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LOAN (INCOME EQUALIZATION DEPOSITS) AMENDMENT BILL 1984

EXPLANATORY MEMORANDUM

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GENERAL OUTLINE

The Loan (Income Equalization Deposits) Amendment Bill 1984 amends the Loan (Income Equalization Deposits) Act 1976.

The broad purpose of the Bill is the same as that of the Principal Act; that is, to provide primary producers with an incentive to set aside income in high income years for use in lower income years. The particular purpose of the Bill is to change the basis of that incentive from an income tax deferral (with interest paid on the tax deferral as well as the investment component) to a concessionary interest rate applying to eligible deposits.

That interest rate (identified as the Class A rate) will be two percentage points above the short term bond rate, adjusted each calendar quarter.

Ineligible deposits will receive interest at a rate three percentage points below the short term bond rate (identified as the Class B rate).

As far as possible, the eligibility criteria and provisions relating to withdrawal and making of deposits have remained the same as those applying under the Principal Act. However, one important aspect in which eligibility will be determined

differently under the new legislation is that depositors will be required to provide self-estimates, for the current income year, of the income amounts which form the eligibility criteria. This is necessary because the concessionary element, that is, the highest interest rate, will often be paid before the precise levels of those income amounts can be determined by the Commissioner of Taxation.

Interest will be initially paid on the basis of self-estimates. The Authorized Person under the Bill will recoup any overpayments of interest when the Commissioner's determination is known. Unwitting overestimation will not be penalised; in fact deposits made according to overestimates will be withdrawable immediately the Commissioner's determination is known. Overestimation with intent to defraud is an offence under the Bill.

Under the Bill, depositors who hold IEDs made before 1 September, 1983 (identified as Class C deposits) will be able to convert their deposits into the new scheme. If the conversion application is made within 60 days of commencement of the amending legislation, such conversions will have effect from 1 September, 1983 and interest will be paid on the deposits concerned at the Class A or Class B rate, whichever is applicable, as from that date. Sucn conversions will be deemed to be withdrawn Class C deposits and will be subject to income tax as if the withdrawal had taken place on 1 September, 1983. Conversions of Class C deposits into

deposits at the Class A or B rate which occur after 60 days from commencement will have effect, for interest and taxation purposes, as at the date of receipt of the conversion application.

The administrator for the scheme is described as the Authorized Person who, from 1 January, 1985, will be the Secretary of the Department of Primary Industry. The Authorized Person will receive self-estimates of the relevant income measures from depositors. The Authorized Person will then forward to the Commissioner a list of depositors, requesting determinations of the relevant income amounts in respect of each depositor for the purposes of calculating revised interest entitlements. Depositors will be informed of the assessed income measures by way of a certificate from the Authorized Person.

The Bill provides for prosecution in cases where depositors do not notify the Authorized Person of the cessation of primary production business - that is, of eligibility for the concessionary interest rate.

The Bill contains provisions for appeals against certain administrative decisions to be made to the Administrative Appeals Tribunal.

The Bill contains a secrecy provision relating to information provided by depositors, or by the Commissioner of Taxation, to the Authorized Person.

NOTES ON CLAUSES

CLAUSE 1. SHORT TITLE

Self explanatory

CLAUSE 2. INTERPRETATION

This clause sets out definitions of a number of words and expressions for the purposes of the Bill. Those definitions not explained below are self explanatory.

'Class A interest deposit limit' is the maximum amount a depositor can deposit in respect of an income year and which will receive the highest interest rate available under the scheme.

'Class A interest rate' is the highest interest rate payable on deposits under the scheme and is two percentage points above the short term Treasury Bond rate, the definition and determination of which is explained below. This concessionary interest rate is intended to provide incentive for primary producers to make deposits in high income years.

'Class B deposit' broadly means deposits made after 1 September, 1983, but which, for one reason or another (see below), are not eligible for the highest interest rate offered under the scheme. Some deposits which do not fall

within the Class B deposit definition will receive the Class B interest rate. Such deposits comprise deposits made by primary producers but which fall outside the Class A interest deposit limit in respect of the period in which they were made.

'Class B interest rate' is the rate payable on Class B deposits and on primary producer deposits which fall outside the Class A interest deposit limit. The Class B interest rate is set at three percentage points below the short term Treasury Bond rate. This margin is set as a discouragement to non-primary producers who might otherwise seek to take advantage of the scheme and also to discourage primary producers seeking to deposit more than their entitlements.

'Class C deposit' means deposits made before 1 September, 1983 which are not converted into Class A or Class B deposits.

'Class C interest rate' is the rate payable on Class C deposits. The rate is seven and one half per cent per annum until 1 September, 1984. It will then decrease by two percentage points on 1 September each year until it reaches zero (on 1 September, 1987), in order to encourage conversion into Class A or B deposits and thereby to bring to account unrecouped income tax deductions.

'conversion application' means an application to transfer from Class C deposits into Class A or B deposits or from Drought Bonds into Class A or B deposits.

'conversion deposit' means a Class A or B deposit which results from the conversion of a Class C deposit or Drought Bond.

'gross receipts from primary production' is one of the criteria on which the Class A interest deposit limit is based. It is not defined for any purpose other than for Income Equalization Deposits and the definition may eventually be withdrawn from the Income Tax Assessment Act. To allow for this possibility, the definition is made with reference to its inclusion in the Assessment Act at the time of commencement of this Act.

'owner' means either the depositor, or the beneficiary of a trust estate who is under a legal disability and who has had a deposit made on his behalf by the trustee. Other beneficiaries, who are eligible by way of a trust's primary production business, are required to deposit on their own behalf.

'primary producer deposit' means a deposit made by a primary producer on or after 1 September, 1983 or that part of a primary producer's Class C deposits which is converted and in respect of which an unrecouped income tax deduction exists

(partial conversions are pro-rated by the proportion of the total deposits in respect of which an unrecouped income tax deduction exists) or that part of a primary producer's Drought Bonds in respect of which an unrecouped deduction exists (pro-rated as above.) In short, primary producer deposits include new deposits made by primary producers on or after 1 September, 1983 and the Class A entitled portion of conversion deposits.

'reduced taxable income' determines, as the alternative criterion to a proportion of gross receipts from primary production, the Class A interest deposit limit in respect of a depositor in respect of any income year.

The definitions of the 'qualifying bond series', 'last declared bond series', 'shortest term bond series' and 'lowest yield bond series' are necessary to define the short term bond rate which determines the interest rates to apply to Class A and Class B deposits.

'qualifying bond series' means a Treasury Bond series with a maturity of less than five years, offered at tender in the preceding quarter.

'last declared bond series' means the most recent qualifying bond series.

'lowest yield bond series' means the qualifying bond series which was (were) allotted at the lowest weighted average yield.

'shortest term bond series' means the qualifying bond series with the shortest term to maturity.

'short term bond rate' refers to the weighted average yield of successful bids for the relevant Treasury Bond series offered at tender. The relevant Treasury Bond series is the shortest series on offer at the last Treasury Bond tender held in any calendar quarter. In the unlikely event that more than one Bond series of the same maturity (less than five years) are offered at the last Treasury Bond tender in a quarter, the relevant Bond series is the series carrying the lowest yield. Where no Treasury Bond series with a maturity of less than five years is offered in a quarter, the Treasurer will determine the rates of interest applying to deposits in relation to the following quarter, on the basis of secondary market yields in two year Treasury Bond trading, immediately prior to the end of a previous quarter.

Sub-Clause (f) allows, during the year of income, the use of the depositor's estimates of relevant income amounts for the purposes of determining elgibility for the Class A interest rate, until such time as the Commissioner of Taxation determines the relevant income amounts.

CLAUSE 3. BORROWING BY ACCEPTING DEPOSITS

Sub-section 4(4) of the Principal Act is omitted because the Bill provides the mechanism under which interest rates will be set under the new scheme.

CLAUSE 4.

INTEREST PAYABLE IN RESPECT OF DEPOSITS (PROPOSED SECTION 4A)

Proposed Section 4A specifies the interest rates to apply to different categories of deposits.

The Class A interest rate will apply, and will continue to apply, to non-conversion deposits which lie within the Class A interest deposit limit in respect of the income year in respect of which the deposit was made. The Class A interest rate will also apply and continue to apply to primary producer conversion deposits.

Non-primary producer conversion deposits will receive the Class B rate, as will new deposits which fall outside the Class A interest deposit limit.

Deposits which were made before 1 September 1983, and which are not converted, will receive the Class C rate.

Where a depositor ceases to carry on the business of primary production and does not recommence such business within 120 days, the depositor will lose any entitlement to Class A interest in respect of all deposits as of the date of cessation of primary production business. This provision restricts the concessionary interest element to depositors who carry on a business of primary production in the period to which the interest payment relates. It allows a reasonable period for such circumstances as moving from one farm to another or between different activities within the primary production sector.

The maximum amount of deposits (including conversion deposits) held by any one depositor which may earn the Class A interest rate is $250,000.

Because the Class B interest rate is three percentage points below the short term bond rate in respect of any quarter, and in order to disallow the possibility that the Commonwealth could receive monies in respect of Class B deposits if the short term bond rate were below 3%, the Class B interest rate is limited to a minimum level of zero.

CLASS A INTEREST DEPOSIT LIMIT (PROPOSED SECTION 4B)

The Class A interest deposit limit determines the amount of new deposits a depositor may make in respect of any income year at the Class A interest rate. Conversions of existing

deposits made under the old scheme into the new are not subject to the Class A interest deposit limit in any income year (the $250,000 maximum limit does, however, apply).

The Class A interest deposit limit in respect of a depositor in respect of an income year is the lesser of:

- taxable income, other than taxable income from property, (ie reduced taxable income of the income year); and

- sixty percent of gross receipts from primary production of the income year.

These eligibility criteria for the subsidy element of the scheme (along with the requirement to be a primary producer) are the same as those which applied under former arrangements.

Where a depositor makes an application to deposit in the first two months of an income year, the depositor may elect to have eligibility for Class A interest in respect of that deposit relate to the previous year's Class A interest deposit limit. Such elections are possible for any number of deposits made in the first two months of an income year, so long as a depositor has not already made deposits related to the current year's estimated Class A deposit limit. The Class A interest rate is payable, if applicable, on deposits made under such an election from the date of receipt of the application, in the normal way. This provision is included

(as was one of similar effect in the taxation legislation under former arrangements) so that depositors may take advantage of the IED scheme when they are best able to ascertain their financial position, and will be more likely to have receipt of income earned in respect of activities during an income year; that is, in the period immediately following the end of an income year.

ESTIMATES OF RELEVANT INCOME AMOUNTS (PROPOSED SECTION 4C)

Proposed Section 4C requires the provision, by depositors, of self-estimates of relevant income amounts upon which the Authorized Person bases the calculation of initial interest payments, and to which the depositor may refer when deciding upon the level of his new deposits.

Depositors may revise their self-estimates at any time.

In the case of a legally disabled beneficiary of a trust estate, the trustee is required to estimate relevant income amounts on behalf of the beneficiary.

Such estimates are necessary because the income equalization feature of the scheme requires deposits to be made on the basis of the current year's income (or, at the depositor's election, that of the year just ended). In order to ascertain the appropriate interest payment in respect of recent deposits, some basis of assessment is necessary until

the Commissioner's determinations of relevant income amounts are made; that basis is the depositor's (or trustee's) self-estimates.

DETERMINATION OF RELEVANT INCOME AMOUNTS (PROPOSED SECTION 4D)

Proposed Section 4D requires the Commissioner of Taxation to provide to the Authorized Person, on request, determinations of the relevant income amounts in respect of depositors. The Authorized Person is required to communicate such determinations to depositors. Determinations in respect of legally disabled beneficiaries will be furnished to the trustee.

Where a depositor is dissatisfied with the Commissioner's determination, he may within 60 days of receipt of the determination, object to the Authorized Person, who must forward such an objection to the Commissioner who is obliged to consider it. The Commissioner must notify the depositor through the Authorised Person whether or not he decides to alter a determination. If the Commissioner's response to the depositor's objection has no effect on, or increases either of the relevant income amounts, the depositor has no further right of objection. If the determination made in response to the depositor's objection decreases either of the relevant income amounts, the depositor may again object to the determination.

A determination which has been made, or has been amended due to a depositor's objection, may be amended by the Commissioner at his own instigation once only and within two years from the date of the original determination or from the date of the determination made in response to a depositor's objection.

The effect of proposed Section 4D is to allow the depositor and the Commissioner the right to have a determination amended once (except where an amendment is unfavourable to the depositor) and thereby to limit the extent to which variations in the correct level of interest payment can take place.

CLAUSE 5. RECORDS RELATING TO DEPOSITS

Self explanatory.

CLAUSE 6. DEPOSITS ON BEHALF OF BENEFICIARIES OF TRUST ESTATES

This clause withdraws the requirement, which existed under the Principal Act, that only beneficiaries of deceased trust estates may have deposits made on their behalf by the trustee in respect of the primary production business of the trust where the beneficiary suffers a legal disability. There is no reason to limit this arrangement to deceased estates any longer, because there are no taxation consequences under the Bill.

CLAUSE 7. CONVERSION OF STOCK AND PRE-SEPTEMBER 1983 DEPOSITS

This clause replaces Section 12 of the Principal Act and allows for the conversion of Drought Bonds and Class C deposits (ie those made before 1 September, 1983) into Class A or B deposits. Where an application for conversion of Class C deposits is made within 60 days of commencement of the amending legislation, the conversion will be deemed to have taken place on 1 September, 1983. Interest will be payable from that date at the Class A or B rate, whichever is applicable.

Depositors holding Class C deposits have been paid at the Class C rate in respect of the period 1 September, 1983 until 29 February, 1984. If those depositors transfer within 60 days of commencement they will receive a backdated interest cheque in respect of the above period, representing the difference between the Class C rate and the Class A or Class B rate, whichever is applicable.

Applications for conversion of Class C deposits which are made after 60 days from commencement, or for conversions of stock, will be deemed to be Class A or B deposits from the date of receipt of the application.

CLAUSE 8. REPAYMENT WITHIN 12 MONTHS ON GROUND OF FINANCIAL DIFFICULTIES

Section 16 of the Principal Act allows for repayment of deposits within 12 months where the depositor can show financial difficulty which did not arise from circumstances existing at the time the deposit was made.

Clause 8 provides that the period for which a converted Class C deposit or Drought Bond was held as a Class C deposit or Drought Bond is taken into account when determining whether or not the deposit has been held for 12 months.

CLAUSE 9. REPAYMENT OF DEPOSITS AFTER EXPIRATION OF 12 MONTHS

Section 17 of the Principal Act provides for repayment of deposits on request by the depositor at any time after the deposit has been held for twelve months.

Clause 9 provides that the period for which a converted Class C deposit or Drought Bond was held as a Class C deposit or Drought Bond is taken into account when determining whether or not the deposit has been held for 12 months.

CLAUSE 10. REPAYMENT OF CLASS C DEPOSITS IN RESPECT OF WHICH NO INCOME TAX DEDUCTION HAS BEEN ALLOWED

This clause ensures treatment of non-converted Class C deposits only under Section 18 of the Principal Act; unrecouped income tax deductions can only exist in respect of such deposits.

CLAUSE 11. REPAYMENT OF EXCESS CLASS C DEPOSITS

This clause ensures treatment of non-converted Class C deposits only under Section 19 of the Principal Act which refers to deposits in respect of which an unrecouped income tax deduction may exist.

CLAUSE 12. SPECIAL PROVISIONS RELATING TO THE REPAYMENT OF PRIMARY PRODUCER DEPOSITS

Where the sum of deposits made by a primary producer which would otherwise receive the Class A rate, and those converted by a primary producer in respect of which an unrecouped income tax deduction exists (ie Class A eligible conversions), is greater than $250,000, the Class B interest rate will apply to the excess. That excess is repayable on request, irrespective of whether the deposit has been held for twelve months. Deposits which, when deposited, were eligible only for the Class B rate may not be withdrawn under this clause.

Where a depositor makes deposits which would, consistent with self-estimates, be Class A deposits, and the Commissioner's determination of relevant income amounts causes an amount of those deposits to be eligible only for the Class B rate, that amount of deposits is repayable irrespective of whether the deposit has been held for 12 months. Only the first self-estimate is relevant to this provision, so as to prevent

the possiblity of depositors manipulating subsequent estimates in order to enable early withdrawal. Depositors who overestimate will be able to withdraw excess deposits at such time as the Commissioner's determination is extant. Depositors may not withdraw Class A deposits under this provision unless a subsequent determination by the Commissioner causes the Class B interest to apply to such deposits, nor may any deposits be withdrawn which, consistent with self-estimates, were made at the Class B rate.

Where a depositor ceases to be a primary producer, all deposits become repayable on the date of receipt of a withdrawal application irrespective of whether the deposits have been held for 12 months.

CLAUSE 13. REPAYMENT IN CASE OF DEATH, BANKRUPTCY OR WINDING-UP

Self explanatory.

CLAUSE 14. REVIEW OF DECISION

Where a depositor is refused by the Authorized Person an application for the early withdrawal of a deposit on ground of financial difficulties, the depositor may refer the Authorized Person's decision to the Administrative Appeals Tribunal. Under former arrangements such references were made to a Taxation Board of Review.

CLAUSE 15. PROVISIONS APPLICABLE WHERE REQUEST UNDER SECION 16 PENDING 12 MONTHS AFTER MAKING OF DEPOSIT

This clause relates only to deposits in respect of which an unrecouped income tax deduction may exist; ie Class C deposits. It allows for reference to the Administrative Appeals Tribunal (replacing the jurisdiction of a Taxation Board of Review) of an application for withdrawal which remains outstanding under Section 16, even after the deposit has been held for 12 months and is therefore repayable. It may be in the depositor's interest for the relevant deposits to be deemed to be repayable in the financial year in which the application was made. This is because such a repayment will be deemed income for taxation purposes and the tax rate applicable to the repaid deposits may be more favourable to the depositor in the year in which the application was made.

This clause will become redundant when all Class C deposits have been held for twelve months or longer, ie after 31 August, 1984.

CLAUSE 16. DELEGATION BY AUTHORIZED PERSON

Self explanatory.

CLAUSE 17. OFFENCES

When the holder of primary producer deposits ceases to carry on the business of primary production, the relevant depositor is required to notify the Authorized Person in writing of the cessation of primary production business within 60 days of cessation. Where the deposit was made by a trustee on behalf of a legally disabled beneficiary the trustee must notify. Non-notification by the depositor or trustee will cause the depositor or trustee to be liable to a fine of $2000 or imprisonment for 12 months or both.

Such a penalty is necessary to ensure that depositors notify and so enable the Authorized Person to make appropriate interest adjustments as soon as possible. The level of the fine is intended to ensure that non-notification of cessation of primary production will not be in the financial interest of a depositor, who could receive interest on overpaid interest until such time as any overpaid interest was recouped.

It is a defence against prosecution if the depositor or trustee can prove that they were ignorant of the cessation of primary production business.

Proposed sub-sections 27A(3) and (4) provide for prosecution in cases where the depositor, legally disabled beneficiary or trustee provides information or estimates which that person

does not believe or has no reasonable grounds for believing to be correct or to be a fair estimate. This provision aims to prevent gross over-estimates being made in order to earn interest on overpayments of interest until recoupment takes place. The penalty to apply in sucn cases is a fine of $2000 or imprisonment for 12 months or both.

RECOVERY OF OVERPAYMENTS

Self explanatory.

SECRECY

Self explanatory.

CLAUSE 18. AMENDMENT OF LOAN (DROUGHT BONDS) ACT

Interest is payable on conversion deposits from the date on which the application is made. This clause prevents payment of interest in respect of a converted Drought Bond while interest is being earned on the IED which resulted from the Drought Bond conversion.

CLAUSE 19. TRANSITIONAL

This clause allows for the continuation of the Commissioner of Taxation in the role of Authorised Person until 1 January, 1985. The Secretary, Department of Primary Industry, will be the Authorised Person from that date.

Transitional arrangements also apply to estimates of relevant income amounts provided by depositors to the Commissioner of Taxation in the period 1 September, 1983 to commencement. Such estimates are deemed estimates of relevant income amounts for the purposes of the Bill.

Elections, in the first two months of an income year to have deposit eligibility related to the previous year's relevant income amounts, which were made in the period 1 September, 1983 to commencement, are deemed to have been made under the provisions of the Bill.

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