Article Information

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Service: Taxation

Federal Budget 2020-21: Key tax measures

Tonight's highly anticipated Federal Budget delivered on expectation with much welcomed income tax cuts for individuals and a number of business concessions designed to stimulate business cash flow, including temporary loss 'carry-back' measures, accelerated deductions and expanded access to the small business concessions.

Personal income tax cuts

The second stage of the Government's Personal Income Tax Plan will be brought forward to 1 July 2020. The changes are intended to support economic recovery and jobs by boosting consumption. From 1 July 2020:

- The top threshold of the 19 percent personal income tax bracket will increase from $37,000 to $45,000.
- The low income tax offset (LITO) will increase from $445 to $700. The increased LITO will be withdrawn progressively at a rate of 5 cents per dollar between taxable incomes of $37,500 and $45,000. The LITO will then be withdrawn at a rate of 1.5 cents per dollar between taxable incomes of $45,000 and $66,667.
- The top threshold of the 32.5 percent personal income tax bracket will increase from $90,000 to $120,000.

The low and middle income tax offset (LMITO) will be retained for the 2020-21 income year. The LMITO provides a reduction in tax of up to $255 for taxpayers with a taxable income of $37,000 or less. Between taxable incomes of $37,000 and $48,000, the value of the offset increases at a rate of 7.5 cents per dollar to the maximum offset of $1,080. Taxpayers with taxable incomes between $48,000 and $90,000 are eligible for the maximum offset of $1,080. For taxable incomes of $90,000 to $126,000, the offset phases out at a rate of 3 cents per dollar. The LMITO will be received on assessment after individuals lodge their tax returns for the 2020-21 income year.

Loss carry back

Under the existing tax law, companies are required to carry losses forward to offset profits in future years.

Under this measure, corporate tax entities with aggregated turnover of less than $5 billion will be able to carry back tax losses from the 2019-20, 2020-21 or 2021-22 income years to offset previously taxed profits in the 2018-19 or later income years. This will generate a refundable tax offset in the year in which the loss is made.

The tax refund would be limited by requiring that the amount carried back is not more than the earlier taxed profits and that the carry back does not generate a franking account deficit. The tax refund will be available on election by eligible businesses when they lodge their 2020-21 and 2021-22 tax returns.

Accelerated deductions

Businesses with aggregated annual turnover of less than $5 billion will be able to deduct the full cost of eligible capital assets acquired from 7:30pm tonight and first used or installed by 30 June 2022.

Full expensing in the year of first use will apply to new depreciable assets and the cost of improvements to existing eligible assets. For businesses with aggregated annual turnover of less than $50 million, full expensing also applies to second-hand assets.

Businesses with aggregated annual turnover between $50 million and $500 million can still deduct the full cost of eligible second-hand assets costing less than $150,000 that are purchased by 31 December 2020 under the enhanced instant asset write-off.

Businesses that hold assets eligible for the enhanced $150,000 instant asset write-off will have an extra six months, until 30 June 2021, to first use or install those assets.

Businesses with aggregated annual turnover of less than $10 million can deduct the balance of their simplified depreciation pool at the end of the income year while full expensing applies.

Additionally, the provisions which prevent small businesses from re-entering the simplified depreciation regime for five years if they opt-out will continue to be suspended.

Small business tax concessions

The small business entity turnover threshold for existing small business tax concessions will be increased from $10 million to $50 million.

Businesses with an aggregated annual turnover of between $10 million and $50 million will have access to up to ten further small business tax concessions in three phases:

- From 1 July 2020, those businesses will be able to immediately deduct certain start-up expenses and certain prepaid expenditure.
- From 1 April 2021, those businesses will be exempt from the 47 per cent FBT on car parking and multiple work-related portable electronic devices (such as phones or laptops) provided to employees.
- From 1 July 2021, those businesses will be able to access the simplified trading stock rules, remit pay as you go (PAYG) instalments based on GDP adjusted notional tax, and settle excise duty and excise-equivalent customs duty monthly on eligible goods under the small business entity concession.

Those businesses will also have a two-year amendment period apply to income tax assessments for income years starting from 1 July 2021, excluding entities that have significant international tax dealings or particularly complex affairs.

In addition, from 1 July 2021, the Commissioner of Taxation’s power to create a simplified accounting method determination for GST purposes will be expanded to apply to businesses below the $50 million aggregated annual turnover threshold.

Access to the small business CGT concessions will not be affected by these changes.

FBT

Currently, FBT is payable if an employer provides training to redundant, or soon to be redundant, employees and that training does not have sufficient connection to their current employment.

An FBT exemption for employer provided retraining and reskilling benefits provided to redundant, or soon to be redundant employees will be introduced where the benefits may not be related to their current employment. This measure will apply from tonight and is intended to incentivise employers to retrain redundant employees to prepare them for their next career.

The exemption will not extend to retraining acquired by way of a salary packaging arrangement. It will also not be available for Commonwealth supported places at universities, which already receive a benefit, or extend to repayments towards Commonwealth student loans.

The Government will consult on allowing an individual to deduct education and training expenses where the expense is not related to their current employment. Individuals can currently deduct education or training expenses they incur which are sufficiently related to their current employment.

Additionally, FBT compliance will be reduced with the Government to provide the Commissioner of Taxation with the power to allow employers to rely on existing corporate records, rather than employee declarations and other prescribed records, to finalise their fringe benefits tax (FBT) returns.

Corporate residency

The ATO's interpretation following the High Court's 2016 decision in *Bywater Investments Ltd v Federal Commissioner of Taxation* departed from the long-held position on the definition of a corporate resident. The Government requested the Board of Taxation review the definition in 2019-20.

The tax law will be amended to provide that a company that is incorporated offshore will be treated as an Australian tax resident if it has a "*significant economic connection to Australia*". This test will be satisfied where both the company's core commercial activities are undertaken in Australia and its central management and control is in Australia.

The measure is consistent with the Board of Taxation's key recommendation in its 2020 report: *Review of Corporate Tax Residency* and will mean the treatment of foreign incorporated companies will reflect the position prior to the 2016 Court decision in *Bywater*.

The measure will have effect from the first income year after the date of Royal Assent of the enabling legislation, but taxpayers will have the option of applying the new law from 15 March 2017.

Victorian business support grants

Generally State-based grants such as the Business Support Grants are considered taxable income.

Under this measure, the Victorian Government's business support grants for small and medium business as announced on 13 September 2020 will become non-assessable, non-exempt (NANE) income for tax purposes.

The Commonwealth will extend this arrangement to all States and Territories. Eligibility would be restricted to future grants program announcements for small and medium businesses facing similar circumstances to Victorian businesses.

A new power in the income tax laws to make regulations will also be introduced to ensure that specified state and territory COVID-19 business support grant payments are NANE income.

Eligibility for this treatment will be limited to grants announced on or after 13 September 2020 and for payments made between 13 September 2020 and 30 June 2021.

R&D

For small companies with an aggregated annual turnover of less than $20 million, the refundable R&D tax offset is being set at 18.5 percentage points above the claimant's company tax rate, and the $4 million cap on annual cash refunds will not proceed.

For larger companies with an aggregated annual turnover of $20 million or more, the number of intensity tiers will be reduced from three to two.

The R&D premium ties the rates of the non-refundable R&D tax offset to a company's incremental R&D intensity, which is R&D expenditure as a proportion of total expenses for the year. The marginal R&D premium will be the claimant's company tax rate plus:

- 8.5 percentage points above the claimant's company tax rate for R&D expenditure between 0 per cent and 2 per cent R&D intensity for larger companies
- 16.5 percentage points above the claimant's company tax rate for R&D expenditure above 2 per cent R&D intensity for larger companies.

The start date for the changes will be deferred so that all changes to the program apply to income years starting on or after 1 July 2021.