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## INSTANT ASSET WRITE-OFF

As part of the Federal Government's first phase of the stimulus package for the economy, businesses with an "aggregated turnover" of less than $500 million can now claim an immediate deduction for depreciating assets costing less than $150,000 that are first used or installed ready for use from 12 March 2020 to 30 June 2020.

Depending on the aggregated turnover of the business and the date when the asset is first used or installed ready for use, the following thresholds apply from 1 July 2019 onwards:

| Aggregated Turnover | Date Range | Threshold |
|---|---|---|
| < $500 million | 12 March 2020 to 30 June 2020 | $150,000 |
| < $50 million | 7.30pm (AEDT) on 2 April 2019 to 11 March 2020 | $30,000 |
| < $10 million | 29 January 2019 to 7.30pm (AEDT) on 2 April 2019 | $25,000 |

The aggregated turnover is calculated based on the total ordinary business income of the business and its associated entities derived from the ordinary course of carrying on its business. For the 2019-20 financial year, businesses can choose to use either its aggregated turnover in the 2018-19 or 2019-20 financial year.

The immediate deduction is available for both new and second-hand assets. However, certain assets are specifically excluded, such as:

- buildings and leasehold improvements that fall under the capital works deduction regime;
- software allocated to a software development pool (but not other software);
- horticultural plants and other certain assets used in the primary production; and
- assets that are leased out, or expected to be leased out, for more than 50% of the time jon a depreciating asset lease.

Moreover, eligible businesses acquiring cars as depreciating assets can only claim up to the car limit of $57,581 for the 2019-20 financial year. Cars in this context mean passenger vehicles (except motor cycles or similar vehicles) designed to carry a load less than one tonne and fewer than 9 passengers. However, eligible businesses can still claim immediate deductions for other vehicles (e.g. panel vans, utilities, trucks and machinery) that are designed to carry a load of more than 1 tonne and/or more than 8 passengers where the cost of the vehicles are less than $150,000.

As a final note, eligible businesses only have 3 weeks to access the instant asset write-off for $150,000 (at the time writing). Without a further extension by the Government, the threshold will go back to $1,000 from 1 July 2020 and it will only be available for businesses with an aggregated turnover of less than $10 million.

**Accelerated Depreciation for Depreciating Assets**

In addition to the instant asset write-off, businesses with an aggregated turnover of less than $500 million can also claim a depreciation deduction at an accelerated rate of 50% for eligible depreciating assets. While there is no cap on the cost of the depreciating asset purchased, the asset must be new and it has not previously been held by another entity (other than as trading stock). Importantly, the asset must not be one where the business has applied the instant asset write-off or other depreciation deductions (e.g. businesses cannot double-claim the deductions from the same single asset under different provisions).

For small businesses with an aggregated turnover less than $10 million that use the Simplified Depreciation Rules, the accelerated rate is 57.5% in the first income year and 30% thereafter. The accelerated rate is available for eligible depreciating assets that are first held, and first use or installed ready for use for a taxable purpose from 12 March 2020 to 30 June 2021.

**ATO Tax Payment Concessions**

The ATO has also announced various concessions to assist taxpayers experiencing financial difficulty as a result COVID-19, which include:

- the option to vary PAYG Instalments to zero or claim a credit for instalments paid under the previous activity statements without attracting penalties or interest;
- the ability to defer up to 6 months the payment date of amounts due through the business activity statement (including PAYG instalments), income tax assessments, fringe benefits tax assessments and excise;
- allowing businesses on a quarterly reporting cycle to opt into monthly GST reporting to get quicker access to GST refunds they may be entitled to;
- remitting any interest and penalties, incurred on or after 23 January 2020, that has been applied to tax liabilities; and
- allowing affected businesses to enter into low-interest payment plans for their existing and ongoing tax liabilities.

**Payroll Tax Grants and Concessions for WA Businesses**

The WA State Government has also announced a raft of payroll tax measures to assist businesses impacted by COVID-19.

First, a one-off grant of $17,500 will be available for employers, or groups of employers, whose annual Australian taxable wages are more than $1 million and up to $4 million. For a group of employers, a single grant will be payable to the designated group employer. Eligible employers do not need to apply for the grant as they will automatically be paid by cheque or EFT from July 2020.

Second, the payroll tax threshold will be increased to $1 million from 1 July 2020. This effectively brings forward the original planned date of 1 January 2021 for the threshold increase. This measure will save eligible employers an estimated $1,375 to $1,625 in payroll tax. Further, it is estimated that approximately 300 businesses will no longer be liable for payroll tax due to the threshold increase and, therefore, may benefit from the additional saving on compliance costs.

The third and final measure enables employers, or groups of employers, who pay $7.5 million or less in Australian taxable wages and have been directly or indirectly impacted by COVID-19, to defer their monthly payroll tax payments until 21 July 2020. A business is directly or indirectly affected if the current turnover, profit, customers, bookings, retail sales, supply contracts or other factors, compared with normal operating conditions, have been directly or indirectly affected by COVID-19.

If you have any queries on these various Federal or State concessions, please contact Andrew Lowry or Leonard Tebbutt on 08 9444 9711**.**

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## JOBKEEPER UPDATE

As the JobKeeper enrolment due date for the months of April and May 2020 ended on 31 May 2020, most practitioners are now comfortable with the eligibility requirements for the JobKeeper scheme. While enrolments have been undertaken for most clients, there are on-going requirements that still need to be satisfied for the remaining JobKeeper period. We have summarised two key updates that that have been released over the last week.

### ***Wage Condition for Monthly-Paying Clients***

The JobKeeper Rules require that an employer who operates on a pay cycle that is less frequent than a fortnight (i.e. monthly pay cycles), allocate the monthly amount it pays between JobKeeper fortnights in a reasonable manner, in order to demonstrate that it has met the wage condition for those fortnights.

The ATO has advised that where an employee's work pattern and employment status remains constant throughout the relevant period, it will be reasonable to allocate a monthly payment equally to each fortnight. However, if the work performed by the employee differs significantly over the period, it may not be reasonable to allocate a monthly payment equally to each fortnight. An unequal allocation is more likely to be unreasonable in cases where the difference

is caused by a change to the employee's usual work patters or employment status – for example, where the employee is stood down or their usual hours of work are significantly reduced during the month.

In some cases, employers who have paid at least $3,000 before tax to employees in a four-week period may have, in good faith, simply allocated that payment equally to each fortnight. There may be some circumstances where that allocation is not reasonable, for example, because the work performed by the employee significantly differed between the two fortnights. In these cases, for JobKeeper fortnights ending in April or May, the ATO will allow employers until the end of June to make any additional payments necessary to ensure that a reasonable allocation of the payments made is at least $1,500 per fortnight.

In such circumstances, the Commissioner will need to apply his discretion to allow monthly-paying employers until the end of June to make any further payments necessary in respect of the fortnights ending in April and May 2020 to meet the 'reasonable allocation' requirement.

Based on the ATO's updated guidance, we recommend that you consider whether you have met the 'reasonable allocation' requirement for the fortnights ending in April and May 2020 and whether you need to apply to the Commissioner for a discretion to be exercised to allow a 'top-up' payment to be made by the end of June 2020.

***JobKeeper and Superannuation***

As announced when the Rules were first introduced, JobKeeper 'top-up' payments should not be subject to superannuation guarantee. The *Superannuation Guarantee (Administration) Regulations 2018* have now been amended to ensure that employers are not subject to additional superannuation guarantee obligations as a result of their participation in the JobKeeper scheme. Amounts of salary and wages that do not relate to the performance of work and are only paid to an employee to satisfy the wage condition for JobKeeper purposes, are excluded from the calculation of an employer's superannuation guarantee shortfall and minimum superannuation contribution required.

Should you have any queries in relation to the above, or require us to assist with any JobKeeper related matters, please contact Andrew Lowry or Leonard Tebbutt on 08 9444 9711**.**

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## DEVELOPER ORDERED TO COMPENSATE FOR GST

- *Lloyd v Belconnen Lakeview Pty Ltd (No 2)* [2020]

On 14 May 2020 the Federal Court, Lee J, in *Lloyd v Belconnen Lakeview Pty Ltd (No 2)* [2020] FCA 698, ordered a Canberra developer to pay $29,914 to the purchaser of an apartment. This amount was the equivalent of what would have been the GST component on the acquisition price and was awarded on the basis that the developer failed to amend the sale contract to reflect the change of GST status from taxable supply to input taxed.

The judgement comes on the back of the Federal Court's decision last year that the developer may have engaged in misleading and deceptive conduct when the developer sold apartments claiming GST was included in the price: *Lloyd v Belconnen Lakeview Pty Ltd [2019] FCA 2177.*

In the original case, the developer had obtained real property under a 99-year lease and then developed apartments which it allegedly marketed as being subject to GST. However, the developer had obtained a private ruling stating that the sale of the units would be input taxed. The Federal Court said in their original judgement that it was up to each purchaser to take action against the developer for restitution based on the alleged misleading conduct. The purchaser did so and in this case won compensation in the form of the GST component.

The lesson learned here and in many other GST issues we have encountered related to property, is that parties need to do adequate GST due diligence. Purchasers and vendors need to ensure that sale contracts and any subsequent variations, reflect the appropriate GST status and/or their agreed intentions to apply the margin scheme or sale of going concern.

Failure to do so could be a costly and stressful mistake, often leading to over or underpaid GST and unpleasant surprises when input tax credits are reviewed by the ATO and denied due to inadequate or incorrect documentation supporting the GST position of the parties. We recommend that accountants encourage their clients to seek their assistance in reviewing property contracts prior to entering into these significant transactions.

If you would like to discuss property transactions and their GST implications, please contact Andrew Lowry or Leonard Tebbutt on 08 9444 9711**.**

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### TRUSTEE RESOLUTIONS MUST BE MADE BY 30 JUNE OF EACH YEAR

As you may be aware, trustees are required to have made their 2020 resolutions to distribute trust income **on or before 30 June 2020**. The ATO recommends that the resolution is in writing and is in a format that is compatible with the respective Trust Deed.

Furthermore, if a trust has derived capital gains or franked dividends and the trustee wishes to distribute some or all of those capital gains or franked dividends to specific beneficiaries (called "streaming"), the trustee must:

1. Understand the terms of the Trust Deed in respect to how income is defined and whether the Deed allows the "streaming" of capital gains and franked dividends;
2. Determine how much and to whom the income will be distributed; and
3. Draft a suitable resolution and have it executed by 30 June 2020.

**If the resolution is not made and signed by 30 June, the ATO may assess the trust income to the trustee at 45%.**

In order to do this effectively, we will need a clear understanding of what the Trust's 2020 income is likely to be, including the amount of any capital gains or franked dividends that have been (or are expected to be) derived in the 2020 year.

To get the best result, this must be done before we draft and execute the Trustee Resolution on 30 June 2020. Accordingly, if you require our assistance in drafting this year's resolution please contact Andrew or Leonard to discuss how best we can determine the trust's likely 2020 income position.

If you would like us to assist in the preparation of the resolution and your Trust Deed has not been reviewed by us in the past, please also provide a copy of the Trust Deed, together with any amendments and variations made to the original Trust Deed. We will then contact you with a fee estimate to review the Deed, as well as to tailor the trustee resolution to your Deed.

If you have any queries in regard to any of the above or wish to discuss this further please do not hesitate to contact Andrew Lowry or Leonard Tebbutt on 08 9444 9711**.**