

EXPOSURE DRAFT

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

Commencement information

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.	
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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:

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- 1 (i) is in the income year; and
2 (ii) after 30 June 2023 but before 1 July 2024; and
3 (d) you are a small business entity, or an entity covered by
4 subsection (4), for the income year that includes the start
5 time; and
6 (e) subsection (2) (about eligible energy assets) applies to the
7 asset; and
8 (f) neither the expenditure nor the asset is excluded under
9 subsection (6); and
10 (g) the only balancing adjustment events that occur for the asset
11 at a time during the period starting on 1 July 2023 and ending
12 on 30 June 2024 occur because you stop holding the asset
13 because of an event or circumstance referred to in
14 subsection 40-365(2) (about involuntary disposals) of the
15 *Income Tax Assessment Act 1997*.
- 16 (2) This subsection applies to an asset if:
17 (a) the asset uses electricity and, at the start time, a new
18 reasonably comparable depreciating asset that uses a fossil
19 fuel was available in the market; or
20 (b) all of the following conditions are satisfied:
21 (i) the asset uses electricity;
22 (ii) at the start time, a new reasonably comparable
23 depreciating asset that uses a fossil fuel was not
24 available in the market;
25 (iii) if the asset is being acquired by way of replacement of
26 or substitution for another depreciating asset—the asset
27 is more energy efficient than the other asset;
28 (iv) if the asset is not being acquired by way of replacement
29 of or substitution for another depreciating asset—the
30 asset is more energy efficient than a new reasonably
31 comparable depreciating asset that was available in the
32 market at the start time; or
33 (c) the asset enables one or more of the following:
34 (i) a depreciating asset (other than an asset excluded under
35 subsection (6)) that uses electricity or energy generated
36 from a renewable source to be more energy efficient;
37 (ii) electricity or energy generated from a renewable source
38 to be stored;
39 (iii) electricity or energy generated from a renewable source
40 to be used at a different time;
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- 1 (iv) electricity or energy generated from a renewable source
2 to be monitored.

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

- 5 (3) This subsection applies to an amount of expenditure in relation to
6 an income year if:
- 7 (a) the amount is included in the second element of a
8 depreciating asset's cost under paragraph 40-190(2)(a) of the
9 *Income Tax Assessment Act 1997*; and
 - 10 (b) you can deduct the expenditure under a provision of a
11 taxation law (other than section 328-465 of this Act) whether
12 or not in, or wholly in, the income year in which the
13 expenditure was incurred; and
 - 14 (c) the expenditure is incurred:
 - 15 (i) in the income year; and
 - 16 (ii) after 30 June 2023 but before 1 July 2024; and
 - 17 (d) you are a small business entity, or an entity covered by
18 subsection (4), for the income year in which the expenditure
19 is incurred; and
 - 20 (e) the expenditure enables one or more of the following:
 - 21 (i) if the asset could use a fossil fuel—the asset to only use
22 electricity or energy generated from a renewable source;
 - 23 (ii) if the asset uses electricity or energy generated from a
24 renewable source—the asset to be more energy
25 efficient;
 - 26 (iii) the asset to store electricity or energy generated from a
27 renewable source;
 - 28 (iv) the asset to use electricity or energy generated from a
29 renewable source at a different time;
 - 30 (v) the asset to monitor its use of electricity or energy
31 generated from a renewable source;
 - 32 (f) neither the expenditure nor the asset is excluded under
33 subsection (6); and
 - 34 (g) the only balancing adjustment events that occur for the asset
35 at a time during the period starting on 1 July 2023 and ending
36 on 30 June 2024 occur because you stop holding the asset
37 because of an event or circumstance referred to in
38 subsection 40-365(2) (about involuntary disposals) of the
39 *Income Tax Assessment Act 1997*.
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Businesses with turnover under \$50 million

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2 (4) An entity is covered by this subsection for an income year if:
3 (a) the entity is not a small business entity for the income year;
4 and
5 (b) the entity would be a small business entity for the income
6 year if:
7 (i) each reference in Subdivision 328-C of the *Income Tax*
8 *Assessment Act 1997* (about what is a small business
9 entity) to \$10 million were instead a reference to \$50
10 million; and
11 (ii) the reference in paragraph 328-110(5)(b) of that Act to a
12 small business entity were instead a reference to an
13 entity covered by this subsection.

Working out whether you can deduct expenditure

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15 (5) For the purposes of paragraph (1)(b) or (3)(b), in working out
16 whether you can deduct an amount of expenditure assume that:
17 (a) you will continue to hold the asset throughout its effective
18 life; and
19 (b) throughout that effective life, you will use it for a taxable
20 purpose:
21 (i) for the purposes of paragraph (1)(b)—to the same extent
22 as you use it, or have it installed ready for use, for a
23 taxable purpose in the income year in which you start to
24 use it, or have it installed ready for use, for a taxable
25 purpose; or
26 (ii) for the purposes of paragraph (3)(b)—to the same extent
27 as you use it for a taxable purpose in the income year in
28 which the expenditure is incurred.

Excluded assets and expenditure

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30 (6) The following kinds of assets and expenditure are excluded by this
31 subsection:
32 (a) an asset that can use a fossil fuel (other than a use of which
33 that is merely incidental);
34 (b) expenditure (other than expenditure referred to in
35 subparagraph (3)(e)(i)) on an asset that can use a fossil fuel
36 (other than a use of which that is merely incidental);
37 (c) an asset that solely or predominantly generates electricity
38 from a renewable source (for example, photovoltaic cells);
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- (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*.