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Global Tax Alert

Australia enacts economic stimulus and support measures – Action required by business

EY Tax News Update: Global Edition

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Executive summary

On 23 March 2020, the Australian Federal Government introduced a package of Bills which the Australian Parliament then passed to enact the measures announced on 12 March and 22 March 2020 which are intended to cushion the economic impact of the coronavirus (COVID-19).

The cost of the Federal Government measures including its health package funding is now AU$189 billion.[1]

This EY Global Tax Alert provides further detail following the earlier March Tax Alerts, to assist businesses to understand, analyze and plan for actions to ensure they avail themselves of the following time-limited business measures:

- Increase in the instant asset write off up to $150,000 per asset with expanded eligibility
- Business investment incentive measure with 50% first-year depreciation deductions
- Tax-free payments to small and medium-sized businesses with a turnover of less than $50 million that employ workers

This Tax Alert does not cover the other Federal Government support and economic measures, including appropriation Bills to cover both "business as usual" expenditure plus funding for the stimulus measures, given the deferral

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of the Federal Budget until October. These include adding $40 billion to the annual discretionary fund to spend on such measures as purchasing emergency medical supplies and offering more financial assistance. Parliament will not sit again until 11 August 2020.

State governments have introduced their own packages in response to the economic impact of COVID-19 – notably changes to payroll tax arrangements, focusing on small to medium businesses and ranging from refunds, payment holidays and waivers to changes to thresholds.

As well, the Australian Taxation Office (ATO) is continuing to adjust processes and support, with frequently asked questions and updates on its website about assistance to businesses. These include ATO recognition that businesses are varying down various installments of tax and might need to consider refunds of earlier installments in relation to the year ending 30 June 2020.

Actions required by business – some are time-sensitive

Certain measures in the economic package apply for a short period of time and therefore warrant early analysis and responses.

- Suppliers of assets should assess marketing alternatives in light of the business measures and cash payments to consumers.
- Businesses eligible for both asset purchase incentives should consider the timing for purchases of eligible assets to ensure they are within the relevant deadlines.

Businesses need to understand the timing of the various government and ATO support measures which may be available to them.

Detailed discussion

Other personal and non-tax business economic measures

Other stimulus and support measures enacted but not discussed in this Tax Alert include:

- Wage subsidies to support apprentices and trainees for small businesses
- Temporary early release of superannuation – directly impacted individuals and sole traders are able to access up to $10,000 of their superannuation, tax-free, in 2019-20, and up to a further $10,000 in 2020-21
- Temporary reduction of pension fund minimum drawdown rates by 50% for the 2019-20 and 2020-21 income years
- Income support for individuals – temporarily expanding eligibility for income support payments and a new, time-limited, supplement of $550 per fortnight
- Payments to support households – two rounds of $750 to eligible recipients
- Lower deeming rates used for setting pension and Social Security benefits
- Temporary relief for financially distressed businesses – temporarily providing higher thresholds and more time to respond to demands from creditors, providing temporary relief from directors' personal liability for trading while insolvent and temporary flexibility in the *Corporations Act 2001*
- Small and Medium Enterprise (SME) Guarantee Scheme to support $40 billion of lending to SMEs through a Government guarantee of 50% of new loans issued by eligible lenders to SMEs
- Support for the aviation industry – up to $715 million of government support
- Establishing the $100 million Australian Business Growth Fund to provide equity finance to SMEs across a range of industries and locations
- $1 billion assistance for severely affected regions
- Establishment of the Structured Finance Support (Coronavirus Economic Response) Fund, initially $15 billion in order to ensure continued access to funding in particular for smaller lenders
- Government making targeted investments in structured finance markets
- Increased in the Medicare Levy and Medicare Levy Surcharge low income thresholds for the 2019-20 income year have been made In line with annual increases in the Consumer Price Index. The next Intergenerational Report is delayed until mid-2021.

Tax incentives for businesses with turnover below $500 million annually

Two incentives available from 12 March 2020 are restricted to businesses with an aggregated annual turnover of less than $500 million.

Claimants will first need to consider:

- Are they carrying on a business – this issue arose already when considering eligibility for the instant asset write-off under the previous rules (which applied to those with turnover of less than $50 million)
- The amount of their aggregated annual turnover

Turnover

The aggregated annual turnover will broadly be the turnover of the entity plus the turnover of the entity's **connected entities and affiliates**. The relevant "small business entity" rules set out that "an entity is connected with you" if one of the following conditions is met:

- Either entity controls the other entity in a way described in the section
- Both entities are controlled by the same third entity

An "affiliate" is any individual or company that, in relation to their business affairs, acts or could reasonably be expected to act either:

- According to your directions or wishes
- In concert with you

The aggregated annual turnover is tested for either the prior income year or the expected/actual current income year. There is an exclusion for using the expected current year rule where aggregated turnover for each of last two years was $500 million or more.

The aggregation rules therefore may make certain Australian entities ineligible. Turnover includes that of both Australian resident and nonresident entities covered under the above definitions.

Instant asset write-off increased to $150,000 per asset until 30 June 2020

From 12 March 2020 until 30 June 2020, the Instant asset write-off (IAWO) threshold is increased to $150,000 per asset for businesses with aggregated annual turnover of less than $500 million (up from the previous $30,000 per asset for businesses under a $50 million threshold).

The IAWO will revert to $1,000 for small businesses (turnover less than $10 million) from 1 July 2020.

The increased IAWO only applies to new or second-hand assets **first used or installed ready for use** for a taxable purpose after 12 March 2020 and before 1 July 2020.

The Act amends the current instant asset write off rules (in Division 328 of the ITAA 1997) introduced originally as a small business entity measure. The rules and issues which arise under that law are therefore also relevant for the increased write offs.

The write off applies to depreciating assets under Division 40 of the *Income Tax Assessment Act 1997* (ITAA 97). It does not apply to assets not eligible for Division 40 including buildings and other capital works depreciable under Division 43 of the ITAA 97.

A depreciating asset is an asset that has a limited effective life and can reasonably be expected to decline in value over the time it is used. Common depreciating assets include computers, electric tools, furniture and motor vehicles.

Exclusions include:

- Land and items of trading stock
- Most intangible assets

Improvements to land or fixtures on land (for example, windmills and fences) may be depreciating assets and are treated as separate from the land.

The threshold applies on a per asset basis, so eligible businesses can immediately write-off multiple assets each costing less than $150,000.

The amendments also increase to $150,000 the threshold below which **subsequent capital expenditure** relating to a depreciating asset (included in the second element of an asset's cost), including in respect of assets subject to the IAWO under the previous small and medium business measures in an earlier year, can be immediately deducted, during the period 12 March 2020 to 30 June 2020.

For assets that cost $150,000 or more, and second element costs of $150,000 or more relating to depreciating assets, which therefore do not qualify for immediate deduction, a small business entity can place the asset in its small business simplified depreciation pool. The tax treatment for the pooled assets may be modified by the backing business investment measures, discussed below.

The threshold for immediate deduction of the balance of a general small business pool at the end of an income year is increased from $30,000 to $150,000 for income years that end on or after 12 March 2020, but before 1 July 2020.

The IAWO will revert to $1,000 for small businesses (turnover less than $10 million) from 1 July 2020.

It is important to emphasize that the IAWO incentive requires active business action by 30 June 2020 to utilize the benefit.

Backing business investment (BBI) – 50% first-year depreciation

A 15-month incentive through accelerating depreciation deductions on eligible assets held by eligible businesses is introduced to boost business investment and economic growth in the short term.

The BBI measure allows an immediate deduction of 50% of the cost of a new asset depreciable under Division 40 of the ITAA 97 (i.e., plant, equipment and specified intangible assets).

The existing depreciation rules will continue to apply to the remaining balance of the asset's cost over its effective life. Therefore, an eligible asset will generate an immediate deduction of 50%, plus in the same year will generate a Division 40 depreciation deduction calculated in respect of the remaining 50% of the asset's cost.

Assets are eligible if acquired after the announcement (12 March 2020) and first used or installed ready for use for a taxable purpose by 30 June 2021. The accelerated depreciation deduction applies in the first year that the asset is so first used or installed.

A number of exceptions apply. The BBI is not available for:

- Assets where a commitment to the asset was entered into before 12 March 2020. This applies where at any time before 12 March 2020 the entity:
  - Entered into a contract where they would hold the asset
  - Started to construct the asset
  - Started to hold the asset in some other way

An option to enter into such a contract is not considered to be a commitment for these purposes.

- Second-hand Division 40 assets
- Assets which would not be in Australia, where:
  - It is reasonable to conclude, at the time the asset is first used or installed ready for use, that it will be not used principally in Australia for the principal purpose of carrying on a business
  - It is reasonable to conclude, at the time the asset is first used or installed ready for use, that it will never be located in Australia
- Buildings and other capital works depreciable under Division 43
- Assets already deducted under the IAWO rules
- Assets whose decline in value is worked out under the Subdivision 40-E low-value and software development pools or Subdivision 40-F primary production depreciating assets provisions

The measure results in businesses bringing forward depreciation deductions from future years to the current period resulting in a reduced tax liability in the current period.

A small business entity (aggregated turnover less than $10 million) that uses the Subdivision 328-D simplified depreciation rules may be eligible to deduct an amount equal to 57.5% of the taxable purpose proportion of the adjustable value of a qualifying depreciating asset using the general small business pool rules.

Other rules may apply in respect of certain statutory intangible assets and for tax cost setting of assets of an entity which joins a tax consolidated group.

Example

Company A has annual turnover of $80 million and purchases a depreciable asset for $100,000 on 13 March 2020. Company A will start using the asset from 1 July 2020. The Income tax rate of Company A is 30%. Assuming the asset has an effective life of 3 years and depreciation is calculated on a straight-line basis (33.33% per year), the BBI impacts tax deductions as follows:

	2020-21	2021-22	2022-23	Total
With BBI				
Immediate deduction	50,000	–	–	–
Depreciation	16,667	16,667	16,666	50,000
Total claim	**66,667**	**16,667**	**16,666**	**100,000**
Reduced Tax	20,000	5,000	5,000	30,000

The tax benefits will be even more immediate for an asset first used or installed ready for use before 30 June 2020.

Boosting cash flow for employers with turnover under $50 million

Up to a $100,000 tax-free payment with a minimum payment of $20,000 will be provided to small and medium-sized businesses and eligible not-for-profits (NFPs) with an aggregated turnover of less than $50 million that employ workers (under Cash Flow Boost Bill, as announced on 12 March 2020).

The measure will provide a payment equal to 100% (up from the originally announced 50%) of the pay-as-you-go (PAYG) withheld on salaries and wages paid by the eligible businesses/NFPs. Eligible businesses and NFPs that pay salaries and wages will receive a minimum $20,000 payment even where they are not required to withhold tax.

Eligible SMEs include NFP organizations, sole traders, partnerships, companies or trusts that had an Australian Business Number (ABN) on 12 March 2020 and which continue to be active. Charities registered with the Australian Charities and NFPs Commission are eligible, regardless of when they were registered, if they meet the other eligibility requirements.

Eligible payments include:

- Salary and wages
- Director fees
- Eligible retirement or termination payments
- Compensation payments
- Voluntary withholding from payments to contractors

Delivery of the cash flow boosts

No application is needed. The ATO will apply the cash flow boosts automatically to eligible entities when they file their activity statement for the relevant periods.

The eligible businesses will receive the cash flow boost through the ATO in two tranches:

The first cash flow boost payments, between $10,000 and $50,000, will be delivered by the ATO as a credit upon the filing of activity statements from 28 April 2020. These payments cover:

- Quarterly filers – periods ending March 2020 (filing due date 28 April 2020) and June 2020 (filing due date 28 July 2020)
- Monthly filers – periods of March 2020 (filing due date 21 April 2020), April 2020 (filing due date 21 May 2020) and May 2020 (filing due date 21 June 2020).

Monthly filers will receive a credit calculated at three times the rate (300%) in the March 2020 activity statement, to align with quarterly filers.

The second cash flow boost from the ATO to the eligible entity will equal the first tranche of the payment to which the entity is entitled. The second cash flow boost payments are payable in equal installments for either:

- Quarterly filers - June and September 2020 quarters
- Monthly filers – periods of June, July, August and September 2020.

The second cash flow boost payments will generally be made on filing of the activity statement containing the Goods and Services Tax (GST) return of the entity for the period.

If an entity is entitled to receive a refund it will be paid within 14 days.

The $50 million aggregated turnover threshold uses the current small business entity measures definitions as discussed above. This is tested for the most recent income year of the entity for which an assessment of income tax has been made by the Commissioner of Taxation (the Commissioner). Entities with large or multiple connected entities and/or affiliates as defined might result in that entity being ineligible.

If no income tax return has been filed, the Commissioner must be reasonably satisfied that it is likely that the entity is an SME, or a charity or other NFP entity of equivalent size, for the income year that includes the period. The ATO states that they will determine this based on "other information" they hold. Relevant entities might wish to take proactive action here.

If an entity is paid more cash flow boosts than they are entitled to, they will be required to repay the excess.

Anti-avoidance rules apply to prevent artificial or contrived arrangements to make the entity entitled to the first cash flow boost or increase the entitlement of the entity to the first cash flow boost. The ATO states that this may include restructuring your business or the way you usually pay your workers to fall within the eligibility criteria, as well as increasing wages paid in a particular month to maximize the cash flow boost amount.

ATO ongoing guidance

The ATO is proactively providing assistance to large and small businesses, and individuals. A range of services is available and numerous frequently asked questions have been issued and are continuously being updated: EY remains in contact with the ATO about priority issues for guidance.

We highlight the ATO update of 20 March on its assistance to those affected by COVID-19 (link) which outlines ATO willingness to engage in discussions about cash flows due to the ATO including that "businesses that vary their PAYG instalment to zero can also claim a refund for any instalments made for the September 2019 and December 2019 quarters."

Additional EY resources

Some EY resources which are being constantly updated may also be of assistance:

- Rolling EY Australia tax and economic updates here https://www.ey.com/en_au – these include webcasts and replays of earlier webcasts
- EY Tax International COVID-19 Response Tracker here https://www.ey.com/en_gl/tax/how-covid-19-is-causing-governments-to-adopt-economic-stimulus--.

EY is also delivering global webcasts which are available for subsequent replay. Coming on Friday 27 March US time is "Tax in the time of COVID-19: Global tax and economic responses to the crisis". To track the webcasts and register, go to https://www.ey.com/en_gl/webcasts.

Endnote

1. Currency references in this Alert are to the AU$.

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