

10 March 2009

Small Business and General Business Tax Break – Consultation
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

**SUBMISSION TO TREASURY
EXPOSURE DRAFT - TAXATION LAWS AMENDMENT (SMALL BUSINESS AND GENERAL BUSINESS
TAX BREAK) BILL 2009**

We appreciate this opportunity to make a brief submission on the proposed business tax break on behalf of our clients. The 30% tax break is a good idea and provides a real incentive for business to invest. The purpose of our submission is to provide feedback and highlight some potential difficulties.

Cummings Flavel McCormack

Cummings Flavel McCormack is a medium sized Chartered Accounting firm based in Melbourne. Our clients include many small and medium sized businesses that have been adversely affected by the current economic climate.

The 30% tax break has attracted significant interest from our clients, suggesting that some businesses may accelerate their capital expenditure or even take this opportunity to upgrade their equipment.

Submission

All section references refer to the *Income Tax Assessment Act 1997*.

10% tax break

The 30% tax break has sparked the interest of our clients and we anticipate that many clients will accelerate their capital investment. By contrast, there was little reaction to the original announcement of a 10% investment allowance. The investment allowance represented a genuine cash flow benefit of only 3% for most business taxpayers (assuming an average tax rate of 30%). In other words, a small business which spends \$1,000 on an item of plant would receive an after-tax benefit of only \$30. This is unlikely to impact business expenditure.

We do not anticipate that the 10% tax break will have any significant impact on the business expenditure of our clients while significantly increasing the complexity of the new rules. We submit that the 30% tax break be extended, or the 10% tax break be increased to at least 20% to provide a legitimate incentive for business investment.

The “purpose” test

The relevant asset must be acquired for the principle purpose of carrying on a business. This imposes a narrower test than the general deduction tests in section 8-1 and will create uncertainty for some taxpayers who have not previously needed to consider whether their activities constitute carrying on a business. We note that this “business” requirement is also narrower than the concept of an “enterprise” for GST purposes.

This “purpose” test will create uncertainty and potentially increase compliance costs for certain taxpayers, including:

- Consultants and contractors with a personal services business as defined in Division 87. Whether a person/entity is carrying on a business is a question of fact that is independent of the statutory tests for a “personal services business”;
- Consultants or contractors who do not have a “personal services business” as defined. Again, it is a question of fact whether a person/entity is carrying on a business. The treatment of the tax break for personal services entities under Division 86 will need to be clarified;
- The owners of commercial property (ie. lessors). For the purpose of this tax break, we submit that it is not appropriate to distinguish between a landlord with one commercial tenant and other landlords with multiple tenants who are more likely to be carrying on business in the traditional sense;
- Entities involved solely in leasing activities. For example, it is reasonably common for one entity in a private group to own all plant and equipment which is leased to one or more trading entities in the group. Given the broader business activities of these groups, we submit that it should not be necessary to determine whether the particular leasing activities constitute a business in isolation. It should be sufficient that these assets are used in the business of an associate for these purposes;
- Superannuation funds

Software

Software is a depreciating business asset which requires frequent upgrade or replacement. In practical terms, the current write-off for the cost of software is effectively no different to other forms of depreciation under Division 40. We submit that business software should be eligible for the 30% tax break.

Unit Trusts

Many of our clients conduct their business through a unit trust structure. Unit trusts and their unit holders will effectively be denied the full benefit of the 30% tax break. The tax break will create a difference between accounting profit and taxable income in the unit trust. The annual distribution of this tax sheltered amount can result in a significant capital gain for unit holders, effectively reversing the benefit of the tax break. We submit that gains attributed to new

Division 41 be excluded from the operation of CGT event E4 (section 104-70) by amendment to section 104-71.

Primary Producers

We submit that the tax break should apply to capital expenditure by primary producers on water facilities (ie. conserving or conveying water) and landcare operations at the very least. Encouraging further investment in the Australian rural economy and particularly water conservation would seem to be an appropriate objective in the current circumstances.

Please call Michael Jones or David Kent on 9252 0800 if you have any queries.

Yours faithfully

Cummings Flavel McCormack Pty Ltd

Michael Jones

Director