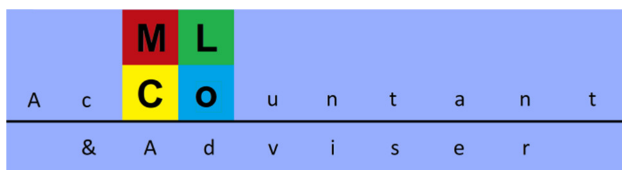

Please read this update
and contact this office
if you have any queries

Practice Update

July 2020

Treasury Laws Amendment (2020 Measures No 3) Bill 2020

Treasury Laws Amendment (2020 Measures No 3) Bill 2020 has passed both Houses of Parliament and is now law.

Extending the Instant Asset Write-Off

This legislation amends the income tax law to allow a business with an aggregated turnover for the income year of less than $500 million to immediately deduct the cost of a depreciating asset (instant asset write-off). The asset must cost less than a threshold of $150,000 and be first used or installed ready for use for a taxable purpose by 31 December 2020. Without these amendments the $150,000 instant asset write-off would have ended on 30 June 2020.

By extending the previous end date of 30 June 2020 to 31 December 2020, the amendments give businesses additional time to access the $150,000 instant asset write-off for their acquisitions of depreciating assets, including those purchases that have been delayed by supply chain disruptions. Further, the amendments extend cash flow support to businesses through the early stages of the recovery from the economic conditions caused by COVID-19.

It will be interesting to see if this timeframe is further extended at some later point. Note that, come 1 January 2021, if there is no further extension, the $150,000 threshold for the instant asset write-off for depreciating assets will collapse to $1,000 and the turnover threshold for eligibility for the outright deduction of less than $500 million will fall to a turnover of less than $10 million.

Editor: Please contact our office if you are considering purchasing a depreciating asset for your business and want to know if you will be eligible for the instant asset write-off.

Treasury Laws Amendment (2019 Measures No 3) Bill 2019

Treasury Laws Amendment (2019 Measures No 3) Bill 2019 has passed both Houses of Parliament and is now law.

Testamentary trusts and minors

This legislation contains amendments to ensure the tax concessions available to minors in relation to income from a testamentary trust only apply in respect of income generated from assets of the deceased estate that are transferred to the testamentary trust (or the proceeds of the disposal or investment of those assets).

Broadly speaking, when a trustee distributes income to a minor it is taxed at the highest marginal rate (plus Medicare levy). However, there are certain exceptions to this rule. One such exception is where the trust is a testamentary trust – being a trust that was established as a result of the will of a deceased individual. Income from a testamentary trust is a type of 'excepted trust income' that is generally taxed at ordinary rates.

Prior to this legislation being passed, the previously existing law did not specify that the assessable income of the testamentary trust be derived from assets of the deceased estate (or assets representing assets of the deceased estate). As a result, assets unrelated to a deceased estate that were injected into a testamentary trust may, subject to anti-avoidance rules, generate excepted trust income that was not subject to the higher tax rates on minors. This was an unintended consequence, which allowed some taxpayers to inappropriately obtain the benefit of concessional tax treatment.

This legislation clarifies that excepted trust income of the testamentary trust must be derived from assets transferred to the testamentary trust from the deceased estate or from the accumulation of such income.

This change will apply in relation to assets acquired by or transferred to the trustee of a testamentary trust on or after 1 July 2019.

Please contact our office if you have any concerns about testamentary trusts making distributions to minor beneficiaries.

Regulations confirm no SG obligation on JobKeeper payments where work is not performed

The federal government has registered the *Superannuation Guarantee (Administration) Amendment (Jobkeeper) Payment Regulations 2020*.

These regulations ensure that amounts of salary or wages that do not relate to the performance of work and are only paid to an employee to satisfy the wage condition for getting the JobKeeper payment are prescribed by the Regulations as excluded salary or wages.

The effect is that these amounts are excluded from the calculations of an employer's superannuation guarantee shortfall and the minimum compulsory superannuation contribution an employer is required to make in respect of an employee to avoid a superannuation guarantee charge liability.

Likewise, the Regulations recognise that an employer is only entitled to a JobKeeper payment for its employees if the business has suffered a substantial decline in turnover. In these circumstances, it is appropriate to require employers to only make minimum superannuation contributions in respect of amounts that are required to be paid to an employee for the performance of work.

Employers would not be required to make contributions in relation to additional amounts paid to satisfy the wage condition (for example, the amount by which $1,500 exceeds an employee's normal pay).

Editor: If you are concerned about the calculation of compulsory superannuation for any employees supported by JobKeeper, please contact our office.

COVID-19 and Division 7A relief

The ATO has announced some limited relief for private companies that have loans to their shareholders or related parties that are governed by what are referred to as "complying loan agreements".

A complying loan agreement is entered into to avoid triggering an assessable deemed dividend that could potentially be equal to the amount of the loan from the private company.

When there is a complying loan agreement between a private company and a borrower, the borrower must make the minimum yearly repayment (MYR) by the end of the private company's income year. This avoids the borrower being considered to have received an unfranked dividend, generally equal to the amount of any MYR shortfall.

As a result of the COVID-19 situation, the ATO understands that some borrowers are facing circumstances beyond their control. To offer more support, the ATO will allow an extension of the repayment period for those borrowers who are unable to make their MYR by the end of the lender's 2019–20 income year (generally 30 June).

Requesting the extension

A request for a 12-month extension can be made through the completion of an online application. Borrowers will be asked to confirm the shortfall, that the COVID-19 situation has affected them and that they are unable to pay the MYR as a result.

When the ATO approves an application, it will let the borrower know they will not be considered to have received an unfranked dividend. This is subject to the shortfall being paid by 30 June 2021. It will not be necessary to submit further evidence with the application.

This particular streamlined process established by the ATO only applies to applications for an extension of up to twelve months for COVID-19 affected borrowers. It is still open to a borrower to apply to obtain a longer extension of time outside the streamlined process.

Editor: If you have been affected by the COVID-19 situation and need more to time to make your minimum yearly repayment (MYR) in relation to complying loans from private companies, contact our office for assistance.

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.