

[QUESTIONS WE'VE BEEN ASKED](#) > GENERAL ISSUES

The application date for the depreciation of commercial buildings

Issued: 22 June 2021

QB 21/05

This Question We've Been Asked clarifies the application date for the reintroduction of depreciation for commercial buildings.

Key provisions

COVID-19 Response (Taxation and Social Assistance Urgent Measures) Act 2020 – ss 2, 4, 5, 6, 7, 10, 11, 12, 13, 14, 29(2) and (4) to (8), 30 and 39

Income Tax Act 2007 – section EE 31

Question

When do the new rules providing for the depreciation for commercial buildings apply from: 1 April 2020 or from the beginning of the 2020 – 2021 income year?

Answer

The new rules for depreciation for commercial buildings apply from the beginning of the 2020-21 income year for all taxpayers.

Explanation

1. Prior to the passing of the COVID-19 Response (Taxation and Social Assistance Urgent Measures) Act 2020 (the Amendment Act), taxpayers were not able to claim a depreciation loss in respect of any building. By amending the existing legislation and making this limitation specific to residential buildings, the amendment now allows owners of commercial buildings to claim depreciation¹.
2. Unless it is anticipated that an Act will commence on the day after it is given Royal Assent, all Acts must be given a commencement date.² The commencement date is the day that the Act comes into force.
3. In the case of the Amendment Act, the commencement date is stated as being the date on which it was given Royal Assent, EXCEPT in relation to some specific sections³. These excepted sections include the sections that allows depreciation to now be claimed on commercial buildings. The commencement date for these sections is stated to be 1 April 2020⁴.
4. Having a commencement date of 1 April can be problematic for a taxpayer with a balance date prior to 1 April as it would mean that the legislation would only apply for part of their 2020 – 2021 income year. To overcome this, it is quite usual to supplement the commencement date to ensure that the relevant provisions apply from the beginning of a particular income year (no matter what balance date a taxpayer has). In this instance, having the provision apply from the beginning of an income year means that taxpayers with early balance dates are not disadvantaged or inconvenienced by, for instance, having to undertake apportionment of the depreciation loss.
5. In the case of the Amendment Act, the amendments specific to commercial building depreciation are stated as applying “for the 2020-21 and later income years”⁵.
6. This is consistent with statements made in the commentary to the Amendment Act, which stated that the proposed amendment would apply for the 2020–21 income year.

¹ Sections EE 31, EE 31(2)(d) and EE 31(3)(c) of the Income Tax Act 2007.

² Section 8 of the Interpretation Act 1999.

³ Section 2(1) of the Amendment Act.

⁴ Section 2(5) of the Amendment Act.

⁵ Section 5(4) of the Amendment Act.

7. This result is also consistent with statements made in the commentary to the Amendment Act regarding the repeal of s DB 65. This section previously allowed a deduction for commercial fit-out not previously separately depreciated. With the reintroduction of depreciation on commercial buildings s DB 65 is no longer required. As with the statement made in the commentary discussed at [6], the commentary to the Amendment Act that discusses the repeal of s DB 65 states that the section is repealed with effect from the 2020 – 21 income year.

Examples

8. The following examples illustrate when the new rules reintroducing depreciation for commercial buildings will apply from.

Early balance date

Early Worm Limited has a 30 November balance date.

The new rules reintroducing depreciation for commercial buildings will apply from 1 December 2019, which is the first day of the company's 2020-21 income year.

Standard balance date

Ordinary Limited has a 31 March balance date.

The new rules reintroducing depreciation for commercial buildings will apply from 1 April 2020, which is the first day of the company's 2020-21 income year.

Late balance date

Night Owl Limited has a 30 June balance date.

The new rules reintroducing depreciation for commercial buildings will apply from 1 July 2020, which is the first day of the company's 2020-21 income year.

References

Legislative References

COVID-19 Response (Taxation and Social Assistance Urgent Measures) Act 2020 – ss 2, 4, 5, 6, 7, 10, 11, 12, 13, 14, 29(2) and (4) to (8), 30 and 39

Income Tax Act – s EE 31 and YE 1

Interpretation Act 1999 – s 8

About this document

Questions We've Been Asked (QWBAs) are issued by the Tax Counsel Office. QWBAs answer specific tax questions we have been asked that may be of general interest to taxpayers. While they set out the Commissioner's considered views, QWBAs are not binding on the Commissioner. However, taxpayers can generally rely on them in determining their tax affairs. See further [Status of Commissioner's advice](#) (December 2012). It is important to note that a general similarity between a taxpayer's circumstances and an example in a QWBA will not necessarily lead to the same tax result. Each case must be considered on its own facts.