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LEASE INDUCEMENT AND LEASE SURRENDER PAYMENTS

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LEASE INDUCEMENT AND LEASE SURRENDER PAYMENTS

(1) INCOME FROM AGREEMENTS TO GRANT OR TO SURRENDER LEASES

1. Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence

Consideration derived by a person (the **payee**) for the agreement by the payee to the grant, renewal, extension, or transfer of a right (the **land right**) that is a leasehold estate, or a licence to use land, is income of the payee, unless:

(a) The amount is derived by the payee:

- (i) As the holder of a land right; and
- (ii) As consideration for the transfer of the land right to the person paying the amount; or

(b) The payee derives the amount as a tenant of residential premises, in which case it is not income to the extent of such amount.

[s. CC 1B as proposed in cl. 4B(1) of the *Supplementary Order Paper* (11 December 2012) to the *Livestock Bill* coming into force on 1 April 2013]

2. Consideration for agreement to surrender leasehold estate or terminate licence

Consideration derived by a person (the **payee**) for the agreement by the payee to the surrender of a leasehold estate or the termination of a licence to use land, is income of the payee if:

(a) The payee is the person who owns:

- (i) The estate in land from which the leasehold estate or licence is granted; or
- (ii) The person who owns the leasehold estate or licence; and

(b) The payee does not derive the amount as a tenant of residential premises: the amount is not income to the extent the payee derives it as a tenant of residential premises.

[s. CC 1C as proposed in cl. 4B(1) of the *Supplementary Order Paper* (11 December 2012) to the *Livestock Bill* coming into force on 1 April 2013]

LEASE INDUCEMENT AND LEASE SURRENDER PAYMENTS

(2) EXPENDITURE ON AGREEMENTS TO GRANT OR TO SURRENDER LEASES

1. Expenditure on agreement to grant, renew, extend, or transfer leasehold estate or licence

A person (the **payer**) is allowed a deduction for an amount of expenditure incurred by the person as consideration for the agreement by another person (the **payee**) to the grant, renewal, extension, or transfer of a right (the **land right**) that is a leasehold estate, or a licence to use land if:

- (a) The payer is the person who owns:
 - (i) The land right; or
 - (ii) The estate in land from which the land right is granted; and
- (b) The payee is the person who is obtaining the land right.

This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

[s. **DB 20B** as proposed in **cl. 17B(1)** of the *Supplementary Order Paper* (11 December 2012) to the *Livestock Bill* coming into force on 1 April 2013 and applying to an amount that is:

- (a) Incurred on or after 1 April 2013; and
- (b) Not incurred as consideration for the agreement, before 1 April 2013, to a lease of land , or a licence to use land.

[**Cl. 17B(2)** of the *Supplementary Order Paper* (11 December 2012) to the *Livestock Bill* coming into force on 1 April 2013]]

2. Expenditure on agreement to surrender leasehold estate or terminate licence

A person (the **payer**) is allowed a deduction for an amount of expenditure incurred by the person as consideration for the agreement by another person (the **payee**) to the surrender of a leasehold estate or the termination of a licence to use land, if:

- (a) The payer is a person who owns the leasehold estate or licence or the estate in land from which the leasehold estate or licence is granted; and
- (b) The payee is a person who owns the leasehold estate or licence or the estate in land from which the leasehold estate or licence is granted.

This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

[s. **DB 20C** as proposed in **cl. 17B(1)** of the *Supplementary Order Paper* (11 December 2012) to the *Livestock Bill* coming into force on 1 April 2013 and applying to an amount that is:

- (a) Incurred on or after 1 April 2013; and
- (b) Not incurred as consideration for the agreement, before 1 April 2013, to a lease of land , or a licence to use land.

[**Cl. 17B(2)** of the *Supplementary Order Paper* (11 December 2012) to the *Livestock Bill* coming into force on 1 April 2013]]

LEASE INDUCEMENT AND LEASE SURRENDER PAYMENTS

(3) THE SPREADING RULES FOR LEASE INDUCEMENT PAYMENTS

1. The spreading rules apply to income derived under s. CC 1B for the grant of a lease or licence, and to expenditure incurred under s. DB 20B paid for the grant of a lease or licence, in an income year:
 - (a) In relation to a land right that is a leasehold estate or a licence to use land (the **land right**); and
 - (b) In relation to a land right that may be terminated, or expires if not extended or renewed; and
 - (c) In relation to a period (the **spreading period**) beginning with the later of:
 - (i) The commencement of the land right; and
 - (ii) The most recent renewal or extension.
2. The spreading rules are:
 - (a) If the amount is incurred or derived before the end of the spreading period, the amount is allocated in equal portions to each income year that:
 - (i) Includes part of the spreading period; and
 - (ii) Ends after the amount is incurred or derived; and
 - (iii) Ends within 50 years from the beginning of the spreading period; and
 - (b) If the amount is incurred or derived at, or after the end of, the spreading period, the amount is allocated to the income year in which it is incurred or derived.
3. When a person ceases, in an income year, to hold a land right, or the estate in land from which the land right is granted, all of the remaining income that should be spread is allocated to that year (the **balance year**) if:
 - (a) At the beginning of the balance year, the person held the land right, or the estate in land from which the land right is granted; and
 - (b) In the balance year, the person ceases to hold the land right, or the estate in land from which the land right is granted; and
 - (c) The remaining income would be allocated under the spreading rules to an income year:
 - (i) Ending before, or including, the end of the spreading period; and
 - (ii) After the balance year.
4. When a person (together with associated persons) ceases, in an income year, to hold both a land right and the estate in land from which the land right is granted, any remaining deduction that should be spread is allocated to that year (the **balance year**) if:
 - (a) At the beginning of the balance year, either or both of the land right and the estate in land from which the land right is granted are held by the person or by an associated person; and
 - (b) At the end of the balance year, neither of the land right and the estate in land from which the land right is granted are held by the person or by an associated person; and
 - (c) The remaining deduction would be allocated under the spreading rules to an income year:
 - (i) Ending before, or including, the end of the spreading period; and
 - (ii) After the balance year.

[s. EI 4B as proposed in cl. 32B of the *Supplementary Order Paper* (11 December 2012) to the *Livestock Bill* applying from 1 April 2013 to amounts as under cl. 17B – see page 3 above]

LEASE INDUCEMENT AND LEASE SURRENDER PAYMENTS

(4) CONSEQUENTIAL CHANGES RELATING TO THE SPREADING RULES

1. General rules in s. EA 3 for unexpired expenditure will not apply

The general rules in s. EA 3 for unexpired expenditure will not apply to a leasehold estate, or licence to use land, to which the spreading rules in s. EI 4B will apply.

[s. EA 3(2)(db) as proposed to be inserted by cl. 25B of the *Supplementary Order Paper* (11 December 2012) to the *Livestock Bill* coming into force on 1 April 2013].

2. The spreading rules in s. EI 4B are to be treated as part of the 'land provisions'

The definition of "land provisions is to be amended so that the spreading rules in s. EI 4B will form part of the land provisions as defined in s. YA 1.

This is apparently to ensure that the meaning of 'associated person' for the purposes of the spreading rules in s. EI 4B is the meaning that applies to the land provisions.

[Proposed amendment to the definition of **land provisions** in s. YA 1 contained in cl. 57(19B) of the *Supplementary Order Paper* (11 December 2012) to the *Livestock Bill* coming into force on 1 April 2013]