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TECHNOLOGY INVESTMENT BOOST ("TIB")

Small businesses (with an aggregated annual turnover of less than $50 million) can deduct an additional 20% of the expenditure incurred for the purposes of business digital operations. This also extends to small businesses that are digitising its operations on business expenses and depreciating assets such as portable payment devices, cyber security systems or subscriptions to cloud based services.

An annual $100,000 cap on expenditure will apply to each qualifying financial year. Businesses can continue to deduct expenditure over $100,000 under existing law.

Background

The Technology Investment Boost and Skills and Training Boost Bill Treasury Laws Amendment (2022 Measures no 4) Bill 2022 received Royal Assent on 23 June 2023.

The TIB is a temporary measure aimed to support digital adoption by small businesses. Providing an incentive for small businesses to take advantage of digital technologies, which are "key to a stronger, productive and resilient economy".

The new tax incentive applies to eligible expenditure incurred between 7.30pm on 29 March 2022 until 30 June 2023. For taxpayers whose income year commences on 1 July, the 20% bonus deductions (for the 2022 & 2023 income years) are both claimed in the 2023 income tax return.

The Detail

<u>*Entities eligible for the bonus deduction*</u>
The bonus deduction is available to entities that meet the definition of a small business entity under section 328-110 of the ITAA 1997. Section 328-110 defines a small business entity as an entity that carries on business with an aggregated turnover of less than $10 million. The bonus is also available to entities that would meet the definition of a small business entity under 328-

110 of the ITAA 1997 if the reference to $10 million (turnover) was replaced by reference to $50 million.

Digital operations
Eligible expenditure must have a direct link with respect to the digital operation of the business. Expenditure must be incurred wholly or substantially for the purposes of an entity's digital operations or digitising the entity's operations.

There are four main business expenditure categories:

- Digital enabling items – computer and telecommunications hardware and equipment, software, systems and services that form and facilitate the use of computer networks;
- Digital media and marketing costs – audio and visual content that can be created, accessed, stored or viewed on digital devices;
- E-commerce – supporting digitally ordered or platform enabled online transactions; and
- Cyber security – cyber security systems, back up management and monitoring services.

An entity's expenditure on digital operations or digitising its operations is not necessarily limited to these categories.

Expenditure must not be excluded
Some types of expenditure are ineligible for the bonus deduction even where they would otherwise meet the requirements. These are:

- salary and wage costs;
- capital works costs which can be deducted under Division 43 of the ITAA 1997;
- financing costs;
- training and education costs; and
- expenditure that forms part of, or is included in, the cost of trading stock.

Relevant time period for eligible expenditure
An entity can only claim the bonus deduction for expenditure incurred from 7:30pm (by legal time in the Australian Capital Territory) on 29 March 2022 to 30 June 2023.

For the purposes of calculating and claiming the bonus deduction for normal or late balancers, this timing is expressed as two time periods ('the relevant time periods'):

- from 7:30pm (by legal time in the Australian Capital Territory) on 29 March 2022 until the end of the entity's 2021-22 income year ('the first time period'); and
- from the start of the entity's 2022-23 income year to 30 June 2023 ('the second time period')

Early balancers (i.e. if an entity's 2022-23 income year begins before 1 July 2022) have different relevant time periods, which are as follows:

- from 7:30pm on 29 March 2022 until the end of the entity's 2022-23 income year ('the early balancer first time period'); and

- from the start of the entity’s 2023-24 income year to 30 June 2023 (‘the early balancer second time period’).

Calculating and claiming the bonus deduction

The amount of the bonus deduction is calculated as 20% of the total amount of eligible expenditure, up to a maximum bonus deduction of $20,000 per income year or specified time period.

Key Takeaway

The Government’s goal in providing temporary tax incentives is to encourage small businesses to take advantage of digital technologies.

This tax incentive provides eligible businesses to claim an additional 20% deduction on already 100% deductible items such as technology hardware and software used for business purposes.

If you would like to discuss the above matters further, please contact Andrew Lowry or Leonard Tebbutt on 08 9444 9711.

ASSESSABILITY OF COMMUTED LUMP SUM INSURANCE PAYMENT

What was the recent case about?

On 16 November 2023 the Administrative Appeals Tribunal handed down its decision in the case of Sladden and Commissioner of Taxation (Taxation) [2023] AATA 3815. The case was to confirm whether a lump sum payment, made to settle an insurance claim in full, was ordinary income or a capital gain.

It serves as a timely reminder that whether a lump sum payment received as a result of commuting an insurance payout is taxable income or not depends on the underlying nature of the payment.

This case involved Dr Sladden, who has taken out two linked insurance policies in 1999. One of these policies was an income protection policy, while the other was a life protection policy. In early 2013 Dr Sladden made a claim on the income protection policy and subsequently began receiving monthly payments. These payments were included in her assessable income.

In January 2017 the insurance policies were transferred to AMP and due to ongoing difficulties with the new policy provider, Dr Sladden sought to commute the benefit payments into a lump sum.

AMP offered $1 million to settle the claim in full, and all parties appeared to understand that this was in relation to the income protection policy only. The life insurance policy would also be cancelled. Dr Sladden also had tax advice that the lump sum would be assessable as ordinary income.

It was only after the settlement deed was received that Dr Sladden took active steps with AMP to discuss a change in the wording to include references to the life insurance policy. It is worth

noting that the life insurance policy was worth $24,471.96 at the time, and the terms of the settlement deed did not change other than acknowledging that it covers "all insurance cover held under the Policy".

The AAT rejected the argument that any amount of the settlement payment was capital, and whether the settlement deed expressly covered the cancellation of the life insurance policy was secondary to the fact that the negotiated amount had already been agreed upon in relation to the income protection policy.

As a result, the whole amount was taxable as ordinary income.

Dr Sladden had tried to rely on case law that found if a payment contained both income (income protection insurance) and capital (life insurance), and the settlement amount cannot be dissected between the income and capital components, then it will all be treated as capital.

What might this mean for you

When considering if a settlement payment of any nature is taxable as ordinary income, it is the facts that led to the settlement that will determine the true nature of the payment.
Capital components may be tax free, or subject to reduced tax as a result of the general 50% discount and other concessions.

Any sham arrangements may be challenged. This may occur, for example, where the parties agree to the settlement of the income and capital components, but the settlement deed only shows one total settlement figure.

Any formal settlement deed cannot re-characterise the payment's nature. There must be true weighing of any capital component during the settlement negotiations for this to occur, and then the settlement deed must reflect the agreed terms of the settlement.

If you would like to discuss the above matters further, please contact Andrew Lowry or Leonard Tebbutt on 08 9444 9711.

New Year's Resolution – Updating My Estate Plan

For a number of years, we have been reminding our Private Clients to start the conversation on considering their Estate Plan and what they would like to see happen to their assets, their entities (including businesses) and their super before and after they die.

Believe me, it is not an easy discussion and can take some time to gain traction. But I believe it is a discussion we all need to have at some point, even if it is in bite size pieces.

As your trusted advisor, we are well placed to facilitate the process and act, primarily as the project manager, for the efficient and effective drafting of your Estate Plan.

So, what does an efficient and effective Estate Plan look like?

In our experience, unfortunately there is no standard template of what one looks like but more so what it needs to consider. One thing is for certain is that is much more than just a Will. It requires a full understanding of your financial and personal circumstances and wishes in order to ensure that when those wishes are eventually acted upon, and at some stage they will be, that the consequences are known, expected and manageable.

A clear and powerful statement taken from Australian Succession Law: Commentary (Thomson Reuters) 2013 written by Haines QC, Englefield, Harland & Worrall is:

> *"The consequence of not having an estate plan ought to be considered so that it can be contrasted to what an estate plan can achieve.*
>
> *(a) First, a person without an estate plan is unlikely to have a will, or if they have a will, there is a high risk that they have a "simple" will that does not reflect a well-considered examination of their needs or their views. If they do not have a will, the distribution of their estate is subject to the intestacy provisions in the relevant jurisdiction or jurisdictions….*
>
> *(b) Second, in relation to Powers of Attorney, they will have no-one in the position of an Attorney to act for them in business and financial affairs when they are either away from their normal place of living or when they lose capacity;*
>
> *(c) Third, in relation to their health, medical and lifestyle decisions, they will have no-one to act for them if they were to lose capacity;*
>
> *(d) Fourth, in relation to their superannuation, family trusts, companies or other business structures, the effects on death will be unconsidered, and the effects on these structures and their family members from their death may not be what the person assumed would happen or wanted to happen if they had taken time to consider and reflect."*

Christmas is a time when many of us finally have the time to think about ourselves and our families, meaning the New Year can be a perfect opportunity for you to consider the effectiveness of your current Estate Plan. Why not make updating your Estate Plan one of your New Year's resolutions?

If you would like to discuss the above matters further, please contact Andrew Lowry or Leonard Tebbutt on 08 9444 9711.

TAX AND THE CHRISTMAS PARTY

The costs (such as food and drink) associated with Christmas parties are exempt from FBT if they are provided on a working day on a client's business premises and consumed by current employees.

However, a taxable fringe benefit will arise in the following circumstances;

1. Where an associate of an employee who attends the party, unless the minor benefits exemption applies; and
2. Where the Christmas Party is held off premises, unless the minor benefits exemption applies;

Minor Benefits Exemption

Where you provide a Christmas party for your employees and their partners you don't add the costs together, but instead look at the cost of the benefit provided to each person. Each benefit that is less than $300 (incl GST) may be a minor benefit and exempt if certain conditions are met.

The minor benefits exemption **can** apply provided you don’t use the 50/50 method in determining your entertainment fringe benefits.

Gifts provided to employees at a Christmas party

All benefits associated with the Christmas function should be considered separately to the Christmas party when considering the minor benefits exemption. For example, the cost of gifts such as bottles of wine and hampers given at the function should be looked at separately to determine if the minor benefits exemption applies to these benefits.

Tax deductibility of a Christmas party

The cost of providing a Christmas party is income tax deductible ***only*** to the extent that it is subject to FBT. Therefore, any costs that are exempt from FBT (that is, exempt minor benefits and exempt property benefits) can't be claimed as an income tax deduction.

The costs of entertaining clients are not subject to FBT but are not income tax deductible.

Christmas party held off the business premises

The costs associated with Christmas parties held off your client’s business premises (for example, a restaurant) will give rise to a taxable fringe benefit for employees and their associates unless the benefits are exempt minor benefits.

If you would like to discuss the above matters further, please contact Andrew Lowry or Leonard Tebbutt on 08 9444 9711.