TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL 2022: TECHNOLOGY INVESTMENT BOOST

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	***Definition***
ATO	Australian Taxation Office
ITAA 1997	*Income Tax Assessment Act 1997*
IT(TP) Act	*Income Tax (Transitional Provisions) Act 1997*
GST	Goods and Services Tax

Chapter 1: Technology Investment Boost

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Outline of chapter

1.1 Schedule xx to the Bill amends the IT(TP) Act to provide small businesses (with aggregated annual turnover of less than $50 million) with a bonus deduction equal to 20 per cent of their eligible expenditure incurred on expenses and depreciating assets for the purposes of their digital operations or digitising their operations.

1.2 The bonus deduction applies to eligible expenditure incurred between 7:30pm (by legal time in the Australian Capital Territory) on 29 March 2022 and 30 June 2023. It applies to the total of eligible expenditure of up to $100,000 per income year or specified time period, up to a maximum bonus deduction of $20,000 per income year or specified time period.

Context of amendments

1.3 The measure supports small businesses to take advantage of digital technologies, which are key to a stronger, productive and resilient economy.

1.4 Small businesses will have access to a 20 per cent bonus deduction for eligible expenditure incurred on business expenses and depreciating assets, to support their digital operations, up to a maximum bonus deduction of $20,000 per income year or specified time period.

1.5 The new tax incentive, which is available until 30 June 2023, will assist small businesses to adopt new technologies to operate more efficiently and grow.

Digitisation can also assist small businesses to respond to customer demands, remain competitive and build resilience to changes in economic conditions.

Summary of new law

1.6 Schedule xx to the Bill amends the IT(TP) Act to allow small businesses (with aggregated annual turnover of less than $50 million) to claim a bonus deduction equal to 20 per cent of their eligible expenditure incurred on expenses and depreciating assets for the purposes of their digital operations or digitising their operations.

1.7 To be eligible for the bonus deduction:

- the expenditure must be eligible for a deduction under another provision of the taxation law;
- the expenditure must be incurred between 7:30pm (by legal time in the Australian Capital Territory) on 29 March 2022 and 30 June 2023; and
- if the expenditure is on a depreciating asset – the asset must be first used or installed ready for use by 30 June 2023.

1.8 Generally, small businesses may claim a maximum bonus deduction of $20,000 per income year.

1.9 Certain kinds of expenditure, such as salary and wage costs, are not eligible for the bonus deduction.

Detailed explanation of new law

Entities eligible for the bonus deduction

1.10 The bonus deduction is available to entities that meet the definition of a small business entity under section 328-110 of the ITAA 1997. Section 328-110 defines a small business entity as an entity that carries on business with an aggregated annual turnover of less than $10 million.
[Schedule xx, item 1, paragraphs 328-460(1)(a) and (2)(a) of the IT(TP) Act]

1.11 The bonus deduction is also available to entities that would meet the definition of a small business entity under section 328-110 of the ITAA 1997 if the reference to $10 million was replaced by a reference to $50 million.
[Schedule xx, item 1, paragraphs 328-460(1)(a) and (2)(a) and subsection 328-460(3) of the IT(TP) Act]

1.12 Small businesses are eligible for the bonus deduction if they meet these requirements in the income year in which the expenditure is incurred.
[Schedule xx, item 1, paragraphs 328-460(1)(a) and (2)(a) of the IT(TP) Act]

Expenditure eligible for the bonus deduction

Digital operations

1.13 To be eligible for the bonus deduction, expenditure must be incurred wholly or substantially for the purposes of an entity's digital operations or digitising the entity's operations. That is, the eligible expenditure must have a direct link to the entity's digital operations for its business.
[Schedule xx, item 1, paragraphs 328-460(1)(d) and (2)(d) of the IT(TP) Act]

1.14 Expenditure on digital operations or digitising operations may include, but is not limited to, business expenditure on:

- digital enabling items – computer and telecommunications hardware and equipment, software, systems and services that form and facilitate the use of computer networks;
- digital media and marketing – audio and visual content that can be created, accessed, stored or viewed on digital devices; and
- e-commerce – supporting digitally ordered or platform enabled online transactions.

Relevant time period for eligible expenditure

1.15 An entity can only claim the bonus deduction for expenditure incurred from 7:30pm (by legal time in the Australian Capital Territory) on 29 March 2022 to 30 June 2023.

1.16 For the purposes of calculating and claiming the bonus deduction for normal or late balancers, this timing is expressed as two time periods ('the relevant time periods'):

- from 7:30pm (by legal time in the Australian Capital Territory) on 29 March 2022 until the end of the entity's 2021-22 income year ('the first time period'); and
- from the start of the entity's 2022-23 income year to 30 June 2023 ('the second time period').
[Schedule xx, item 1, subparagraphs 328-460(1)(b)(i) and (2)(b)(i) of the IT(TP) Act]

1.17 Early balancers have different relevant time periods, which are as follows:

- from 7:30pm (by legal time in the Australian Capital Territory) on 29 March 2022 until the end of the entity's 2022-23 income year ('the early balancer first time period'); and
- from the start of the entity's 2023-24 income year to 30 June 2023 ('the early balancer second time period').
[Schedule xx, item 1, subparagraphs 328-460(1)(b)(ii) and (2)(b)(ii) of the IT(TP) Act]

Expenditure must be able to be deducted

1.18 In order to claim the bonus deduction for an amount of expenditure, the entity must be able to deduct the eligible expenditure under another provision of the taxation law, regardless of which income year they claim the deduction. ***[Schedule xx, item 1, paragraphs 328-460(1)(c) and (2)(c) of the IT(TP) Act]***

1.19 Because of this, expenditure must necessarily be incurred in carrying on a business for the purpose of gaining or producing assessable income in order to be eligible for the bonus deduction. If expenditure is for multiple purposes (e.g. a mix of private and business use), the bonus deduction will apply to the proportion of the expenditure that is for an assessable income-producing purpose.

Eligibility of depreciating assets

1.20 An entity can claim the bonus deduction for expenditure on a depreciating asset only if the asset is first used, or installed ready for use, before 1 July 2023. This rule does not apply to expenses incurred in the development of in-house software allocated to a software development pool, consistent with current pooling rules. ***[Schedule xx, item 1, paragraphs 328-460(1)(g) and (2)(g) of the IT(TP) Act]***

1.21 An entity cannot claim the bonus deduction for expenditure on a depreciating asset if any balancing adjustment event occurs to the asset while the entity holds it during the relevant time period, unless the balancing adjustment event is an involuntary disposal. This means, for example, that an entity cannot claim the bonus deduction if it sells the asset within the relevant time period. ***[Schedule xx, item 1, paragraphs 328-460(1)(f) and (2)(f) of the IT(TP) Act]***

1.22 Repair and improvement costs for depreciating assets are eligible for the boost provided that these costs are incurred during the relevant time period.

Exclusions

1.23 Some types of expenditure are ineligible for the bonus deduction even where they would otherwise meet the requirements. These are:

- salary and wage costs;
- capital works costs which can be deducted under Division 43 of the ITAA 1997;
- financing costs;
- training and education costs; and
- expenditure that forms part of, or is included in, the cost of trading stock.

[Schedule xx, item 1, paragraphs 328-460(1)(e) and (2)(e) and subsection 328-460(5) of the IT(TP) Act]

1.24 These types of expenditure are not directly related to digital operations or digitising operations. The bonus deduction is not intended to cover general operating costs relating to employing staff, raising capital, the construction of the business premises, and the cost of goods and services the business sells.

1.25 Training and education costs are excluded as these costs may be eligible for the Skills and Training Boost, which also provides a 20 per cent bonus deduction.

Calculating and claiming the bonus deduction

20 per cent of expenditure

1.26 The amount of the bonus deduction is calculated as 20 per cent of the total amount of eligible expenditure, up to a maximum bonus deduction of $20,000 per income year or specified time period.
[Schedule xx, item 1, sections 328-455 and 328-460 of the IT(TP) Act]

1.27 This applies regardless of how the entity calculates any other deductions in respect of the expenditure.

1.28 The bonus deduction is intended to be a one-off bonus deduction that does not affect any other deductions in the taxation law.

1.29 The requirement that expenditure is deductible under a taxation provision means that there are certain exclusions to eligible expenditure. For example, if a business is registered for GST, the bonus deduction is generally calculated on the GST-exclusive amount of expenditure, as generally the GST component of expenditure is not deductible in accordance with section 27-5 of the ITAA 1997.

Calculating the bonus deduction for depreciating assets

1.30 Under the existing taxation law, for depreciating assets, small business entities generally either deduct the cost of a depreciating asset in one income year (for example, under the Temporary Full Expensing regime in Subdivision 40-BB of the IT(TP) Act) or deduct the decline in value of the asset over its effective life (for example, under the uniform capital allowance regime in Division 40 of the ITAA 1997).

1.31 The bonus deduction is equal to 20 per cent of the cost (within the meaning of Division 40 of the ITAA 1997) of an eligible depreciating asset that is used for a taxable purpose. This means that regardless of the method of deduction that the entity takes (i.e. whether immediate or over time), the bonus deduction in respect of a depreciating asset is calculated based on the asset’s cost.

1.32 When calculating the bonus deduction for expenditure on a depreciating asset, it is assumed that:

- the entity will continue to hold the asset throughout its effective life; and
- the entity will use the asset for a taxable purpose to the same extent that it does in the income year it first uses or installs the asset.

[Schedule xx, item 1, subsection 328-460(4) of the IT(TP) Act]

Example 1.1 Claiming the bonus deduction for a depreciating asset where Temporary Full Expensing applies

A Co Pty Ltd (A Co) is a small business entity. On 15 July 2022, A Co purchased multiple laptops to allow its employees to work from home. The total cost was $100,000 (GST-exclusive). The laptops were delivered on 19 July 2022 and immediately issued to staff entirely for business use. As the holder of the assets, A Co is entitled to claim a deduction for the depreciation of a capital expense.

A Co can claim the full purchase price of the laptops ($100,000) as a deduction under temporary full expensing in its 2022-23 income tax return. It can also claim the maximum $20,000 bonus deduction in its 2022-23 income tax return.

Example 1.2 Claiming the bonus deduction for a depreciating asset where the entity claims depreciation deductions over a number of years

B Co Pty Ltd (B Co) is a small business entity. On 15 July 2022, B Co purchased multiple laptops to allow its staff to work from home. The total cost was $100,000 (GST-exclusive). The laptops were delivered on 19 July 2022 and immediately issued to staff for business use. As the holder of the assets, B Co is entitled to claim deductions for the depreciation of a capital expense. B Co has made the choice to opt out of temporary full expensing and instead will claim depreciation deductions for the decline in value of the laptops over their effective life under the uniform capital allowance rules in Division 40 of the ITAA 1997.

In its 2022-23 income tax return, B Co can claim a depreciation deduction for the decline in value of the laptops between 19 July 2022 and 30 June 2023. It can also claim the bonus deduction calculated on the entire amount of eligible expenditure ($100,000). This results in the maximum $20,000 bonus deduction. Depreciation deductions that B Co may be able to claim in 2022-23 and later income years are not altered by the bonus deduction.

Cap on bonus deduction

1.33 The total expenditure eligible for the bonus deduction is effectively $100,000 over the relevant time period such that entities can generally claim a maximum bonus deduction of $20,000 per relevant time period.
[Schedule xx, item 1, section 328-455 of the IT(TP) Act]

1.34 The cap on the bonus deduction works on a cumulative basis in respect of the eligible expenditure. An entity may incur expenditure for its digital operations across various items. The cap operates to limit the bonus deduction to a maximum $20,000 per income year or specified time period.

1.35 Different cap rules apply if an entity’s 2022-23 income year begins before 1 July 2022 (i.e. it is an ‘early balancer’). Early balancers can claim a maximum bonus deduction of $20,000 for the early balancer first time period (i.e. from 7:30pm (by legal time in the Australian Capital Territory) on 29 March 2022 to the end of their 2022-23 income year).

1.36 This means that for early balancers, the first $20,000 cap may be spread over two income years (i.e. 7:30pm (by legal time in the Australian Capital Territory) on 29 March 2022 to the end of the 2021-22 income year and also the 2022-23 income year).
[Schedule xx, item 1, paragraph 328-455(2)(a) and subsection 328-460(1) of the IT(TP) Act]

1.37 Early balancers can then claim up to a maximum bonus deduction of $20,000 for eligible expenditure during the period from the start of their 2023-24 income year to 30 June 2023.
[Schedule xx, item 1, paragraph 328-455(2)(b) and subsection 328-460(2) of the IT(TP) Act]

1.38 This ensures that all entities can claim up to a maximum bonus deduction of $40,000 for the period from 7:30pm (by legal time in the Australian Capital Territory) on 29 March 2022 to 30 June 2023.

Timing for claiming the bonus deduction

1.39 Generally, entities must claim the bonus deduction for expenditure incurred in their 2021-22 income year in their 2022-23 return. This is to allow additional time for administrative and legislative arrangements to be put in place before the bonus deduction may be claimed. The bonus deduction for expenditure incurred in an entity’s 2022-23 income year will also be claimed in its 2022-23 return.
[Schedule xx, item 1, subsection 328-455(1) and subparagraphs 328-460(1)(b)(i) and (2)(b)(i) of the IT(TP) Act]

1.40 However, if an entity’s 2022-23 income year begins before 1 July 2022 (i.e. it is an ‘early balancer’), the entity must claim the bonus deduction for 2021-22 (if applicable), 2022-23 and 2023-24 in its 2023-24 return.
[Schedule xx, item 1, subsection 328-455(2) and subparagraphs 328-460(1)(b)(ii) and (2)(b)(ii) of the IT(TP) Act]

1.41 This timing applies only to the bonus deduction amount. Entities must deduct any other amounts according to the relevant provisions of the taxation law.

Example 1.3 Claiming the bonus deduction for 2021-22 and 2022-23 in an entity's 2022-23 income tax return (normal balancer)

C Co Pty Ltd (C Co) is a small business entity with a normal accounting period (1 July to 30 June). On 23 April 2022, C Co set up an annual $2,000 subscription (GST-exclusive) to a cloud service to store client and sales data. In its 2021-22 income tax return, C Co can claim a deduction for $2,000 under the general deduction provisions as the cloud subscription is a business operating expense. It can also claim a bonus deduction of $400 (20 per cent of $2,000) in its 2022-23 income tax return.

C Co renews the subscription on 23 April 2023 at the discounted price of $1,900. Therefore, in its 2022-23 income tax return C Co can claim a deduction for $1,900 under the general deduction provisions, and another bonus deduction of $380 (20 per cent of $1,900).

In summary, C Co can claim a deduction for $2,000 in its 2021-22 income tax return and $2,680 in its 2022-23 income tax return, comprising a general deduction of $1,900 and two bonus deductions of $400 (relating to eligible expenditure in 2021-22) and $380 (relating to eligible expenditure in 2022-23).

Example 1.4 Claiming the bonus deduction for 2022-23 and 2023-24 in an entity's 2023-24 income tax return (early balancer)

D Co Pty Ltd (D Co) is a small business entity and has a substituted accounting period of 1 January to 31 December. From April 2022, D Co pays monthly software subscription fees of $5,000 (GST-exclusive). These fees are incurred on the first day of each month.

D Co's software subscription fees for its 2022-23 income year (the period 1 January 2022 to 31 December 2022) are $45,000 ($5,000 for 9 months). This amount is a business operating expense and deductible in D Co's 2022-23 income tax return. These fees will also be eligible expenditure for the purposes of the Technology Investment Boost. However, because of the delayed claim rule, the bonus deduction of $9,000 (20 per cent of $45,000) must be claimed in D Co's 2023-24 income tax return.

D Co will also be able to claim 12 months' worth of the software subscription fees under the general deduction provision in its 2023-24 income tax return ($60,000). However, only $30,000 will be eligible expenditure for the purposes of the Technology Investment Boost ($5,000 for 6 months from January to June 2023). Accordingly, D Co can claim a bonus deduction of $6,000 (20 per cent of $30,000) for 2023-24.

In total, D Co can claim $15,000 in bonus deductions in its 2023-24 income tax return.

Commencement, application, and transitional provisions

1.42 The amendments commence on the first 1 January, 1 April, 1 July or 1 October to occur after the day the Act receives Royal Assent.
[Schedule xx, item 1 of commencement table]

1.43 The amendments apply to eligible expenditure incurred between 7:30pm (by legal time in the Australian Capital Territory) on 29 March 2022 and 30 June 2023.
[Schedule xx, item 1, paragraphs 328-460(1)(b) and (2)(b) of the IT(TP) Act]

1.44 The amendments apply retrospectively from 7.30pm (by legal time in the Australian Capital Territory) on 29 March 2022. This ensures that entities qualify for the bonus deduction retrospectively from the announcement of the measure. The changes are wholly beneficial to entities incurring expenditure affected by these amendments.