Tax & Super Australia

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Legislation doesn't provide for all small businesses to "opt out" of full expensing

Tax & Super Australia (TSA) is concerned that new legislation that allows businesses to "opt out" of full expensing measures does not include any provisions for entities that use small business depreciation.

When the Treasurer announced on 23 November that businesses could opt out of fully expensing assets, TSA welcomed this change and hoped that these measures would apply to all entities. However, the legislation reveals that this is not the case.

The amendments only apply in relation to those businesses that use Division 40 of the Income Tax Assessment Act 1997 (ITAA 1997) to calculate their depreciation. There are no amendments made in respect of the many small businesses that use Subdivision 328-D to calculate their depreciation. This subdivision enables a simpler form of depreciation by permitting entities to use a general small business pool.

The amending law, the Treasury Laws Amendment (2020 Measures No. 6) Bill 2020, is now in the Senate.

TSA tax counsel John Jeffreys said the exclusion of entities that use small business depreciation is a major oversight.

"Many small businesses use this simpler form of deprecation. They will be concerned that by purchasing an asset and being forced to immediately write that asset off, the entity will be pushed into tax losses. When this occurs, this can result in the small businesses entity having to pay added tax in future years."

"This is particularly the case where a business is being run, for example, through a trust. If the trust is pushed into losses when it acquires an asset, it can mean the trust's beneficiaries lose the use of the tax-free threshold. When the tax-free threshold is lost for a year, it cannot be regained and therefore there is a permanent tax loss."

"As it stands, there is no choice in this matter. The business is forced to claim the full expensing of the asset," Mr Jeffreys said.

Also, as at 30 June 2021 and 30 June 2022, small businesses that elect to use Subdivision 328-D will be forced to have the closing balance of their general small business pool equal to zero.

This means that any balance in the pool that has not been depreciated must be claimed as a depreciation deduction at that time. Small businesses do not have a choice to opt out of these forced deductions.

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"While many small businesses will welcome the ability to write off assets to the extent of 100%, others will not want to be forced into having tax losses or a low level of taxable income," Mr Jeffreys said.

"This may cause these businesses to not acquire new assets until the full expensing regime ends after 30 June 2022. This would appear to be contrary to what the Government is aiming to achieve."

For further comment, please contact TSA senior tax counsel John Jeffreys:
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About Tax & Super Australia Tax & Super Australia (TSA) is a not-for-profit organisation that provides practical tax, super and accounting information for about 3,600 members and a broader tax community of more than 15,000 people. It is based in Melbourne but has members all over Australia. Most of its members are tax agents, accountants and super professionals.