Treasury Laws Amendment (Housing Tax Integrity) Bill 2017: Limiting deduction for plant and equipment in residential premises and travel expenditure for residential rental property

Submission to Treasury from H&R Block Tax Accountants

Chapter 1: Travel expenditure for residential rental property

1. We note that Schedule 1 to the Bill amends the Income Tax Assessment Act 1997 (ITAA 1997) to ensure that travel expenditure incurred in gaining or producing assessable income from residential premises is:
   - Not deductible; and
   - Not recognised in the cost base of the property for capital gains tax purposes

2. No tax policy rationale whatsoever appears to have been made for this change.

3. It is a well-established principle of the Australian tax system that taxpayers can deduct those expenses which have legitimately been incurred in gaining or producing assessable income. This new measure erodes – without obvious reason – that principle by picking on one particular type of deduction claimed against one particular type of assessable income, by removing the ability to claim that particular deduction.

4. The rationale given – that there are concerns that some taxpayers have been claiming travel deductions without correctly apportioning costs or have claimed travel costs that were for private purposes – is actually not a rationale for policy change at all; it is simply a flag that the Australian Taxation Office could and should have devoted more resources to applying the existing law properly.

5. The same rationale, indeed, could be applied against many deductions against income and we trust that this move is not a foretaste of further restrictions against other deductions which have been claimed, sometimes erroneously, to be subject to abuse by taxpayers.

6. Significant numbers of residential investment property owners will now find themselves subject to additional costs because they are no longer able to deduct costs which they legitimately incur in earning rental income.

7. By way of example, we aware of numerous individuals who own holiday accommodation located some distance (but within the same state) from their homes who rent out that accommodation to visitors and undertake cleaning and other guest changeover tasks themselves at the end of each rental. They drive from their homes to the holiday accommodation and back in order to do that. They will still be required to carry out those tasks after this new law enters the statute books – but they will no longer be able to claim tax deductions for costs incurred in traveling to and from their holiday accommodation. This is fundamentally unfair; they will be able to claim other costs associated with the guest changeover, such as the provision of cleaning materials and they would also be able to claim

for the cost of a cleaner, if they felt inclined to hire one (although the cost would exceed what they currently incur in doing the job themselves). If they operated their holiday rental as a business, they would still be able to claim a deduction for travel costs and they would also be able to claim a deduction if they operated through a company. In short, one class of taxpayer (individuals with residential investment properties) is being unfairly targeted.

8. We believe that this is poorly thought through law which unfairly targets one group of taxpayers. Accordingly, we believe that this proposed law change should be abandoned.

Chapter 2: Limiting Deductions for plant and equipment in residential premises

1. We note that Schedule 2 to the Bill amends the Income Tax Assessment Act 1997 (ITAA 1997) to deny income tax deductions for the decline in value of 'previously used' depreciating assets (plant and equipment) an entity uses in gaining or producing assessable income from the use of residential premises for the purposes of residential accommodation.

2. The exclusion of corporate tax entities, superannuation funds and large unit trusts, combined with the continued availability of depreciation deductions for commercial rental properties means that, for no obvious policy reasons, the targeting of this change at residential rental properties unfairly discriminates against one group of taxpayers whilst continuing to offer the same deductions to other taxpayers in identical circumstances. We note that the amendments also do not affect taxpayers engaged in the business of producing income from residential premises for residential accommodation, which reinforces the perception that this law change is discriminatory.

3. These amendments are complex and confusing. They will add to compliance costs for affected taxpayers and will lead to inadvertent non-compliance through failure to understand the operation of the rules. The example at 2.1 for instance, highlights numerous instances in which a taxpayer can make the wrong decision not through deliberate non-compliance but through lack of understanding. More taxpayers will fall foul of ATO compliance action, which is surely the opposite of what was intended.

4. It is not clear from the EM exactly what the scale of tax loss is that relates to the operation of current law. It is nevertheless difficult to believe that tax is being lost in such large amounts to justify the introduction of such a needlessly complex "fix" to the problem.