

May 2011

# The Client Link

A host of legislated changes take effect from 1 April 2011. Some of these are listed below.

## Qualifying Company Changes

On 1 April 2011 changes to rules for qualifying companies (QCs) and loss-attributing qualifying companies (LAQCs) will come into force, effectively ending the LAQC tax entity for income years starting on or after 1 April 2011. This will be the 2011–12 income year for companies with a standard or late balance date, or the 2012–13 income year for companies with an early balance date. These changes will mean:

- companies won't be able to elect to become a QC or LAQC for any income years starting on or after 1 April 2011;
- companies that are QCs or LAQCs for the income year immediately prior to the income years starting on or after 1 April 2011 will be able to remain as a QC, but will not be able to attribute losses to its shareholders;
- existing QCs or LAQCs will be able to continue as a QC and will be taxed in the same way as ordinary QCs, or choose to revoke their QC status;
- existing QCs and LAQCs can transition to another tax entity, such as a look-through company (see below), partnership or sole tradership, without a tax cost during the "transitional year" being either of the first two income years starting on or after 1 April 2011.

## Look-through company (LTC) rules

The new LTC rules are available for income years starting on or after 1 April 2011.

An LTC is, generally, transparent for income tax purposes. This means the LTC's income, expenses, tax credits, gains and losses are passed on to the LTC's owners, in proportion to their shares in the company. Losses from the LTC, however, are subject to a loss limitation rule. They can be offset against their other income. Profit from the LTC will also be taxed at the owner's marginal tax rates. The LTC retains its corporate obligations and benefits under general company law, but will generally be ignored for income tax purposes. However, for other tax purposes, such as PAYE, FBT or GST, the LTC will retain its tax obligations.

If a QC or an LAQC wants to transition to an LTC, it may do so by completing a form (IR 862) within 6 months of the start of the transitional year.

## Company tax rate

The company tax rate will reduce from 30% to 28% from the 2011–12 income year. For companies with standard balance date, this will apply from 1 April 2011. Dividends issued after the new rate takes effect can be imputed at the existing 30% rate for up to two years if company tax has been paid at the 30% rate.



**IMPORTANT:** This is not advice. Clients should not act solely on the basis of the material contained in **The Client Link**. Items herein are general comments only and do not constitute or convey advice per se. Changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. **The Client Link** is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and should not be made available to any person without our prior approval.

## New tax depreciation rules

Budget 2010 removed depreciation deductions for most buildings (those with useful lives of 50 years or more) from the start of the 2011–12 income year. You can still claim:

- depreciation on the fit-out of commercial and industrial buildings;
- 20% depreciation loading on assets in certain circumstances (see below).

### Commercial fit-outs

The law has been clarified so that commercial and industrial fit-outs remain depreciable property. Items of fit-out that are shared between commercial and residential purposes, eg, lifts, electrical cabling, fire protection, sewerage and water reticulation, in a mixed-purpose building, will be depreciable if the dominant purpose of the building is commercial. Fit-outs used only for commercial purposes will be depreciable property.

A definition of “dwelling” has been added that excludes a number of types of buildings that provide residential-type accommodation. This ensures that fit-outs associated with these buildings will continue to be depreciable property. The types of buildings that will be specifically excluded from the meaning of dwelling are:

- hospitals;
- hotels, motels, inns, hostels and boarding houses;
- certain serviced apartments;
- camping grounds;
- convalescent homes, nursing homes and hospices;
- rest homes and retirement villages - from hospital care through to residential care facilities.

A new rule will allow commercial building owners, who don't itemise building fit-out separately from the building at the time of acquisition, to amortise up to 15% of the building's adjusted tax book value at 2% straight-line per year until the building is disposed of.

### Residential fit-outs

Residential fit-outs are generally non-depreciable.

### Depreciation loading

Depreciation loading was removed on a prospective basis as part of Budget 2010. Loading continues to apply for assets purchased or constructed before 20 May 2010 or when there was a commitment to purchase or construct an asset on or before 20 May 2010. Under the new rules, an asset will be eligible for depreciation loading if:

- it was acquired on or before 20 May 2010; or
- there was a decision to purchase or construct it and its owner either:
  - entered into a binding contract for its purchase or construction on or before 20 May 2010; or
  - incurred expenditure in relation to it on or before 20 May 2010.

Evidence of a decision to purchase or construct an asset can be obtained through documents that conclusively show such a decision was made. Alternatively, a statutory declaration sent to the Commissioner of Inland Revenue stating a decision was made is acceptable.

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## Changes to GST rules

The Taxation (GST and Remedial Matters) Act 2010 was enacted in December 2010 and introduces changes to the GST rules relating to land transactions which will apply to supplies made on or after 1 April 2011.

GST-registered vendors will be required to charge GST at the rate of 0% on any supply to a GST-registered person that wholly or partly consists of land, if at the time of settlement:

- the recipient intends to use the goods for making taxable supplies; and
- the supply is not a supply of land intended to be used as the principal place of residence of the recipient or a person associated with the recipient.

The purchaser is obliged to advise of their registration status and intentions in respect of the land. For transactions entered into before 1 April 2011 but for which the time of supply is after that date, the supplier has the option of treating the transaction as being governed by either the current GST rules or the new rules.