of tax declared for 1980-81 are as follows:

Parts of Taxable Income

Exceeding $	Not Exceeding $	Standard Rate %	Surcharge %	Total %
4,041	17,239	32	Nil	32
17,239	34,478	32	14	46
34,478	-	32	28	60

The tax payable may be calculated from the following table.

Parts of Taxable Income

Exceeding $	Not Exceeding $	Tax on Total Taxable Income
0	4,041	Nil
4,041	17,239	Nil + 32 cents for each dollar of taxable income in excess of $4,041
17,239	34,478	$4,223.36 + 46 cents for each dollar of taxable income in excess of $17,239.
34,478	-	$12,153.30 + 60 cents for each dollar of taxable income in excess of $34,478.

Clause 6 : Levy of tax

This clause operates to formally levy the tax imposed by clause 5 of the Bill in respect of the 1980-81 financial year and, until the Parliament otherwise provides, for the 1981-82 financial year.

INCOME TAX (COMPANIES AND SUPERANNUATION FUNDS) BILL 1980

The main purpose of this Bill is to impose income tax for the 1980-81 financial year, at the rates declared in the Bill, on the 1979-80 incomes of companies and the 1980-81 incomes of superannuation funds.

Other rates of income tax payable for the 1980-81 financial year - by individuals and by trustees generally - have been declared by the Income Tax (Rates) Act 1976 and are to be imposed by the Income Tax (Individuals) Bill 1980. The "branch profits" tax that is payable by non-resident companies is imposed by the Income Tax (Non-Resident Companies) Act 1978.

Apart from one rate change for superannuation funds to which section 121DA of the Assessment Act applies - referred to below - the practical effect of the present Bill will be the same as the Income Tax (Companies and Superannuation Funds) Act 1979 which declared and imposed the rates of income tax payable by companies and superannuation funds for the 1979-80 financial year.

The rates of income tax declared by this Bill for the 1980-81 financial year are as follows:

- by clause 6, the general rate of tax on taxable income of companies is to remain at 46 per cent;
- by clause 6, the rate of tax payable by a friendly society dispensary on its taxable income is to remain at 41 per cent;
- by clause 6, the rate of additional tax payable by a private company on the amount by which dividends paid fall short of a sufficient distribution remains at 50 per cent;
- by clause 7, the rate of tax payable on investment income of a superannuation fund that does not, under the "30/20" rule, invest a sufficient proportion of its assets in public securities remains at 46 per cent;
- by clause 7, the rate of tax on certain taxable income of superannuation funds to which section 121CA or 121CB of the Assessment Act applies is to remain at 50 per cent;
- by clause 7, the rate of tax on income of trusts qualifying as superannuation funds to which section 121DA of the Assessment Act applies is to be 60 per cent instead of the rate of 61.07 per cent applicable to 1979-80 income.

The latter reduction is related to the reduction to 60 per cent under the Income Tax (Rates) Act 1976, in the rate of tax payable for 1980-81 under section 99A of the Assessment Act in respect of trust income to which no beneficiary is presently entitled, broadly, income that is being accumulated in the trust.

In the past, the rate of tax applicable under sections 99A and 121DA has been the same. A trust qualifies as a superannuation fund to which section 121DA applies simply if it answers the description of being a "provident, benefit, superannuation or retirement fund". A fund to which section 121DA applies, unlike a superannuation fund to which section 121CA or section 121CB applies, does not attract any special taxation treatment.

Clause 11 of the Bill relates to instalments of company tax. Clause 11 will authorise the collection of instalments in the 1981-82 financial year in accordance with relevant provisions of the Assessment Act. The first of 3 instalments is to be due not earlier than 15 August 1981.

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