



Tax Laws Amendment (Small Business Measures No. 3) Act 2015

No. 114, 2015

An Act to amend the law relating to taxation, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Tax Laws Amendment (Small Business Measures No. 3) Act 2015

No. 114, 2015

An Act to amend the law relating to taxation, and for related purposes

[Assented to 26 August 2015]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (Small Business Measures No. 3) Act 2015*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---------------------------------|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this Act | The day this Act receives the Royal Assent. | 26 August 2015 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Tax discount for unincorporated small businesses

Part 1—Main amendments

Income Tax Assessment Act 1997

1 At the end of Division 328

Add:

Subdivision 328-F—Small business income tax offset

Guide to Subdivision 328-F

328-350 What this Subdivision is about

You may be entitled to a tax offset if you are an individual:

- (a) who is a small business entity; or
- (b) whose assessable income includes a share of the net income of an unincorporated small business entity.

Table of sections

Operative provisions

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| 328-355 | Entitlement to the small business income tax offset |
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| 328-365 | <i>Net small business income</i> |
| 328-370 | Relevant attributable deductions |
| 328-375 | Modification if you are under 18 years old |

Operative provisions

328-355 Entitlement to the small business income tax offset

You are entitled to a *tax offset for an income year if you are an individual:

- (a) who is a *small business entity for the income year; or

- (b) whose assessable income for the income year includes a share of the *net income, for the income year, of a small business entity that is not a *corporate tax entity.

Note: This section does not apply to an individual in his or her capacity as the trustee of a trust (see subsection 960-100(4)).

328-360 Amount of your tax offset

- (1) The amount of your *tax offset is equal to 5% of the following:

$$\frac{\text{Your total net small business income for the income year}}{\text{Your taxable income for the income year}} \times \text{Your basic income tax liability for the income year}$$

where:

your total net small business income for the income year means so much of the sum of the following as does not exceed your taxable income for the income year:

- (a) your *net small business income for the income year, if you are a *small business entity for the income year;
- (b) your share of a small business entity's net small business income for the income year that is included in your assessable income for the income year, less your deductions to the extent that they are attributable to that share and covered by section 328-370.

For the purposes of paragraph (b), disregard small business entities that are *corporate tax entities.

Note: If you are under 18 years old, your total net small business income will probably be worked out under section 328-375.

- (2) However, the amount of your *tax offset is \$1,000 if the amount worked out under subsection (1) exceeds \$1,000.

Note: Your tax offset is capped at \$1,000 regardless of the number of small business entities that cause you to be entitled to the tax offset for the income year.

328-365 Net small business income

- (1) A *small business entity's ***net small business income*** for an income year is the result of:
-

- (a) working out the entity's assessable income for the income year to the extent that it relates to the entity carrying on a *business, but disregarding:
 - (i) any *net capital gain; and
 - (ii) any *personal services income not produced from conducting a *personal services business; and
 - (b) subtracting the entity's deductions to the extent that they are attributable to that assessable income and covered by section 328-370.
- (2) However, the entity's **net small business income** for the income year is zero if that result is less than zero.

328-370 Relevant attributable deductions

For the purposes of this Subdivision, this section covers all attributable deductions other than any under:

- (a) section 25-5 (about tax-related expenses); or
- (b) Division 30 (about gifts or contributions); or
- (c) Subdivision 290-C (about personal superannuation contributions).

328-375 Modification if you are under 18 years old

- (1) Despite subsection 328-360(1), your total net small business income for the income year is worked out under this section if you are a prescribed person (within the meaning of section 102AC of the *Income Tax Assessment Act 1936*) for the income year.
- (2) **Your total net small business income for the income year** is the result of:
 - (a) working out your business income (within the meaning of subsection 102AE(5) of that Act) for the income year to the extent that it relates to you carrying on:
 - (i) a *business as a *small business entity for the income year; or
 - (ii) a business as a partner in a partnership, if the partnership is a small business entity for the income year; and

Schedule 1 Tax discount for unincorporated small businesses

Part 1 Main amendments

- (b) subtracting your deductions, and each partnership's deductions, to the extent that they are attributable to that business income and covered by section 328-370.
- (3) However, ***your total net small business income for the income year*** is:
 - (a) zero if that result is less than zero; or
 - (b) equal to your taxable income for the income year if that result exceeds that taxable income.

Part 2—Other amendments

Income Tax Assessment Act 1997

2 Section 13-1 (after table item headed “sickness benefits”)

Insert:

small business

small business income..... Subdivision 328-F

3 At the end of section 328-5

Add:

| |
|--|
| <p>You may be entitled to a tax offset for any small business income included in your assessable income, if you are an individual (Subdivision 328-F).</p> |
|--|

4 Subsection 328-10(1) (after table item 6)

Insert:

| | | |
|----|----------------------------------|----------------------------------|
| 6A | Small business income tax offset | Subdivision 328-F of this Act |
|----|----------------------------------|----------------------------------|

5 Subsection 995-1(1)

Insert:

net small business income, of a *small business entity, has the meaning given by section 328-365.

Part 3—Application of amendments

6 Application of amendments

The amendments made by this Schedule apply to assessments for the 2015-16 income year and later income years.

Schedule 2—Immediate deductibility for small business start-up expenses

Income Tax Assessment Act 1997

1 Section 40-825

After “5 years”, insert “(or immediately in the case of some start-up expenses for small businesses)”.

2 Subsection 40-880(1)

After “5 years”, insert “, or immediately in the case of some start-up expenses for small businesses,”.

3 After subsection 40-880(2)

Insert:

- (2A) However, you can deduct the capital expenditure in the income year in which you incur it if:
- (a) the expenditure is incurred in relation to a business that is proposed to be carried on; and
 - (b) the expenditure is incurred:
 - (i) in obtaining advice or services relating to the proposed structure, or proposed operation of the business; or
 - (ii) in payment to an *Australian government agency of fees, taxes or charges relating to establishing the business or its operating structure; and
 - (c) you are a *small business entity for the income year, or both of the following apply:
 - (i) you are not carrying on a *business in the income year;
 - (ii) you are not *connected with, or an *affiliate of, another entity that carries on a business in the income year and that is not a small business entity for the income year.

4 Subsection 328-10(1) (before table item 1)

Insert:

| | | |
|----|--|-----------------------------------|
| 1A | Immediate deductibility for small business start-up expenses | Subsection 40-880(2A) of this Act |
|----|--|-----------------------------------|

5 Application of amendments

The amendments made by this Schedule apply in relation to assessments for the 2015-16 income year and later income years.

Schedule 3—FBT and portable electronic devices

Fringe Benefits Tax Assessment Act 1986

1 Subsection 58GA(3) (definition of *small business entity*)

Repeal the definition.

2 Subsection 58X(4)

Repeal the subsection, substitute:

- (4) However, subsection (3) does not apply if:
- (a) the later item is a replacement for the other item; or
 - (b) the later item is a portable electronic device, and the employer is a small business entity for:
 - (i) the year of income starting most recently after the start of the FBT year; or
 - (ii) the year of income ending most recently after the start of the FBT year.

Example: For paragraph (a), the later item would be a replacement for the other item if the other item were lost or destroyed, or needed replacing because of developments in technology.

3 Subsection 136(1)

Insert:

small business entity has the same meaning as in the *Income Tax Assessment Act 1997*.

4 Application of amendments

The amendments made by this Schedule apply in relation to the 2016-17 FBT year and later FBT years.

*[Minister's second reading speech made in—
House of Representatives on 24 June 2015
Senate on 13 August 2015]*

(108/15)
