



***TD 98/29 - Income tax: is a primary producer who receives compensation payments for having destroyed sheep under the Victorian Ovine Johne's Disease (OJD) control program eligible to make elections under Subdivision 385-E of the Income Tax Assessment Act 1997?***

 This cover sheet is provided for information only. It does not form part of *TD 98/29 - Income tax: is a primary producer who receives compensation payments for having destroyed sheep under the Victorian Ovine Johne's Disease (OJD) control program eligible to make elections under Subdivision 385-E of the Income Tax Assessment Act 1997?*

 This document has changed over time. This is a consolidated version of the ruling which was published on 17 August 2011

## Taxation Determination

**Income tax: is a primary producer who receives compensation payments for having destroyed sheep under the Victorian Ovine Johne's Disease (OJD) control program eligible to make elections under Subdivision 385-E of the *Income Tax Assessment Act 1997*?**

### Preamble

The number, subject heading, date of effect and paragraph 1 of this Taxation Determination are a 'public ruling' for the purposes of Part IVAAA of the *Taxation Administration Act 1953* and are legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is binding on the Commissioner.

[Note: This is a consolidated version of this document. Refer to the ATO Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

### Date of effect

This Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. Yes. If you are a primary producer who receives compensation payments for the destruction of your sheep, from an agreement made under the Victorian OJD control program stipulating that the sheep will be slaughtered, you are entitled to make an election (under either section 385-105 or section 385-110) to use the tax concessions available under Subdivision 385-E.
2. Section 385-100 provides for circumstances in which a primary producer can elect either to:
  - spread the 'tax profit on the disposal or death' of live stock over a five year period (section 385-105); or
  - defer the inclusion of the 'unused tax profit on the disposal or death' of live stock in assessable income, if the proceeds of the disposal are to be used mainly to buy replacement live stock or to maintain breeding stock for the purpose of replacement of the live stock that were disposed of or died (section 385-110).
3. Paragraph 385-100(1)(a)(iv) provides that a primary producer can make an election under Subdivision 385-E if live stock are disposed of or die because 'they are compulsorily destroyed under an Australian law for the control of a disease or they die of such a disease'.

4. A primary producer whose flock is subject to the OJD control program must either quarantine or destroy the flock. If you choose to destroy the live stock an agreement to do so is entered into under the Livestock Disease Control Act 1994 (Vic) and compensation is paid under that Act. The agreement stipulates, among other things, that the sheep will be slaughtered.

5. If you enter into such an agreement for the slaughter of your sheep under the Victorian OJD control program you are accepted as having disposed of live stock by compulsory destruction under an Australian law within the terms of paragraph 385-100(1)(a)(iv).

**Last Determination**

This is the last Taxation Determination for the 1998 calendar year. The next Determination will be Taxation Determination TD 1999/1.

**Commissioner of Taxation**

16 December 1998

FOI INDEX DETAIL: Reference No. I 1018026

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Related Determinations:

Related Rulings: IT 228

Subject Ref: agriculture; livestock diseases; livestock disposal; livestock industry; livestock losses; primary production; sheep industry

Legislative Ref: ITAA97 Pt 3-45; ITAA97 Div 385; ITAA97 Subdiv 385-E; ITAA97 385-100; ITAA97 385-100(1)(a)(iv); ITAA97 385-105; ITAA97 385-110

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