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Take the lead

Tax deductions for vacant land

Integrity measures tightened

Property developers, investors and primary producers will need to review and plan for their vacant land to ensure tax deductions are not denied from 1 July 2019

The Federal Government has enacted the Federal Budget announcement of the denial of tax deductions for vacant land integrity measures by introducing the *Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019* on 24 July 2019.

Those in the property development, property investment and primary producer space will need to review their landholding usage, contractual arrangements and business plans to ensure tax deductions are not denied from 1 July 2019, especially where the land is not genuinely held for the purpose of earning assessable income.

New vacant land tax integrity measures explained

The new legislation denies deductions for losses or outgoings incurred that relate to holding vacant land (including interest payments, borrowing costs, land taxes, council rates and maintenance costs etc.), regardless of whether the land was first held prior to 1 July 2019. The introduced Bill amends the *Income Tax Assessment Act 1997*.

New Law

A taxpayer cannot claim deductions for losses or outgoings incurred that relate to holding vacant land.

However, the amendments **do not** apply to any losses or outgoings relating to holding vacant land to the extent the land:

- was used or held available for use by the taxpayer (or a related entity) in the course of a business the taxpayer (or a related entity) carries on (for an example, a property development or a primary production business) for the purpose of gaining or producing assessable income
- ceases to be vacant land (for example, a property has been constructed on the land).
- The amendments do not apply to certain classes of entities, including:
  - corporate tax entities
  - superannuation plans (other than self-managed superannuation funds)
  - managed investment trusts
  - public unit trusts
  - unit trusts or partnerships of which all the members are entities of the above types.

Current Law

A taxpayer can claim deductions for losses or outgoings incurred that relate to holding vacant land if:

- the losses or outgoings were incurred in gaining or producing their assessable income; or
- the losses or outgoings relate to the taxpayer carrying on a business in order to derive assessable income.

Those in the property development, property investment and primary producer space will need to review their landholding usage, contractual arrangements and business plans to ensure tax deductions are not denied from 1 July 2019, especially where the land is not genuinely held for the purpose of earning assessable income.

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Important definitions

Land is vacant, if there is no substantial and permanent building or other structure that is in use or available for use on the land, with an independent purpose that is not incidental to the purpose of another structure or proposed structure on the land. A structure includes a building or other thing that is built or constructed on the land.

To be substantial, a building or other structure needs to be significant in size, value or some other criteria of importance in the context of the relevant property.

To be permanent, a structure needs to be fixed and enduring. A fixed structure that is not built for a temporary purpose is a permanent structure even if it would not be expected to remain standing forever.

Denied deductions for cost base expenses included in the cost base

With the introduced integrity measures, losses and outgoings that are not deductible in an income year as a result of these amendments are not able to be carried forward to be deducted in later years.

However, where expenses are non-deductible under these measures, they can be added to the cost base of the asset if the expenses otherwise meet the cost base rules for CGT purposes.

How we can assist

ShineWing Australia's tax team can assist in reviewing and planning client activities relating to vacant land to ensure the impact of introduced integrity measures are minimised.

To find out more, or discuss whether you are impacted, contact James Ye and the tax team.

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