



# **Taxation Laws Amendment (Landcare and Water Facility Tax Offset) Act 1998**

**No. 91, 1998**





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**An Act to provide for a landcare and water facility tax offset for some primary producers and some land-holders, and for related purposes**



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# **Taxation Laws Amendment (Landcare and Water Facility Tax Offset) Act 1998**

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## **An Act to provide for a landcare and water facility tax offset for some primary producers and some land-holders, and for related purposes**

*[Assented to 14 July 1998]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Taxation Laws Amendment (Landcare and Water Facility Tax Offset) Act 1998*.

### **2 Commencement**

- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

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- (2) If Schedule 7 to the *Taxation Laws Amendment Act (No. 2) 1998* has not already commenced when this section commences, items 14 to 17 of Schedule 1 commence immediately after Schedule 7 to that Act commences.

### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.



## **Schedule 1—Landcare and water facility tax offset**

### **Part 1—Income Tax Assessment Act 1997**

#### **1 Subsection 4-10(3) (at the end of step 4 of the method statement)**

Add:

Note: Tax offsets that are carried forward can reduce your income tax liability for a later income year: see Division 65.

#### **2 Subsection 4-10(3) (note 1)**

After “example,”, insert “Division 65, which deals with carrying forward excess tax offsets, and”.

#### **3 Section 13-1 (table entry headed “primary production”)**

Before the sub-entry relating to restart income support payments, insert:

landcare operations, expenditure on	Subdivision
.....	388-A

#### **4 Section 13-1 (table entry headed “primary production”)**

At the end of the entry, add:

water, expenditure on conserving or conveying.....	Subdivision
	388-A

#### **5 Section 40-10**

Repeal the section, substitute:

#### **40-10 What expenditure qualifies?**

- (1) You can write off certain kinds of capital expenditure as deductions. Depending on the kind of expenditure, you can do this either immediately, or over a period of years. This deduction is called a *capital allowance*.

- (2) You may be able to choose a \*tax offset for capital expenditure that you could otherwise deduct. This tax offset is also called a *capital allowance*.
- (3) Many different kinds of capital expenditure qualify for a \*capital allowance. They are all listed in Subdivision 40-B.

**6 Subsection 40-30(2) (table item dealing with landcare operations, column headed “For more detail, see ...”)**

Omit “Subdivision 387-A”, substitute “Subdivisions 387-A (deduction) and 388-A (tax offset)”.

**7 Subsection 40-30(2) (table item dealing with water conservation, column headed “For more detail, see ...”)**

Omit “Subdivision 387-B”, substitute “Subdivisions 387-B (deduction) and 388-A (tax offset)”.

**8 After Division 61**

Insert:

*[The next Division is Division 65.]*

**Division 65—Tax offset carry forward rules**

**Guide to Division 65**

**65-10 What this Division is about**

This Division sets out the rules about carrying forward excess tax offsets to later years of income.

You can only carry forward certain tax offsets.

Before you can apply a tax offset to reduce the amount of income tax that you will pay in a later year, you must apply it to reduce certain amounts of net exempt income.

The same rules that prevent companies from using certain losses that are carried forward prevent companies from applying tax offsets that they have carried forward.

## Table of sections

### Operative provisions

65-20	Which tax offsets this Division applies to
65-25	When you can carry forward a tax offset
65-30	Amount carried forward
65-35	How to apply carried forward tax offsets
65-40	When a company cannot apply a tax offset

*[This is the end of the Guide.]*

## Operative provisions

### 65-20 Which tax offsets this Division applies to

This Division only applies to a \*tax offset if it is stated to be subject to the tax offset carry forward rules.

Note: The only tax offset that is subject to these rules is the landcare and water facility tax offset under Subdivision 388-A.

### 65-25 When you can carry forward a tax offset

- (1) You can carry forward a \*tax offset if the amount of the tax offset exceeds the amount of income tax that you would have to pay if:
  - (a) you had not got the tax offset; and
  - (b) you had not got any \*tax offsets that are of a higher priority.

Note: Section 65-35 explains how to apply tax offsets that are carried forward.

- (2) The following table sets out the order of priority for \*tax offsets (with the highest priority shown first):

Priority of tax offsets (highest to lowest)		
Item	Tax offset	Relevant provision
1	foreign tax credits	section 160AFE of the <i>Income Tax Assessment Act 1936</i>
2	landcare and water facility tax offset	Subdivision 388-A
3	all other tax offsets	listed in section 13-1

### **65-30 Amount carried forward**

The amount of the \*tax offset that is carried forward is the amount of the excess worked out under subsection 65-25(1). However, if you have a taxable income for the income year, reduce the tax offset by the following amount:

\*Net exempt income  $\times$  0.34

### **65-35 How to apply carried forward tax offsets**

- (1) A \*tax offset that you have carried forward decreases the amount of income tax that you would otherwise have to pay under section 4-10 in a later income year.
- (2) You must apply \*tax offsets that are carried forward in the priority order, applying the lowest priority tax offset first, and you must apply tax offsets of a particular type in the order in which you became entitled to them.
- (3) Before you apply a \*tax offset to reduce the amount of income tax that you pay in a later income year in which you have a taxable income, you must apply it to reduce to nil any \*exempt income for:
  - (a) that later income year; or
  - (b) any income year after the year in which the tax offset arose and before the later income year in which you had a taxable income but did not apply the tax offset to reduce the amount of income tax you had to pay.

In reducing exempt income, each 34 cents of tax offset reduces the exempt income by \$1.

Note: Paragraph (b) would apply to cases such as where your taxable income was below your tax-free threshold or where you had other tax offsets that reduced your income tax to nil.

- (4) You can only apply a \*tax offset that you have carried forward to the extent that it has not already been applied.

Note: Section 65-40 contains special restrictions on applying carried forward tax offsets.

#### **65-40 When a company cannot apply a tax offset**

- (1) In working out its \*tax offset for the \*current year, a company cannot apply a \*tax offset it has carried forward if, assuming:
- (a) the tax offset were a \*tax loss of the company for the income year in which it became entitled to the tax offset; and
  - (b) section 165-20 (deducting part of a tax loss) were disregarded;

Subdivision 165-A would prevent the company from deducting it for the current year.

Note: Subdivision 165-A deals with the deductibility of a company's tax loss for an earlier income year if there has been a change in the ownership or control of the company in the loss year or the income year.

- (2) If subsection (1) prevents the company from applying the \*tax offset, it can apply the *part* of the tax offset that it is reasonable to consider relates to a *part* of the income year in which it became entitled to the tax offset, but only if, assuming that part of that income year had been treated as the whole of it, the company would have been entitled to apply the tax offset.

#### **9 At the end of section 387-50, after the box**

Add:

Note: You may be able to choose a tax offset for some or all of that expenditure instead of the deduction: see Subdivision 388-A.

#### **10 At the end of subsection 387-55(1), after the box**

Add:

Note: Depending on the amount of your taxable income, you may be able to choose a tax offset instead of the deduction for up to \$5,000 of the

expenditure: see Subdivision 388-A (landcare and water facility tax offset).

## **11 At the end of section 387-120**

Add:

Note: You may be able to choose a tax offset (spread over 3 years) for some or all of that expenditure instead of the deduction: see Subdivision 388-A.

## **12 At the end of subsection 387-125(1)**

Add:

Note: Depending on the amount of your taxable income, you may be able to choose a tax offset (spread over 3 years) instead of the deduction for up to \$5,000 of the expenditure: see Subdivision 388-A (landcare and water facility tax offset).

## **13 After Division 387**

Insert:

*[The next Division is Division 388.]*

# **Division 388—Tax offsets for primary producers and some land-holders**

## **Table of Subdivisions**

388-A Landcare and water facility tax offset

## **Subdivision 388-A—Landcare and water facility tax offset**

### **Guide to Subdivision 388-A**

#### **388-50 What this Subdivision is about**

If you can deduct under Subdivision 387-A or 387-B capital expenditure you incur on landcare operations or on facilities to conserve or convey water, you may be able (depending on the amount of your taxable income) to choose a tax offset, instead of a
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deduction, for up to \$5,000 of the expenditure you incur on each of those things.
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Note: You cannot choose a tax offset for expenditure incurred after the 2000-01 income year.

## Table of sections

### Operative provisions

388-55 Entitlement to the landcare and water facility tax offset  
388-60 How much is the tax offset?

*[This is the end of the Guide.]*

## Operative provisions

### 388-55 Entitlement to the landcare and water facility tax offset

- (1) If you can deduct capital expenditure you incur in the income year under Subdivision 387-A (landcare operations) or Subdivision 387-B (facilities to conserve or convey water), you can choose a \*tax offset instead for:

- (a) a maximum of \$5,000 of the expenditure you can deduct under Subdivision 387-A; and
- (b) a maximum of \$5,000 of the expenditure you can deduct under Subdivision 387-B.

Note: The part of the tax offset that is for expenditure you can deduct under Subdivision 387-B is spread over 3 income years: see paragraph 388-60(1)(b).

- (2) But you can only choose the \*tax offset if:
- (a) assuming you had chosen a deduction instead of the tax offset, your taxable income for the income year would have been \$20,700 or less; and
  - (b) the expenditure is incurred before the end of the 2000-01 income year.

- (3) To the extent that you choose the \*tax offset for expenditure, you cannot deduct that expenditure under Subdivision 387-A or 387-B (or under any other provision of this Act).

**388-60 How much is the tax offset?**

- (1) Your \*tax offset for an income year is the sum of:
- (a) 34% of the expenditure for which you choose the tax offset that you incur in the income year that you could otherwise deduct under Subdivision 387-A (landcare operations); and
  - (b) 34% of  $\frac{1}{3}$  of the sum of the amounts of expenditure for which you choose the tax offset that you could otherwise deduct under Subdivision 387-B (facilities to conserve or convey water) for:
    - (i) the income year; or
    - (ii) the previous 2 income years.

- (2) However, the \*tax offset is subject to the tax offset carry forward rules in Division 65.

Note: This means that a tax offset that you cannot use in this income year can be carried forward to a later income year and may reduce the income tax that you would otherwise have to pay in that later income year: see Division 65.



## **Part 2—Income Tax Assessment Act 1936**

### **14 After paragraph 160ZJA(1)(c)**

Insert:

- (ca) any amount that, apart from subsection 388-55(3) of the *Income Tax Assessment Act 1997*, would have been allowed or allowable under Subdivision 387-A or 387-B of that Act as a deduction to the taxpayer in respect of any year of income; and

### **15 After paragraph 160ZJA(3)(c)**

Insert:

- (ca) any amount that, apart from subsection 388-55(3) of the *Income Tax Assessment Act 1997*, would have been allowed or allowable under Subdivision 387-A or 387-B of that Act as a deduction to the partnership or the taxpayer in respect of any year of income; and

### **16 After paragraph 160ZJB(1)(c)**

Insert:

- (ca) any amount that, apart from subsection 388-55(3) of the *Income Tax Assessment Act 1997*, would have been allowed or allowable under Subdivision 387-A or 387-B of that Act as a deduction to the taxpayer in respect of any year of income; and

### **17 After paragraph 160ZJB(3)(c)**

Insert:

- (ca) any amount that, apart from subsection 388-55(3) of the *Income Tax Assessment Act 1997*, would have been allowed or allowable under Subdivision 387-A or 387-B of that Act as a deduction to the partnership or the taxpayer in respect of any year of income; and

### **18 At the end of subsection 160ZK(1A)**

**Schedule 1** Landcare and water facility tax offset

**Part 2** Income Tax Assessment Act 1936

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Add:

- ; and (c) an amount that, apart from subsection 388-55(3) of the *Income Tax Assessment Act 1997*, would have been so allowed or allowable under Subdivision 387-A or 387-B of that Act.

## **Part 3—Application**

### **19 Application**

The amendments made by this Schedule apply to assessments for the 1997-98 income year and later income years.

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*[Minister's second reading speech made in—  
House of Representatives on 28 May 1998  
Senate on 24 June 1998]*

(88/98)

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