

Accountants News

INFORMATION FOR PRACTISING ACCOUNTANTS

Legislatively Speaking - The Challenge Continues

The pace of legislative change continues unabated. In this newsletter we review the latest in depreciation policy announcements as well as new property related Queensland Workplace Health and Safety regulations.

Depreciating \$300 Items - Deja Vu

If you thought you had heard the last of this depreciation deduction - think again. Despite the fact that on 21 September 1999 the Government announced the total removal of the deduction and the fact that the ATO confirmed its removal in TR 2000/18, a more limited version of the deduction is included in the New Business Tax System (Capital Allowances Bill) 2000. If the Bill is enacted, the redrafted deduction will be available for items purchased from 1 July 2000.

Seeking simplicity and equity

Following the changes to the depreciation system announced in 1999, rental property owners found themselves at a distinct disadvantage. Small business taxpayers were entitled to continue depreciating items worth \$300 or less at 100% while most taxpayers who used identical items for rental purposes were required to depreciate these items over their effective life.

With the subsequent removal of the immediate 'replacement' deduction for minor items announced in TR 2000/18, the potential impost on rental property owners became even greater. The system, as it was announced, required taxpayers to track and depreciate on an individual basis each sheet, blanket, mixing bowl, or knife and fork they purchased.

According to the Explanatory Memorandum which accompanies the proposed Capital Allowances Bill, the limited reintroduction of the immediate deduction for \$300 items is intended to provide greater equity between taxpayers, as well as reducing book keeping compliance costs.

While the change will provide greater simplicity and equity, it by no means

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provides qualifying taxpayers with depreciation rights equivalent to those available under the Simplified Tax System.

Qualification criteria

Under the proposed section 40-55(8), items will qualify for a 100% deduction if they meet four prerequisites, two of which are new:

1. the cost of the item must not exceed \$300; and
2. you must use the asset predominately for the purpose of producing assessable income that is not income from carrying on a business; and
3. that asset is not part of a set of assets that you started to hold in that income year where the total cost of the set of assets exceeds \$300; and
4. the total cost of the asset and any other identical, or substantially identical, assets that you start to hold in that income year does not exceed \$300.

Requirements 1 and 3 reflect the criteria in the previous legislation and do not impose any new prerequisites.

Requirement 2 ensures that s 40-55(8) applies to only a select category of taxpayers who, it appears, were probably not the intended target of the Government's original changes.

Among those who qualify under requirement 2 will be rental property owners. As we discussed in our last

newsletter, few rental property owners have either the size of portfolio or the direct management involvement required to qualify as carrying on a rental property business. Other beneficiaries may include employees who use their own equipment when carrying out their work (provided the depreciable item is not also substantially used for private purposes).

Requirement 4 is a new prerequisite, the primary intent of which we suspect is to supplement requirement 3 by removing much of the grounds for argument about whether or not a group of items comprises a 'set'.

Application issues

We foresee four major problems with the application of s 40-55(8):

1. There is likely to be just as much debate about the definition of 'identical or substantially identical' as there ever was about the term 'set'.
2. Even when the application of the legislation is clear, the taxpayer will be required to keep very detailed records in order to make and substantiate these decisions.
3. It will not be possible to determine whether an item is eligible for the 100% deduction until after the end of the tax year in which the purchase occurred. Until then, nobody, including the taxpayer, can guarantee that they will not purchase another substantially identical item. Even if the taxpayer is not planning to make such a purchase, it may become necessary if the original item must be replaced due to breakage or loss.

This means that when we prepare a depreciation schedule for a client,

even if the schedule contains no more than one of a potentially qualifying item, we will not be able to automatically apply the 100% deduction. Instead, we can only flag the item for review at the end of the tax year.

4. Viewed superficially, the reintroduced legislation appears to be just a continuation of the status quo. As a result, there is a substantial risk that taxpayers will continue claiming deductions without being aware of the need to meet requirement 4. We think there is also a considerable risk that tax advisors and those preparing depreciation schedules may be similarly unaware of the new criteria.

For rental investment property owners, the reintroduction of the 100% deduction (assuming that it is eventually passed by Parliament) is good news. What is less desirable is the Government's continued practice of legislating by press release and policy announcement. Given that this Bill, which proposes to retrospectively reintroduce a purportedly abolished deduction, has itself yet to be enacted, how can any of us proceed with certainty?

Asbestos Materials Inspections & Reports

If you have a client who is considering purchasing a commercial property in Queensland (or you own one yourself) you should be aware of a recent change in the Queensland Workplace Health & Safety Regulations 1997.

The new regulations require owners of certain 'workplace' buildings to obtain an inspection of their building and its essential plant to determine if they contain any 'asbestos materials'. (Note: in this context the term 'asbestos materials' is less general than it sounds.)

If an 'asbestos material' is identified, the regulations stipulate notification procedures, risk management strategies and ongoing material reviews which must be put in place by the owner. Many owners may find it more cost effective to simply remove the material.

The regulations have applied since 1 November 2000 to all buildings for

which building approval was granted prior to 1 January 1980. Owners have a two year period from this date to obtain the asbestos materials report. However, if within the two year period they propose to lease, sell, dismantle or demolish the building (or any part of it), they must immediately obtain the asbestos materials report before proceeding with the proposed action. If an owner fails to obtain the audit, or fails to pass the audit report on to a new purchaser, the new purchaser becomes legally responsible for meeting the audit requirement.

From 1 November 2002, an identical requirement will apply to buildings for which building approval was granted from 1 January 1980 to 31 December 1989.

The costs of obtaining an asbestos audit and of carrying out any rectification work which may result can be quite substantial. A potential purchaser should ensure either that the building they are purchasing is young enough to be outside the scope of the regulations, or that the regulations have already been satisfied prior to settlement. Standard commercial property contracts do not require disclosure of this regulatory obligation and it may be difficult to terminate the contract or to claim compensatory damages once the transfer is completed.

Construction Liquidation Valuations

Due to the current downturn in the construction industry an increasing numbers of developers and builders are being forced into liquidation. If you have been appointed as liquidator for one of

these companies, you know just how difficult it can be to accurately assess the company's outstanding contractual liabilities.

In these circumstances, rather than making an assessment based on the money already expended on each project, we recommend you commission an independent quantity surveyor to estimate the amount of money required to complete the building works.

By the way, this is not just good advice for liquidators. We provide the same service to a number of different banks and financial institutions who are approving finance for builders and developers. Increasingly, such institutions are demanding regular proof that if the builder or developer becomes unable to complete a project, they (the financial institution) will not be required to outlay an amount greater than the remaining loan funds in order to complete the project and recoup their investment.

Replacement of Division 43 Deferred

The 1999 Review of Business Taxation recommended that new buildings and structures should be depreciated using the general depreciation provisions instead of the current Division 42 construction cost based method. On 21 September 1999, the Treasurer announced the Government's in principle acceptance of this recommendation and nominated a probable implementation date of 1 July 2001. The Treasurer has now announced that this implementation date has been further deferred until after 30 June 2002.

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