

## **EXPLANATORY STATEMENT**

### **Veterans' Entitlements (Attribution of Income – Ineligible Deductions) Determination 2001**

#### **Summary**

Sections 52ZZO and 52ZZZO of the *Veterans' Entitlements Act 1986* (the Veterans' Entitlements Act) provide that to calculate the income of a company or trust, for the purposes of Subdivision G of Division 11A of Part IIIB of the Veterans' Entitlements Act, any deductions allowable under the *Income Tax Assessment Act 1936* or *Income Tax Assessment Act 1997* can be deducted from the gross income of the company or trust, unless the Commission has determined that they are an ineligible deduction, or part of a deduction.

The purpose of the attached instrument is for the Commission to determine those tax deductions that are ineligible to be applied against the gross income of a company or trust for Veterans' Entitlements purposes.

#### **Background**

The *Social Security and Veterans' Entitlements Legislation Amendment (Private Trusts and Private Companies – Integrity of Means Testing) Act 2000* amended the *Social Security Act 1991* and the Veterans' Entitlements Act to give effect to a measure in the Government's 2000-2001 Budget to revise the means test treatment of private companies and private trusts. The measure aims to ensure that income support pensioners who hold their assets in private companies or private trusts receive comparable treatment under the means test to those income support pensioners who hold their assets directly. The assets and income of the structure will be attributed to the person or persons who control the company or trust, or to the person or persons who were the source of the capital or corpus of the company or trust.

#### **Explanation of the provisions**

##### *Part 1*

Section 1 of the instrument states the name of the disallowable instrument and section 2 states that the instrument (Determination) commences on gazettal. Section 3 contains interpretation provisions.

##### *Part 2*

Section 4 of the instrument states that for the purposes of sections 52ZZO(3) and 52ZZZO(3) of the Veterans' Entitlements Act, those deductions listed in Parts 1 and 2 of Schedules 1 and 2 (respectively) of the instrument, that would normally be allowable deductions under the *Income Tax Assessment Act 1936* or *Income Tax Assessment Act 1997* are ineligible deductions, for the purposes of Division 11A of Part IIIB of the Veterans' Entitlements Act.

Sections 5 to 11 provide rules that deal with the application of subsections 52ZZO(5) and 52ZZZO(5) of the Veterans' Entitlements Act in relation to particular types of deductions.

Section 5 provides that any part of a contribution to an employee's superannuation fund will not be allowed as a deduction in so far as it is greater than the 'superannuation guarantee' levy amount.

Section 6 states that, where a company or trust pays wages or a salary to an attributable stakeholder of that entity, or an associate of such a person, then such part of the salary or wages payment that is greater than reasonable remuneration for the work undertaken will be an ineligible deduction for the purposes of Division 11A of Part IIIB of the Veterans' Entitlements Act.

Section 7 provides that any part of an interest payment to a creditor of a company or trust will be an ineligible part of the allowable deduction in so far as it is greater than a reasonable rate of interest.

Section 8 states that, where a company or trust artificially depreciates the value of its trading stock by changing its method of valuing the stock from one year to the next in accordance with an election under section 70-45 of the *Income Tax Assessment Act 1997*, then any part of the depreciation which is solely attributable to this altered valuation method will be an ineligible part of the allowable deduction.

Section 9 provides that, where a primary production company or trust artificially depreciates the value of its trading stock by changing its method of valuing the stock from one year to the next in accordance with an election under section 70-45 of the *Income Tax Assessment Act 1997*, then any part of the depreciation which is solely attributable to this altered valuation method will be an ineligible part of the allowable deduction.

Section 10 states that, where a company or trust artificially depreciates the value of its trading stock by changing its method of valuing the stock during an income year in accordance with an election under section 70-50 of the *Income Tax Assessment Act 1997*, then any part of the depreciation which is solely attributable to this altered valuation method will be an ineligible part of the allowable deduction.

Section 11 provides that, where a primary production company or trust artificially depreciates the value of its trading stock by changing its method of valuing the stock during an income year in accordance with an election under section 70-50 of the *Income Tax Assessment Act 1997*, then any part of the depreciation which is solely attributable to this altered valuation method will be an ineligible part of the allowable deduction.

#### *Schedule 1 – Part 1*

This part provides a list of deductions which would otherwise be allowable under the *Income Tax Assessment Act 1936*, but are determined to be ineligible deductions for the purposes of section 52ZZO of the Veterans' Entitlements Act.

#### *Schedule 1 - Part 2*

This part provides a list of deductions, which would otherwise be allowable under the *Income Tax Assessment Act 1997*, but are determined to be ineligible deductions for the purposes of section 52ZZO of the Veterans' Entitlements Act.

*Schedule 2 – Part 1*

This part provides a list of deductions, which would otherwise be allowable under the *Income Tax Assessment Act 1936*, but are determined to be ineligible deductions for the purposes of section 52ZZZO of the Veterans' Entitlements Act

*Schedule 2 – Part 2*

This part provides a list of deductions, which would otherwise be allowable under the *Income Tax Assessment Act 1997*, but are determined to be ineligible deductions for the purposes of section 52ZZZO of the Veterans' Entitlements Act.

*Schedule 1 – Part 1*

Section 51AE	Deductions for entertainment expenses
Section 54, as applied by section 53I	Application of depreciation provisions
Section 67	Expenses of borrowing

Section 67AAA	Interest on loans to finance certain superannuation contributions and life assurance premiums
Section 67A	Expenses of discharge of mortgage
Section 68	Expenses relating to lease documents
Section 68A	Expenses relating to grant of patents etc
Section 70	Cost of extending telephone lines
Section 70A	Cost of mains electricity connections
Section 73B	Expenditure on research and development activities
Section 73BA	Deduction for certain assets etc used for the purpose of carrying on research and development
Section 73BH	Deduction for plant etc used for the purpose of carrying on research and development
Section 73EB	Section 73BM roll-over relief on disposal of plant to another member of wholly-owned group
Section 75AA	Deduction for capital expenditure incurred in establishing grape vines
Section 75D	Deduction of expenditure on prevention of land degradation
Section 78	Deduction for gifts, pensions etc
Section 79E	General domestic losses of 1989–90 to 1996–97 years of income
Section 80AAA	Film losses of pre-1990 years of income
Section 82AAD	Deduction for contribution to non-complying superannuation fund that taxpayer reasonably believes to be a complying superannuation fund
Section 82AADA	Deduction for contributions to retirement savings accounts
Section 122D	General mining — deduction of residual previous capital expenditure
Section 122DB	General mining — deduction of residual capital expenditure
Section 122DF	General mining — deduction of residual (19 August 1981 to 19 July 1982) capital expenditure
Section 122DG	General mining — deduction of allowable (post 19 July 1982) capital expenditure
Section 122J	General mining — exploration and prospecting expenditure
Section 122JE	Mining and quarrying — deduction of allowable capital expenditure
Section 122JF	Mining and quarrying — exploration and prospecting expenditure
Section 123B	Transport of certain minerals — deduction of expenditure
Section 123BE	Transport of certain minerals — deduction of expenditure
Section 123C	Disposal, loss, destruction or termination of use of property
Section 124AD	Prospecting and mining for petroleum — deduction of residual previous capital expenditure

Section 124ADB	Prospecting and mining for petroleum — deduction of residual previous capital expenditure
Section 124ADD	Prospecting and mining for petroleum — deduction of residual (1 May 1981 to 18 August 1981) capital expenditure
Section 124ADF	Prospecting and mining for petroleum — deduction of residual (19 August 1981 to 19 July 1982) capital expenditure
Section 124ADG	Prospecting and mining for petroleum — deduction of allowable (post 19 July 1982) capital expenditure
Section 124AF	Prospecting and mining for petroleum — deduction of unrecouped previous capital expenditure
Section 124AH	Prospecting and mining for petroleum — exploration and prospecting expenditure
Section 124AM	Prospecting and mining for petroleum — disposal, loss, destruction or termination of use of property
Section 124BA	Deduction of expenditure on rehabilitation-related activities
Section 124F	Timber operations — deduction of expenditure
Section 124G	Timber operations — disposal, destruction or termination of use of property
Section 124J	Timber felled upon acquired land or under right
Section 124JA	Timber mill buildings — deduction of expenditure
Section 124JB	Timber mill buildings — disposal, destruction or termination of use of building
Section 124M	Industrial property — annual deductions
Section 124N	Deductions on the disposal or lapse of a unit of industrial property
Section 124ZAF	Australian films — deductions for capital expenditure under pre-13 January 1983 contracts and certain other contracts
Section 124ZAFA	Australian films — deductions for capital expenditure under post-12 January 1983 contracts
Section 124ZC	Traveller accommodation — deductions in respect of capital expenditure
Section 124ZE	Traveller accommodation — deduction in respect of destruction of building
Section 124ZH	Certain buildings and structural improvements — deductions in respect of qualifying expenditure
Section 124ZK	Certain buildings and structural improvements — deduction in respect of destruction of building
Section 266-25 of Schedule 2F	Fixed trust may be denied tax loss deduction
Section 266-35 of Schedule 2F	Fixed trust may be denied debt deduction
Section 266-50 of Schedule 2F	Fixed trust — deducting part of a tax loss

Section 267-20 of Schedule 2F      Non-fixed trust may be denied tax loss deduction

Section 267-50 of Schedule 2F      Non-fixed trust — deducting part of a tax loss

*Schedule 1 – Part 2*

Section 25-25      Borrowing expenses

Section 25-30      Expenses of discharging a mortgage

Section 30-15      Table of gifts or contributions that you can deduct

Section 32-20      Fringe benefits

Section 32-25      Deductions for losses and outgoings relating to entertainment

Section 36-15      How to deduct tax losses of earlier income years

Section 36-40      Deductions for amounts paid for debts incurred before bankruptcy

Section 40-25      Deducting amounts for depreciating assets

Section 40-285      Capital allowances — balancing adjustments

Section 40-335      Deduction for in-house software where you will never use it

Section 40-370      Balancing adjustments where there has been use of different car expense methods

Section 40-455      In-house software — how to work out your deduction

Section 40-645      Electricity and telephone lines

Section 40-730      Mining and quarrying — deduction for expenditure on exploration or prospecting

Section 40-735      Deduction for expenditure on mining site rehabilitation

Section 40-750      Deduction for payments of petroleum resource rent tax

Section 40-755      Environmental protection activities

Section 40-830      Project pools

Section 40-880      Business related costs

Section 42-15      Deduction for depreciation of plant

Section 42-195      Depreciation of plant — deducting an amount

Section 42-197      Depreciation of plant — deducting a further amount

Section 42-245      Depreciation for some cars — deducting an amount

Section 43-10      Deductions for capital works

Section 43-40      Deduction for destruction of capital works

Section 70-120      Trading stock — capital costs of acquiring trees

Section 165-10      Changing ownership or control of a company — deducting tax losses

Section 165-20	Changing ownership or control of a company — deducting part of tax loss
Section 165-96	Changing ownership or control of a company — when company cannot apply a net capital loss
Section 170-20	Treatment of company groups — who can deduct transferred loss
Section 330-15	Mining and quarrying — deduction for exploration or prospecting expenditure
Section 330-80	Mining and quarrying — allowable capital expenditure
Section 330-340	Mining and quarrying — treatment of excess deductions
Section 330-370	Mining and quarrying — transport capital expenditure is deductible
Section 330-435	Mining and quarrying — deduction for expenditure on rehabilitation
Section 373-5	Intellectual property — expenditure incurred in registering an item
Section 373-60	Intellectual property — balancing adjustments

### *Schedule 2 – Part 1*

Section 51AE	Deductions for entertainment expenses
Section 54, as applied by section 53I	Application of depreciation provisions
Section 67	Expenses of borrowing
Section 67AAA	Interest on loans to finance certain superannuation contributions and life assurance premiums
Section 67A	Expenses of discharge of mortgage
Section 68	Expenses relating to lease documents
Section 70	Cost of extending telephone lines
Section 70A	Cost of mains electricity connections
Section 73B	Expenditure on research and development activities
Section 73BA	Deduction for certain assets etc used for the purpose of carrying on research and development
Section 73BH	Deduction for plant etc used for the purpose of carrying on research and development
Section 73EB	Section 73BM roll-over relief on disposal of plant to another member of wholly-owned group
Section 75AA	Deduction for capital expenditure incurred in establishing grape vines
Section 75B	Deduction of expenditure on conserving or conveying water
Section 75D	Deduction of expenditure on prevention of land degradation
Section 78	Deduction for gifts, pensions etc



Section 79E	General domestic losses of 1989–90 to 1996–97 years of income
Section 80AA	Primary production losses of pre-1990 years of income
Section 82AAD	Deduction for contribution to non-complying superannuation fund that taxpayer reasonably believes to be a complying superannuation fund
Section 82AADA	Deduction for contributions to retirement savings accounts
Section 124F	Timber operations — deduction of expenditure
Section 124G	Timber operations — disposal, destruction or termination of use of property
Section 124J	Timber felled upon acquired land or under right
Section 124JA	Timber mill buildings — deduction of expenditure
Section 124JB	Timber mill buildings — disposal, destruction or termination of use of building
Section 124ZH	Certain buildings and structural improvements — deductions in respect of qualifying expenditure
Section 124ZK	Certain buildings and structural improvements — deduction in respect of destruction of building
Section 124ZZF	100% deduction for establishing horticultural plants where plant life is 3 or more years
Section 124ZZG	Annual deduction for establishing horticultural plants where plant life is 3 or more years
Section 124ZZM	Special deduction for destruction of horticultural plants
Section 159GC	Deductions in respect of income equalization deposits
Section 628	Primary producer deduction in respect of drought investment allowance — expenditure qualifying for deduction
Section 636	Leasing company deduction in respect of drought investment allowance — expenditure qualifying for deduction
Section 647	Drought investment allowance — leasing company may transfer entitlement to lessee
Section 670	Drought investment allowance — deduction for property used by lessee
Section 266-25 of Schedule 2F	Fixed trust may be denied tax loss deduction
Section 266-35 of Schedule 2F	Fixed trust may be denied debt deduction

Section 266-50 of Schedule 2F	Fixed trust — deducting part of a tax loss
Section 267-20 of Schedule 2F	Non-fixed trust may be denied tax loss deduction
Section 267-50 of Schedule 2F	Non-fixed trust — deducting part of a tax loss
Section 393-10 of Schedule 2G	Deduction for making farm management deposit

### *Schedule 2 – Part 2*

Section 25-25	Borrowing expenses
Section 25-30	Expenses of discharging a mortgage
Section 30-15	Table of gifts or contributions that you can deduct
Section 32-20	Fringe benefits
Section 32-25	Deductions for losses and outgoings relating to entertainment
Section 36-15	How to deduct tax losses of earlier income years
Section 36-40	Deductions for amounts paid for debts incurred before bankruptcy
Section 40-25	Deducting amounts for depreciating assets
Section 40-285	Balancing adjustments
Section 40-335	Deduction for in-house software where you will never use it
Section 40-370	Balancing adjustments where there has been use of different car expense methods
Section 40-455	In-house software — how to work out your deduction
Section 40-515	Water facilities, grapevines and horticultural plants
Section 40-565	Extra deduction for destruction of a horticultural plant or grapevine
Section 40-630	Landcare operations
Section 40-645	Electricity and telephone lines
Section 40-755	Environmental protection activities
Section 40-830	Project pools
Section 40-880	Business related costs
Section 42-15	Deduction for depreciation of plant
Section 42-195	Depreciation of plant — deducting an amount
Section 42-197	Depreciation of plant — deducting a further amount
Section 42-245	Depreciation for some cars — deducting an amount
Section 43-10	Deductions for capital works
Section 43-40	Deduction for destruction of capital works
Section 70-120	Trading stock — capital costs of acquiring trees

Section 165-10	Changing ownership or control of a company — deducting tax losses
Section 165-20	Changing ownership or control of a company — deducting part of tax loss
Section 165-96	Changing ownership or control of a company — when company cannot apply a net capital loss
Section 170-20	Treatment of company groups — who can deduct transferred loss
Section 373-60	Intellectual property — balancing adjustments
Section 387-55	Capital allowances for primary producers and some land-holders — landcare operations
Section 387-125	Capital allowances for primary producers and some land-holders — water facilities
Section 387-165	Capital allowances for primary producers and some land-holders — establishment of horticultural plant
Section 387-185	Capital allowances for primary producers and some land-holders — horticultural plant with effective life of 3-years or more
Section 387-190	Capital allowances for primary producers and some land-holders — extra deduction for destruction of horticultural plant with effective life of 3 years or more
Section 387-305	Capital allowances for primary producers and some land-holders — establishment of grapevine
Section 387-315	Capital allowances for primary producers and some land-holders — additional deduction if grapevine is destroyed
Section 387-355	Capital allowances for primary producers and some land-holders — connecting or upgrading power to land
Section 387-390	Capital allowances for primary producers and some land-holders — contributions to connecting or upgrading power to land
Section 387-405	Capital allowances for primary producers and some land-holders — telephone line
Section 387-460	Capital allowances for primary producers and some land-holders — forestry roads and timber mill buildings