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| **EXPOSURE DRAFT** |

Inserts for

Treasury Laws Amendment (Measures for Consultation) Bill 2023: Small business energy incentive

| Commencement information |
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| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Schedule X | The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent. |  |

Schedule X—Small business energy incentive

Income Tax (Transitional Provisions) Act 1997

1 At the end of Division 328

Add:

328‑465 Energy incentive

 (1) You can deduct for an income year an amount that is equal to the lower of:

 (a) 20% of the total amount (which may be nil) of your expenditure to which subsection 328‑470(1) or (3) applies in relation to the income year; and

 (b) $20,000 less any amount deducted under paragraph (a) for a previous income year.

These are bonus deductions under the Income Tax Assessment Act 1997

 (2) The *Income Tax Assessment Act 1997* has effect as if this section and section 328‑470 of this Act were provisions of Division 25 of the *Income Tax Assessment Act 1997*.

 (3) Sections 8‑10, 40‑215 and 355‑715 of the *Income Tax Assessment Act 1997* do not apply in relation to a deduction under this section.

328‑470 Assets that qualify for the energy incentive

Expenditure included in the first element of cost of a depreciating asset

 (1) This subsection applies to an amount of expenditure in relation to an income year if:

 (a) the expenditure is included in the first element of cost of a depreciating asset; and

 (b) you can deduct the expenditure under a provision of a taxation law (other than section 328‑465 of this Act) whether or not in, or wholly in, the income year in which the expenditure was incurred; and

 (c) you start to use the asset, or have it installed ready for use, for any purpose at a time (the ***start time***) that:

 (i) is in the income year; and

 (ii) after 30 June 2023 but before 1 July 2024; and

 (d) you are a small business entity, or an entity covered by subsection (4), for the income year that includes the start time; and

 (e) subsection (2) (about eligible energy assets) applies to the asset; and

 (f) neither the expenditure nor the asset is excluded under subsection (6); and

 (g) the only balancing adjustment events that occur for the asset at a time during the period starting on 1 July 2023 and ending on 30 June 2024 occur because you stop holding the asset because of an event or circumstance referred to in subsection 40‑365(2) (about involuntary disposals) of the *Income Tax Assessment Act 1997*.

 (2) This subsection applies to an asset if:

 (a) the asset uses electricity and, at the start time, a new reasonably comparable depreciating asset that uses a fossil fuel was available in the market; or

 (b) all of the following conditions are satisfied:

 (i) the asset uses electricity;

 (ii) at the start time, a new reasonably comparable depreciating asset that uses a fossil fuel was not available in the market;

 (iii) if the asset is being acquired by way of replacement of or substitution for another depreciating asset—the asset is more energy efficient than the other asset;

 (iv) if the asset is not being acquired by way of replacement of or substitution for another depreciating asset—the asset is more energy efficient than a new reasonably comparable depreciating asset that was available in the market at the start time; or

 (c) the asset enables one or more of the following:

 (i) a depreciating asset (other than an asset excluded under subsection (6)) that uses electricity or energy generated from a renewable source to be more energy efficient;

 (ii) electricity or energy generated from a renewable source to be stored;

 (iii) electricity or energy generated from a renewable source to be used at a different time;

 (iv) electricity or energy generated from a renewable source to be monitored.

Certain expenditure that is included in the second element of cost of a depreciating asset

 (3) This subsection applies to an amount of expenditure in relation to an income year if:

 (a) the amount is included in the second element of a depreciating asset’s cost under paragraph 40‑190(2)(a) of the *Income Tax Assessment Act 1997*; and

 (b) you can deduct the expenditure under a provision of a taxation law (other than section 328‑465 of this Act) whether or not in, or wholly in, the income year in which the expenditure was incurred; and

 (c) the expenditure is incurred:

 (i) in the income year; and

 (ii) after 30 June 2023 but before 1 July 2024; and

 (d) you are a small business entity, or an entity covered by subsection (4), for the income year in which the expenditure is incurred; and

 (e) the expenditure enables one or more of the following:

 (i) if the asset could use a fossil fuel—the asset to only use electricity or energy generated from a renewable source;

 (ii) if the asset uses electricity or energy generated from a renewable source—the asset to be more energy efficient;

 (iii) the asset to store electricity or energy generated from a renewable source;

 (iv) the asset to use electricity or energy generated from a renewable source at a different time;

 (v) the asset to monitor its use of electricity or energy generated from a renewable source;

 (f) neither the expenditure nor the asset is excluded under subsection (6); and

 (g) the only balancing adjustment events that occur for the asset at a time during the period starting on 1 July 2023 and ending on 30 June 2024 occur because you stop holding the asset because of an event or circumstance referred to in subsection 40‑365(2) (about involuntary disposals) of the *Income Tax Assessment Act 1997*.

Businesses with turnover under $50 million

 (4) An entity is covered by this subsection for an income year if:

 (a) the entity is not a small business entity for the income year; and

 (b) the entity would be a small business entity for the income year if:

 (i) each reference in Subdivision 328‑C of the *Income Tax Assessment Act 1997* (about what is a small business entity) to $10 million were instead a reference to $50 million; and

 (ii) the reference in paragraph 328‑110(5)(b) of that Act to a small business entity were instead a reference to an entity covered by this subsection.

Working out whether you can deduct expenditure

 (5) For the purposes of paragraph (1)(b) or (3)(b), in working out whether you can deduct an amount of expenditure assume that:

 (a) you will continue to hold the asset throughout its effective life; and

 (b) throughout that effective life, you will use it for a taxable purpose:

 (i) for the purposes of paragraph (1)(b)—to the same extent as you use it, or have it installed ready for use, for a taxable purpose in the income year in which you start to use it, or have it installed ready for use, for a taxable purpose; or

 (ii) for the purposes of paragraph (3)(b)—to the same extent as you use it for a taxable purpose in the income year in which the expenditure is incurred.

Excluded assets and expenditure

 (6) The following kinds of assets and expenditure are excluded by this subsection:

 (a) an asset that can use a fossil fuel (other than a use of which that is merely incidental);

 (b) expenditure (other than expenditure referred to in subparagraph (3)(e)(i)) on an asset that can use a fossil fuel (other than a use of which that is merely incidental);

 (c) an asset that solely or predominantly generates electricity from a renewable source (for example, photovoltaic cells);

 (d) an asset, or expenditure, being capital works for which you can deduct an amount under Division 43 of the *Income Tax Assessment Act 1997*;

 (e) a motor vehicle or expenditure on a motor vehicle;

 (f) an asset, or expenditure on an asset, where expenditure on the asset is allocated to a software development pool;

 (g) financing costs, including interest, payments in the nature of interest and expenses of borrowing.

Note: Subsections (1) and (3) also do not apply to an item of trading stock because such an asset is not a depreciating asset: see section 40‑30 of the *Income Tax Assessment Act 1997*.