1980

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INCOME TAX ASSESSMENT AMENDMENT BILL (NO. 6) 1980

EXPLANATORY MEMORANDUM

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

15905/80 Cat. No. 80 4448 4—Recommended retail price 55c

General outline

The Bill will give effect to three of the taxation initiatives foreshadowed in the Prime Minister's Policy Speech for the recent elections.

These are the initiatives for a special depreciation allowance for new plant used by primary producers and for new fishing vessels and fishing equipment; for immediate deductibility of capital expenditure on soil conservation on land in Australia being used for primary production; and removal of the specific exclusion from the investment allowance of amusement or recreation plant. The Bill also proposes to correct some minor drafting errors in the legislation that was enacted earlier this year to introduce the 40 per cent oil-fired conversion allowance.

Special depreciation on new property used in agricultural, pastoral, forestry and fishing operations
(Clauses 3, 6 and 7)

A special depreciation provision will authorise the writing-off, in equal instalments over five years, of the cost of new items of plant and machinery that are used wholly and exclusively in agricultural or pastoral pursuits, or in forestry operations. The new allowance is also to apply to plant in the form of fishing vessels, fishing equipment and shore-based plant used wholly and exclusively in fishing operations. The accelerated write-off will be available for eligible plant and machinery acquired under a contract entered into after 30 September 1980, or which the taxpayer commenced to construct after that date.

Structural improvements, and motor vehicles designed primarily for the transport of persons, will not attract the special 20 per cent rate of depreciation; nor will plant that is purchased second-hand. Also, any property for which the law provides a statutory rate of depreciation higher than 20 per cent will not come under the new provisions.

Taxpayers will be able to elect to have normal rates of depreciation apply to individual plant items instead of the 20 per cent rate, if they so wish. Such an election ordinarily must be made at the time of lodgment of the income tax return in which depreciation is first claimed for the plant or machinery. Once made, an election will be irrevocable.

Deductions for capital expenditure by primary producers on soil conservation
(Clauses 4, 8, 9, 13 and 14)

It is proposed to enact new provisions that will provide immediate deductibility for capital expenditure incurred by a primary producer on a range of soil conservation operations on land in Australia that is being used in primary

production. Expenditure that qualifies for the deduction is not also to qualify for the investment allowance.

Under the present law, expenditures related to soil conservation may be deductible over a period of years. In the case of expenditure on the fencing of erosion or saline affected land, the cost of the fencing is depreciable under the general provisions of the law. In the case of other eligible conservation measures, the cost is deductible by equal instalments over ten years.

Eligible conservation measures are the eradication or extermination of animal or vegetable pests, destruction of detrimental weed or plant growth, draining of swamp or low-lying land, prevention and combating of soil erosion, erection of fences to exclude livestock or vermin from areas affected by erosion or excessive salinity and the construction of levee banks.

The proposed amendments will permit the expenditures in question to qualify for immediate deductibility if incurred after 30 September 1980 under a contract entered into after that date or, where the operation is carried out by the taxpayer, if the operation commenced after that date.

Investment allowance
(Clauses 10 to 12)

It is proposed to amend the investment allowance provisions of the income tax law to remove the present exclusion of plant used for purposes of amusement or recreation. This is to be achieved by withdrawing paragraph (f) of section 82AF(2) which presently applies to exclude from the scope of the allowance plant for use in amusement or recreation, including plant for use in connection with sport, gaming or gambling and public entertainment such as circuses and theatres.

In addition, the related exclusion from the investment allowance of expenditure on plumbing fixtures and fittings associated with the provision of recreational and similar facilities for employees is to be withdrawn.

Plant thus brought within the scope of the investment allowance by the amendments will be subject to the general deductibility requirements of the allowance, for example, that the plant be used wholly and exclusively in Australia for the production of assessable income and that the plant not be let out on short-term hire.

The proposed amendments will apply to expenditure incurred on or after 1 October 1980 on property acquired under a contract entered into on or after that date. For property constructed by the taxpayer, the amendments will apply to expenditure incurred on or after 1 October 1980 in respect of construction commenced on or after that date.

Notes on individual clauses of the Bill follow.

Clause 1 : Short title, etc.

This clause provides formally for the citation of the amending Act and for the Income Tax Assessment Act 1936 to be referred to as the Principal Act.

Clause 2 : Commencement

By section 5(1A) of the Acts Interpretation Act 1901, every Act is to come into operation on the twenty-eighth day after the day on which the Act receives the Royal Assent unless the contrary intention appears in the Act. By this clause, it is proposed that the amending Act shall come into operation on the day on which it receives the Royal Assent.

Clause 3 : Divisible deductions

This clause proposes technical amendments to section 50G, one of the "current year loss" provisions of Subdivision B of Division 2A of Part III of the Principal Act. These amendments are consequential upon the new section 57AH proposed by clause 7 to authorise depreciation over five years in respect of new plant and machinery used for the purposes of agricultural, pastoral, forestry or fishing operations.

In broad terms, the current year loss provisions divide an income year into "relevant periods" that are separated by a "disqualifying event". A disqualifying event occurs during an income year with the occurrence of a 50 per cent or greater change in shareholders' dividend, voting or capital rights (the "continuing ownership" test), or of one of a number of circumstances designed to avoid the continuing ownership test. A net loss incurred in one such relevant period is not to be off-set against a net income derived during another relevant period of the same year unless the company satisfies the continuing ownership test or, where there has been a disqualifying change in ownership, the alternative "same business" test.

For these purposes, section 50G describes a category of deductions as "divisible deductions" and directs how such deductions are to be taken into account under the current year loss provisions.

Among the deductions treated as a divisible deduction is the deduction under section 57AE in respect of storage facilities for hay, grain or fodder. Such facilities are depreciable over five years and clause 3 will amend section 50AG so that it will operate in the same way in relation to deductions under proposed section 57AH.

By sub-clause (2) of clause 3, the amendments made by sub-clause (1) will first apply to income tax assessments of a company for a year of income in which 1 October 1980 occurred.

Clause 4 : Depreciation

This clause proposes an amendment to section 54 of the Principal Act that is consequential upon the proposed insertion, by clause 9, of a new section in the Principal Act - section 75D - that will provide for the immediate deductibility of capital expenditure on certain soil conservation operations.

Section 54 authorises deductions for depreciation in respect of plant used in producing assessable income. The section defines "plant" as including fences, dams and certain structural improvements on land used for 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 "plant" that will qualify for immediate deductibility under the proposed section 75D is to be similarly excluded from the operation of section 54.

Clause 4 will insert two new sub-sections - sub-sections (9) and (10) - in section 54. Sub-section (9) is designed, subject to sub-section (10), 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 75D.

This will mean that where a taxpayer is allowed a deduction under proposed section 75D, in respect of expenditure incurred on the acquisition or construction of a unit of property or an extension thereto, depreciation allowances will not be available in respect of that unit or extension to the taxpayer or to a subsequent purchaser of the unit or extension. The proposed denial of depreciation to a subsequent purchaser of a unit of property 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 (10) will, by rendering the provisions of sub-section (9) 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 75D for a reason other than that the expenditure has been recouped. This situation could arise, for example, where a taxpayer had

acquired fencing materials before 1 October 1980 and, subsequent to that date, entered into a contract to have a fence erected, using those materials, around an erosion-affected area.

In such a case, expenditure on the materials used in the fencing, having been acquired before 1 October 1980, will qualify for normal depreciation under section 54, while the balance of the expenditure incurred after 1 October 1980 on the erection of the fence will qualify for deduction under section 75D.

Clause 5 : Calculation of depreciation

This clause will amend section 56(3) of the Principal Act in consequence of the enactment earlier this year, by the Income Tax Assessment Amendment Act (No. 2) 1980, of provisions which authorise a deduction of 40 per cent of the cost of replacing oil-fired equipment with equipment that operates on non-oil energy sources. Subject to certain exceptions, the 40 per cent conversion allowance is additional to any other deduction (including depreciation) allowable in respect of the relevant property under the Principal Act.

Broadly stated, section 56(3) of the Principal Act is to the effect that, for the purposes of calculating depreciation allowances, the cost of plant is to be reduced by any part of the cost for which income tax deductions (other than depreciation allowances) are allowed or allowable. As at present enacted, section 56(3) would require that the cost of plant qualifying for the 40 per cent conversion allowance be reduced, for the purpose of calculating depreciation allowances, by the amount of the allowable conversion allowance deduction.

The amendment to section 56(3) proposed by sub-clause (1) of clause 5 will overcome this drafting oversight and ensure that, calculating depreciation allowances in respect of an item of plant, the cost of that plant will not be taken as being reduced by any deduction allowable in respect of that plant by way of the conversion allowance.

By sub-clause (2), the amendment proposed by sub-clause (1) will apply to assessments in respect of income of the year of income in which 22 August 1979 occurred and to assessments for all subsequent income years. Thus, the amendment will apply as if it had been included in the original 40 per cent conversion allowance legislation.

Sub-clause (3) will ensure that the Commissioner of Taxation has authority to re-open an income tax assessment made before this Bill becomes law if that should be necessary to ensure that depreciation allowances are not affected by any entitlement to a conversion allowance in respect of a particular item of plant.

Clause 6 : Special depreciation on plant

This clause proposes an amendment to section 57AG of the Principal Act consequential upon the proposed insertion in the Principal Act, by clause 7, of a new section - section 57AH - to allow a special 20 per cent rate of depreciation, on a prime cost basis, on new plant and machinery that is used wholly and exclusively in primary production activities. Under section 57AG, depreciation on plant to which that section applies is allowable at a rate that is 20 per cent higher than the rate that would otherwise apply for income tax purposes.

Paragraph (b) of section 57AG(2) excludes from the operation of section 57AG, and thus from eligibility for the 20 per cent loading, certain categories of property for which statutory rates of depreciation are provided in the income tax law. Among these are structural improvements for the on-farm storage of grain, hay or fodder (for which a special 20 per cent rate is prescribed by section 57AE of the Principal Act). It is proposed by the amendment being made by clause 6 that plant that will qualify for the 20 per cent special rate of depreciation in accordance with new section 57AH be treated in the same way. That is, such plant is not also to be eligible for the 20 per cent loading applicable to general depreciation rates under section 57AG.

Clause 7 : Special depreciation on property used for primary production

This clause proposes to amend the Principal Act to insert in it a new section - section 57AH - to authorise a special depreciation allowance for new items of machinery and other plant that are used wholly and exclusively in agricultural or pastoral pursuits, or in forest operations. The new allowance is also to apply to new plant in the form of fishing vessels, fishing equipment and shore-based plant used wholly and exclusively in fishing operations. New section 57AH will enable taxpayers to write-off the cost of eligible new equipment in equal instalments over a period of five income years. A taxpayer's entitlement to the investment allowance in respect of plant that will qualify for the special depreciation allowance will not be affected by the new depreciation allowance.

The special depreciation allowance is to apply to new plant and machinery acquired under a contract entered into on or after 1 October 1980, or which the taxpayer commenced to construct after that date. It will not apply to second-hand plant; structural improvements; motor cars, station wagons, motor cycles and other motor vehicles designed primarily and principally for the transport of persons; or plant for which the income tax law provides a statutory rate of depreciation higher than 20 per cent a year.

Depreciation under new section 57AH will be allowable in the income year in which the new plant is first used for the purpose of producing assessable income, or is installed ready for use for that purpose and held in reserve, and in each of the four succeeding income years. Taxpayers will, if they so wish, be able to elect not to have the special rate of depreciation apply to individual items of plant, but to have ordinary rates apply instead.

Sub-section (1) of the new section 57AH sets out the general conditions under which the special depreciation allowance will apply to a unit of property. Paragraph (a) of that sub-section requires that the relevant plant be a unit of property in respect of which the taxpayer is entitled in the year of income to a depreciation allowance under section 54 of the Principal Act. Depreciation is allowable under section 54 in respect of plant which is owned by the taxpayer and which, during the relevant income year, is either used by the taxpayer for the purpose of producing assessable income or is installed ready for use for that purpose and held in reserve.

Paragraph (b) of proposed section 57AH(1) specifies that, to be eligible for the special rate of depreciation, the unit of property must not, at any time during the year of income when it was owned by the taxpayer, have been used (or installed ready for use) otherwise than in agricultural or pastoral pursuits, forest operations or fishing operations. That is, the unit of property has to be used wholly and exclusively in primary production (including forest and fishing) activities to qualify for the special depreciation allowance. Section 6 of the Principal Act defines what is meant by the terms "forest operations" and "fishing operations".

Under paragraph (c) of proposed section 57AH(1), the special depreciation allowance is to apply to a unit of property that is acquired by the taxpayer under a contract entered into on or after 1 October 1980 or, if the unit was constructed by the taxpayer, the construction of which commenced on or after 1 October 1980.

Paragraph (d) of proposed section 57AH(1) requires that, at the time when the eligible item of plant was acquired by the taxpayer or at the completion of its construction by the taxpayer, it be a new unit of property. Sub-section (11) defines what is meant by "new" for this purpose.

Sub-section (2) of proposed section 57AH specifies certain categories of property that will not qualify for the special depreciation allowance under the section. These are -

(a) structural improvements;

(b) motor cars, station wagons, motor cycles and other motor vehicles (including four-wheel drive vehicles) that are designed for the transport of persons; and

(c) plant that is eligible for depreciation at statutory rates under sections 55(2) or 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.)

Sub-section (3) of proposed section 57AH sets out the special basis for allowing depreciation under section 54 on plant to which the new provision is to apply, in lieu of the basis for depreciation deductions otherwise available under section 54 in accordance with sections 55, 56, 56A and 57 of the Principal Act. Broadly, the depreciation deductions that are allowable in accordance with those sections are based on rates of depreciation that will result in the cost of the particular item being written-off over its estimated effective life. These rates are then generally increased by 20 per cent by the operation of section 57AG, which will, however, by the amendment being made by clause 6, not apply to plant to which the new provision is to apply.

Under paragraph (a) of proposed section 57AH(3), the annual depreciation allowance in respect of an eligible unit of property will be 20 per cent of its cost. By reason of paragraph (b), the special 20 per cent depreciation will first be allowed in the year of income during which the unit is first used for the purpose of producing assessable income or is installed ready for use for that purpose and held in reserve. There will be no pro-rating of the special allowance, so that the full 20 per cent allowance will be available in respect of a year of income in cases where the particular unit is first used part-way through that year.

Paragraph (c) of section 57AH(3) will prevent the special 20 per cent rate of allowance from being allowed over more than 5 years.

Under sub-section (4) of proposed section 57AH, a taxpayer may elect not to have the special rate of depreciation otherwise available under that section apply to particular items of plant. Where such an election is made, ordinary rates of depreciation will apply instead.

Sub-section (5) sets out the conditions under which an election authorised by sub-section (4) is to be made. Paragraph (a) of sub-section (5) requires an election to be made by notice in writing to the Commissioner of Taxation.

Such notice must, by virtue of paragraph (b) of sub-section (5), ordinarily be lodged with the Commissioner by the date of lodgment of the taxpayer's return of income for the year in which depreciation allowances are first available. However, paragraph (b) empowers the Commissioner to extend the time for lodgment of an election.

Sub-section (6) of proposed section 57AH contains anti-avoidance provisions designed to counter any attempted exploitation of the special 20 per cent rate of depreciation through inflation of the cost of eligible new plant. Corresponding provisions are contained in sections 56(4) and 62(3) of the Principal Act which operate in relation to depreciation allowances under the general provisions of the Act.

Sub-sections (7) and (8) of proposed section 57AH are modelled on provisions contained in other sections of the Principal Act, for example, section 82AL which applies in relation to the investment allowance. They are designed as safeguards against the limitation of the new deduction to plant acquired under contracts entered into on or after 1 October 1980 being overcome by any rearrangement of contracts to make it appear that property has been acquired under a legal obligation entered into on or after 1 October 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 before that date. The sub-sections are also expressed to apply in a case where a taxpayer commences construction of a 'substituted unit' on or after 1 October 1980.

Sub-section (9) of section 57AH is a drafting measure under which, in applying sub-sections (6), (7) and (8), a reference to a unit of property is to be taken to include a reference to a portion of a unit of property.

Sub-section (10) of section 57AH is also 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 someone else.

As specified in paragraph (d) of proposed section 57AH(1), the special rate of depreciation available under that section is only to apply to "new" plant and equipment. For that purpose, the word "new" is defined in sub-section (11) to exclude from that term second-hand plant, including plant previously acquired, or held, by any person for use by that person. The definition also ensures that the special rate of depreciation will not apply to plant that has been reconditioned or rebuilt.

Clause 8 : Deduction of certain expenditure on land used for primary production

This clause will remove from the scope of section 75A of the Principal Act items of expenditure that, by reason of new section 75D being inserted in the Principal Act by clause 9, are to become immediately deductible.

Under section 75A, deductions, in equal annual instalments over 10 years, are available for (among other things) capital expenditure on soil conservation operations on land used for primary production and in respect of which deductions are not allowable under other provisions (e.g., the general depreciation provisions) of the Act.

Specifically, paragraphs (a), (c), (f) and(g) of section 75A(1) authorise deductions for expenditure incurred on the eradication or extermination of animal or vegetable pests from the land (paragraph (a)); on the destruction of weed or plant growth detrimental to the land (paragraph (c)); on the drainage of swamp or low-lying land where that operation improves the agricultural or grazing value of the land (paragraph (f)); and on preventing or combating soil erosion on the land (paragraph (g)).

Proposed new section 75D will allow expenditure of these kinds that is incurred on or after 1 October 1980 to be eligible for immediate deduction in the year in which it is incurred. Other capital expenditures presently within the scope of section 75A, such as expenditure incurred in the preparation of the land for agriculture or in the ploughing and grassing of the land for grazing purposes, will remain within the scope of that section.

Sub-clause (1) of clause 8 proposes the omission of paragraphs (a), (c), (f) and (g) of section 75A(1), as expenditures presently falling for consideration under those paragraphs will, with one qualification, in future be immediately deductible under proposed new section 75D. Sub-clause (1) will also insert a new paragraph - paragraph (f) - in section 75A(1). New paragraph (f) will continue the ten-year write-off under section 75A(1) for anti-flooding expenditures allowable at present under paragraph (g) of that section which are not to be allowable under new section 75D. That is, new paragraph (f) will now cover expenditure incurred in preventing flooding on land other than by the construction of levee banks or improvements of a similar nature.

By sub-clause (2), the amendment proposed by sub-clause (1) is to apply to expenditure incurred on or after 1 October 1980 if it is not expenditure that is incurred under a contract entered into before that date, and is not expenditure that is incurred by a taxpayer on a soil conservation operation of a kind to which new section 75D applies that was commenced before that date. These arrangements conform with the commencement arrangements proposed for new section 75D.

Clause 9 : Deduction of expenditure on soil conservation

This clause proposes the insertion in the Principal Act of a new section - section 75D - to authorise an immediate deduction for capital expenditure on soil conservation measures on land in Australia, when incurred by a taxpayer who carries on a business of primary production on the land. The new deduction is to apply to expenditure incurred on or after 1 October 1980 in pursuance of a contract entered into on or after that date, or where the operation is carried out by the taxpayer, commenced on or after that date.

Under the present law, expenditures related to soil conservation may be deductible over a period of years. In the case of expenditure on the fencing of erosion or saline affected land and on dams and certain structural improvements for soil conservation purposes, the cost of the unit is depreciable. In the case of other eligible conservation measures, the cost is deductible by equal instalments over ten years.

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

Sub-section (1) of new section 75D specifies in paragraphs (a) to (f) the types of expenditure which will, subject to the other provisions of the section, qualify for immediate deductibility if incurred by a taxpayer carrying on a business of primary production on land in Australia. Briefly, these are expenditures on measures for the eradication or extermination of animal or vegetable pests (paragraph (a)); on the destruction of detrimental weed or plant growth (paragraph (b)); on draining of swamps or low-lying land (paragraph (c)); on the prevention or combating of soil erosion (paragraph (d)); on the erection of erosion-control fences to exclude livestock or vermin from areas affected by erosion or excessive salinity (paragraph (e)) and on the construction of levee banks (paragraph (f)).

Expenditure that is to qualify under new section 75D excludes expenditure on extending a soil conservation operation, as well as the original operation. Thus, expenditure incurred in enlarging a levee bank or in extending an erosion-control fence for the purpose of excluding livestock or vermin from areas affected by soil erosion will, subject to the other provisions of the section being met, be eligible for immediate deduction.

Sub-section (2) is the operative provision of proposed section 75D. It authorises, subject to the succeeding provisions of the section, a deduction for eligible expenditure on soil conservation operations in respect of the income year in which the expenditure is incurred.

Sub-section (3) makes it clear that immediate deductions under section 75D are those incurred in the soil conservation measures that are the subject of the operations identified in paragraphs (a) to (f) of sub-section (1). Accordingly, expenditure on an otherwise depreciable item is not to fall within section 75D unless the item is a fence, dam or other structural improvement that represents a soil conservation measure as described in sub-section (1).

By sub-section (4), proposed section 75D 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. Similar provisions are contained in sections 75A, 75B and 75C of the Principal Act and aim 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 (5) is necessary to ensure that sub-section (4) may operate in a case where a taxpayer is reimbursed in a single amount that relates partly to expenditure that otherwise qualifies for immediate deductibility under the section 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 (5), 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 (4) will be subject to the usual rights of objection by the taxpayer, and reference to an independent Taxation Board of Review.

Sub-section (6) effectively sets the date from which expenditure on soil conservation measures is to qualify for immediate deductibility. It provides, in effect, that a deduction is not to be allowed under section 75D in respect of expenditure incurred on a soil conservation operation if the expenditure is incurred under a contract entered into before 1 October 1980 or, if the soil conservation operation (or extension to such an operation) is carried out by the taxpayer, the operation (or extension) was commenced before that date.

Sub-section (7) is to apply where after expenditure is incurred in a year of income on a soil conservation operation (or an extension to such an operation) on a primary producer's land, the land is used during the year of income for a purpose other than the carrying on of a business of primary production.

In such circumstances, the Commissioner is to be empowered by sub-section (7) to reduce the deduction otherwise allowable under proposed section 75D by an amount that is fair and reasonable.

Sub-section (8) meets 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 the partnership or the 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 to be 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 deemed proportion of the eligible expenditure is to be deductible in the partner's own assessment.

Sub-section (9) contains customary anti-avoidance provisions designed to counter any attempted exploitation of the new deduction through inflation of the amount of the expenditure incurred. Corresponding provisions are contained in sections 56(4) and 62(3) of the Principal Act, which operate in relation to depreciation allowances under the general provisions of the Act, and in section 75B (expenditure on conserving or conveying water).

Sub-sections (10) and (11) of proposed section 75D (like sub-sections (7) and (8) of proposed section 57AH being inserted by clause 7) follow similar provisions contained elsewhere in the Principal Act. They are designed as safeguards against arrangements to get around the limitation of the immediate deduction for expenditure on soil conservation to operations carried out under contracts entered into on or after 1 October 1980, e.g., by rearrangement of a contract to make it appear that an operation was carried out under a legal obligation entered into before 1 October 1980 in circumstances where a contract for the carrying out of the operation or a substantially similar operation had in fact been entered into by the taxpayer before that date.

Paragraph (a) of sub-section (12) is designed to ensure that a reference in sub-sections (10) and (11) to the carrying out by the taxpayer of an operation is to include a reference to the carrying out of that operation for the taxpayer by another person or persons. By paragraph (b) of sub-section (12), a reference in sub-sections (10) and (11) to a contract or arrangement entered into by a taxpayer for the carrying out of an operation is to include a reference to a contract or arrangement for the supply of goods or the provision of services in connection with such an operation.

Sub-section (13) is a drafting measure which avoids the need for repeated references in sub-sections (10), (11) and (12) to a part of an operation or an extension of an operation. It provides that a reference in sub-sections (10), (11) and (12) to an operation will include a reference to a part of such an operation and an extension of such an operation.

Clauses 10 to 12 : Investment allowance

Clauses 10 to 12 will amend the provisions of Subdivision B of Division 3 of Part III of the Principal Act so that plant for use in connection with amusement or recreation, or certain related activities, may qualify for the investment allowance.

Presently, plant for use in amusement or recreation (including sport, gaming or gambling and public entertainment) and plumbing fixtures and fittings associated with the provision of recreational and similar facilities for employees are specifically excluded from the investment allowance by paragraph (f) of section 82AF(2) and paragraph (a) of section 82AE of the Principal Act. Those exclusions are to be withdrawn by the amendments now proposed.

Plant brought within the scope of the investment allowance by those amendments will remain subject to the general requirements of the investment allowance provisions and to the existing safeguards against abuse of the allowance. Expenditure on new amusement or recreation etc. plant which satisfies those requirements will qualify for an investment allowance deduction at the current 20 per cent rate, subject to the general phasing-in arrangements for items of plant costing less than $976.

The proposed amendments will apply with respect to expenditure incurred on or after 1 October 1980 on the acquisition of eligible plant under a contract entered into on or after that date, or on plant which the taxpayer commenced to construct on or after that date.

Clause 10 : Subdivision not to apply to certain structural improvements

Clause 10 will substitute a new paragraph (a) in section 82AE of the Principal Act, with the aim of removing the present exclusion of plumbing fixtures and fittings associated with the provision of recreational and similar facilities for employees.

Section 82AE provides that, with the exception of certain kinds of structures specified in the section, the investment allowance is not available in respect of structural improvements.

Paragraph (a) of section 82AE ensures that new plumbing fixtures and fittings associated with employees' wash-rooms, rest rooms etc. may qualify for the allowance. However, by the proviso to that paragraph fixtures and fittings associated with facilities provided for employees to engage in entertainment, amusement or gambling or cultural, sporting or recreational pursuits are specifically excluded from the scope of the investment allowance.

By the amendment proposed by clause 10, the present proviso to paragraph (a) is, in effect, to be withdrawn.

Clause 11 : Subdivision not to apply to certain property

Clause 11 proposes to omit paragraph (f) of section 82AF(2) of the Principal Act. Section 82AF operates to exclude specified categories of property from the investment allowance and the effect of the amendment proposed by clause 11 will be to remove the present exclusion of plant for use in, or primarily and principally in connection with -

- amusement or recreation (existing paragraph (f)(i));
- sport (including the racing of animals or vehicles), or physical exercise or any similar activities (existing paragraph (f)(ii));
- gaming or gambling (existing paragraph (f)(iii)); and
- public entertainment, such as circus performances, music, plays, dancing or exhibition of films in cinemas (existing paragraph (f)(iv) and (v)).

Plant brought within the scope of the investment allowance by the amendments proposed by clauses 10 and 11 will qualify for the investment allowance deduction only where the remaining eligibility requirements of the investment allowance provisions are met. (See notes on clause 12.)

Clause 12 : Application of amendments made by clauses 10 and 11

Clause 12, which will not amend the Principal Act, will give effect to the proposal that 1 October 1980 is to be the commencement date for the removal of the present specific exclusion from the investment allowance of plant for use in amusement or recreation or similar activities.

The broad effect of clause 12 will be that the investment allowance provisions are to apply in respect of amusement or recreation plant as if those provisions had first had effect from 1 October 1980. In doing that, certain safeguards and transitional provisions associated with the general introduction of the investment allowance with effect from 1 January 1976 will also be applied to amusement or recreation plant, with effect from 1 October 1980.

Later detailed notes refer only to those investment allowance provisions in respect of which it is necessary, by virtue of clause 12, to relate their operation specifically to the 1 October 1980 commencement date. It should be recognised, however, that other existing conditions of eligibility that are independent of any commencement date will apply equally to amusement or recreation etc. plant. Those other provisions include, for example, those related to -

- the exclusion of structural improvements and certain specified items of plant, e.g., motor cars, motor cycles and other road vehicles designed to carry a load of less than one tonne or less than 9 passengers (sections 82AE and 82AF);

- the ability of leasing companies to forgo the right to all, or part, of the investment allowance in favour of the lessee-user of the relevant property (section 82AD);

- safeguards against disposal of the relevant property within twelve months of installation or use of the property for non-qualifying purposes (sections 82AG to 82AH).

To qualify for the investment allowance, amusement or recreation plant must meet the general tests of being for use by the taxpayer wholly and exclusively in Australia and solely for the purpose of producing assessable income. As in the case of plant generally, amusement or recreation plant will not qualify if it is for use in producing assessable income in the form of rental income by leasing or hiring out the property, by letting it on hire under a hire-purchase agreement or by granting another person a right to use the property. (A taxpayer who acquires property under a hire-purchase agreement is regarded as the owner of the property for the investment allowance.)

Again, amusement or recreation plant that is leased by a leasing company to a lessee, will need to meet the condition that the plant be for use by the lessee wholly and exclusively in Australia and solely for the purpose of producing assessable income. Leased amusement or recreation plant will qualify for the allowance only where the lease is a long-term lease (section 82AQ) entered into on or after 1 October 1980 by a leasing company in the course of carrying on business in Australia and where the lease is entered into by the leasing company and the lessee at arm's length. (Paragraph (a) of clause 12 and section 82AA of the Principal Act.)

Another effect of paragraph (a) is that capital expenditure on a new unit of property for use in amusement or recreation may qualify for the investment allowance deduction

where the expenditure is incurred on or after 1 October 1980 in respect of plant that is either -

- acquired by the taxpayer under a contract entered into on or after 1 October 1980 and before 1 July 1985; or

- constructed by the taxpayer and the construction of which commenced on or after 1 October 1980 and before 1 July 1985.

As with other classes of plant qualifying for the allowance, the amount of expenditure on any item of plant must exceed $500 and the eligible plant must be first used or installed ready for use before 1 July 1986. (Paragraph (b) of clause 12 and section 82AB(1).)

Where a new unit of property for use in amusement or recreation satisfies the general eligibility requirements, an investment allowance deduction will be available in the year of income in which the plant is first used or installed ready for use on the following basis (paragraphs (c) and (d) of clause 12) -

- where the eligible expenditure in respect of an item of plant is less than $526 (and more than $500) the rate of the allowance will be 1 per cent of the eligible expenditure;

- where the eligible expenditure is between $526 and $975 (inclusive), the rate of the allowance will be 1 per cent plus 1 per cent for each whole $25 by which the eligible expenditure exceeds $501;

- where the eligible expenditure is $976 or more the full 20 per cent rate of allowance is to be applicable.

As in the case of plant generally, the investment allowance is to be available only in respect of new amusement or recreation etc. plant. Property that was held by a taxpayer, or was in the course of being constructed for or by a taxpayer, prior to 1 October 1980 will be outside the scope of the scheme. Such property will not attract the allowance if transferred to another taxpayer on or after 1 October 1980. However, where a person held property for sale as trading stock before 1 October 1980 this will not prevent the plant qualifying for the investment allowance in the hands of a purchaser. (Paragraph (f) of clause 12 and section 82AF(4).)

Special rules which have applied in relation to the eligibility of leased plant since the introduction of the investment allowance from 1 January 1976 are to apply

similarly to leased amusement or recreation plant, but substituting a 1 October 1980 commencement date. (Paragraph (b) of clause 12 and section 82AB(7) and (8).)

Other rules associated with leased plant will be introduced in keeping with transitional measures adopted for the introduction of the investment allowance in 1976. One of these relates to the operation of section 82AD of the Principal Act which applies to enable the benefit of the investment allowance to be passed on by a lessor to the lessee where a declaration to that effect is lodged, lodgment generally being required by the eighth day after the end of the month in which the agreement was entered into. Because eligibility of amusement or recreation plant is to apply from 1 October 1980, declarations lodged in respect of lease agreements entered into by 1 January 1981 may be lodged by 8 January 1981 (paragraph (e) of clause 12 and section 82AD), and the Commissioner is empowered to grant extended time for lodgment.

Another of the transitional measures will ensure that a person who, in the interim period between 1 October 1980 and the date of commencement of the amending Bill, has entered into a leasing arrangement that would not satisfy the requirements of the investment allowance provisions - either because the lease is for a term less than the four-year required minimum or because the lease is not with a qualifying leasing company - is given the opportunity to satisfy those requirements. (Paragraphs (h) and (j) and section 82AP.)

For this purpose such a lessee may come to arrangements with the lessor to enter into an extended lease agreement, or alternatively to purchase the leased property, by 31 December 1980 or such later date as the Commissioner permits.

Existing safeguards against attempts to secure an investment allowance for expenditure that is, in effect, incurred as a consequence of a commitment made before the general 1 January 1976 commencement date for the allowance will be extended so as also to apply to expenditure commitments on the acquisition or construction of amusement or recreation plant entered into before 1 October 1980. (Paragraph (g) of clause 12 and section 82AL.)

Clause 13 : Deduction under Subdivision to be in addition to certain other deductions

This clause proposes an amendment to section 82AM of the Principal Act that is consequential upon the insertion in that Act, by clause 9, of a new section - section 75D - to authorise a deduction, in the year the expenditure is incurred, for expenditure by a primary producer on soil conservation measures.

By clause 13, a reference to new section 75D is to be inserted in section 82AM(2). The effect of this amendment will be that an investment allowance deduction will not be allowed to a primary producer in respect of expenditure incurred on the erection of fences to exclude livestock from areas affected by soil erosion or salinity, such expenditure being allowable in full in the year of income under section 75D. This accords with the general rule that the investment allowance is not available in respect of plant that qualifies for immediate deductibility under other provisions of the Principal Act.

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 Act.

Clause 14 will insert in section 170(10) a reference to sub-section (4) of new section 75D which clause 9 of the Bill proposes be inserted in the Act. As amended, section 170(10) will enable the Commissioner to give effect to section 75D(4) by amending, at any time, the assessment of a taxpayer who has been recouped expenditure that has been allowed as a deduction under section 75D in an assessment of income of a year of income that preceded that in which the amount of recoupment is received.

Printed by Authority by the Commonwealth Government Printer