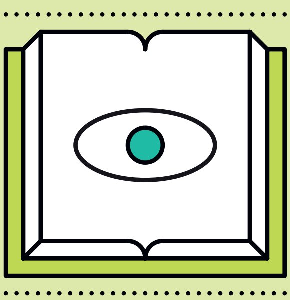
TAX TALK

Loss carry back rules, small business loans & other relief

Last Thursday the government passed legislation to enable taxpayers to carry back losses to the immediately prior year as well as to provide small businesses with cashflow loans. Both measures are designed to provide immediate cash to businesses.

Loss Carry Back Regime

The government had announced the loss carry back regime back in April (see our previous Tax Talk here), however, the legislation provides certainty around how the regime will operate and how taxpayers can utilise this regime.



Primarily, a taxpayer will be able to carry a loss back to the immediately prior year (so a 2021 loss to 2020 or a 2020 loss to 2019). 2019 is the earliest income year a loss can be carried back to, regardless of balance date. This means the prior year taxable income will be reduced and any overpaid tax now potentially refunded. The regime will be elective, with taxpayers needing to choose to carry losses back to a prior year. They will do so by either including the estimated loss in the profit year tax return or by lodging an amendment request with Inland Revenue. The amendment request would take the form of filing an estimate with Inland Revenue; estimates can be made at any time through to the earlier of the date the loss year return is filed or is due.

Key limitations

- To obtain the refund, the company will need sufficient imputation credits. This may be an issue where a dividend has been paid.
- Shareholder continuity of 49% needs to have been maintained between the period the losses are utilised and the period the losses are generated.
- Care needs to be taken where shareholder-employees are involved due to potential deemed dividend and FBT impacts.

The loss carry back regime cannot be utilised in respect of residential rental property losses. Where a taxpayer has a debt for another tax type (e.g. GST), Inland Revenue is unable to automatically use the refund to offset against that debt (i.e. they must release the refund to the taxpayer).

Small Business Loans

Under the new “small business cashflow scheme”, businesses will be able to get interest-free or low-interest loans of up to $100,000. Key features of the scheme and details on eligibility (based on the government’s press release) include:

- The cashflow scheme will be available to businesses employing 50 or fewer staff.
- Eligibility criteria is the same as those for the wage subsidy scheme. Sole traders with no employees will be able to borrow up to $11,800 provided they meet a viable business test and have experienced a 30% drop in revenue.
- Applications for the scheme open on 12 May 2020. The scheme will be administrated by Inland Revenue. Small firms will have 1 month from the opening date to apply for loans; however, the deadline can be extended.
- Companies can borrow $10,000, plus an additional $1,800 for each full-time employee, therefore a firm employing 50 staff can apply for the maximum amount of $100,000.
- The loans are interest-free where the amount is paid back within a year. Otherwise, interest will be charged at a rate of 3% annually and the loan must be paid back within 5 years. No repayment is required within the first two years. If the business is never able to repay by failing the loan does not become taxable.

Clarification on Building Depreciation

Inland Revenue has clarified their commentary on the calculation of depreciation on commercial and industrial buildings. The treatment is summarised below:

Buildings owned in 2011

Straight Line – Multiply the cost price of the building less fitout, plus capital expenditure by 1.5%

Diminishing Value – Multiply the closing tax book value of the building less fitout, plus post 2011 capital expenditure, by 2%

Fitout referred to above relates to a special concession granted when depreciation on buildings was repealed in 2011.

Buildings acquired since 2011

Straight Line – Multiply the cost price of the building, plus capital expenditure by 1.5%

Diminishing Value – Multiply the closing tax book value of the building, plus capital expenditure by 2%

An earlier version of the commentary had created confusion around the calculation of depreciation under the straight-line method.

Residency Relief

Inland Revenue have also announced tax residency will not change for:

- Individuals stranded in New Zealand who weren’t intending to be tax resident but have been forced to remain in New Zealand for longer than 183 days in a rolling 12-month period. Where these circumstances apply the day tests will be based on normal circumstances when people are free to move.
- Businesses where directors, employees and individuals are currently stranded in New Zealand. Inland Revenue have confirmed where there has been the occasional exercise of control (i.e. a board meeting) or where the fixed place in New Zealand is of a purely temporary nature this will not change the country where the real business of a company is carried on.
- Non-resident contractors or persons performing personal or professional services in New Zealand on a short-term visit. Inland Revenue have advised where a person was unable to leave, any extra days in addition to the 92 days will be disregarded.

If you have any queries in relation to the above, please contact your Baker Tilly Staples Rodway advisor.
