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**** FOR IMMEDIATE RELEASE****

Full expensing of assets “opt out” measure welcomed, but some traps for the unwary remain

Tax & Super Australia (TSA) welcomes last week’s announcement by Treasurer Josh Frydenberg that businesses can “opt out” of the new measure outlined in the 2020-21 Federal Budget that allows businesses to fully expense certain assets.

TSA tax counsel John Jeffreys said many businesses would be pleased to learn that they do not have to fully expense an asset, including those businesses that operate through a trust.

“For some trusts, having to fully expense an asset could push the trust into losses and therefore leave them with no income to distribute,” Mr Jeffreys said. “And that could mean that individuals who receive and rely on distributions through the trust as income could miss out on income and accessing the tax-free threshold.”

While overall the ability to fully expense an asset will provide a tax benefit to many businesses, Mr Jeffreys also warned that the detail of the legislation contains traps for uninformed businesses. “Businesses and their advisers need to be aware of certain points, including around anti-avoidance provisions, when considering using this measure.”

\$50 million or more turnover

There is a set of provisions that only apply to businesses with an "aggregated turnover" of \$50 million or more. If these provisions apply, full expensing of assets may not be available.

Pre-commitments

If a business with turnover of \$50 million or more entered into a contract to "hold" the asset before budget time on 6 October 2020, full expensing will not be available where the asset cost is \$150,000 or more.

Anti-avoidance provision for businesses with a turnover of \$50 million or more

There is a special anti-avoidance provision for businesses with a turnover of \$50 million or more. This is aimed at a situation, for example, where a business has ordered an asset prior to budget time on 6 October 2020 that is to be delivered in, say, December 2020. The business knows that it will not be able to fully expense the asset due to it being ordered prior to the budget. So, the business cancels the order and orders a similar or identical asset in, say, October 2020. The business then tries to say that there was no commitment to purchase the asset prior to the budget. However, the anti-avoidance provision will not allow full expensing on the newly ordered asset.

But there is a problem with this anti-avoidance provision. It does not require a motive of tax avoidance like the general anti-avoidance provision, Part IVA. This means that asset purchases could be inadvertently caught by the anti-avoidance provision.

For example, assume a business has entered into a series of different contracts to purchase a set of identical machines. Some contracts are entered into before the budget announcement and some are entered into after the budget announcement. On a strict reading of the words in the anti-avoidance provision, full expensing of the assets purchased after the budget time would not be permitted. This is whether there was a tax avoidance motive or not.

Second-hand assets

Where the business turnover is \$50 million or greater, full expensing is not available for second-hand assets unless the asset costs less than \$150,000, the business's turnover is less than \$500 million and it is purchased before 1 January 2021.

Small businesses

Businesses that have a turnover of less than \$50 million do not need to concern themselves with the anti-avoidance provision nor the second-hand asset restriction in relation to the full expensing of assets. All that is necessary is that the business "holds" the asset after the budget time. If the asset was ordered or a contract was entered into to purchase the asset prior to the budget time, full expensing will be allowed, provided that the asset is first "held" after the budget time. In most situations, an asset is "held" when it is first legally owned by the business, although other quasi-ownership arrangements can result in the business holding the asset.

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