

EXPOSURE DRAFT

2008-2009

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT (23/02/2009)

Tax Laws Amendment (Small Business and General Business Tax Break) Bill 2009

No. , 2009

(Treasury)

**A Bill for an Act to amend the law relating to
taxation, and for related purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **taxation, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Tax Laws Amendment (Small*
6 *Business and General Business Tax Break) Act 2009.*

7 **2 Commencement**

8 This Act commences on the day on which it receives the Royal
9 Assent.

10 **3 Schedule(s)**

11 Each Act that is specified in a Schedule to this Act is amended or
12 repealed as set out in the applicable items in the Schedule

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Schedule 1 Small business and general business tax break

1 concerned, and any other item in a Schedule to this Act has effect
2 according to its terms.

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Small business and general business tax break **Schedule 1**

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Schedule 1—Small business and general business tax break

Income Tax Assessment Act 1997

1 Section 12-5 (table item headed “capital allowances”)

After:
IRUs Subdivision 40-B

insert:
small business and general business tax break Division 41

2 After Division 40

Insert:

Division 41—Small business and general business tax break

Guide to Division 41

41-1 What this Division is about

You may be entitled to a special deduction in relation to a depreciating asset for one or more of the 2008-09, 2009-10 or 2010-11 income years if:

- (a) you are entitled to a deduction for decline in value for the asset for the relevant year under Subdivision 40-B; and
- (b) you make certain new investments in the asset in the period starting on 13 December 2008 and ending on 31 December 2009; and
- (c) the total of those new investments is at least \$1000 (for small businesses) or \$10,000 (for other businesses) for the relevant year.

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Schedule 1 Small business and general business tax break

1 **Table of sections**

2 **Operative provisions**

3	41-5	Object of Division
4	41-105	Entitlement to deduction for investment
5	41-115	Amount of deduction
6	41-120	Recognised new investment amount
7	41-125	Investment time
8	41-130	First use time
9	41-135	New investment threshold

10 **Operative provisions**

11 **41-5 Object of Division**

12 The object of this Division is to provide a temporary business tax
13 break for Australian businesses with a view to encouraging
14 business investment and economic activity.

15 **41-105 Entitlement to deduction for investment**

16 (1) You are entitled to a deduction for an income year in relation to an
17 asset if:

- 18 (a) the asset is a *depreciating asset, other than an intangible
19 asset; and
20 (b) you are entitled to a deduction under section 40-25 in relation
21 to the asset for the income year; and
22 (c) the income year is the 2008-09, 2009-10 or 2010-11 income
23 year; and
24 (d) the total of the *recognised new investment amounts for the
25 income year in relation to the asset equals or exceeds the
26 *new investment threshold for the income year in relation to
27 the asset.

28 (2) For the purposes of paragraph (1)(b), in determining whether you
29 are entitled to a deduction in relation to the asset under
30 section 40-25 for the income year:

- 31 (a) disregard section 40-55 if the asset is a *car for which you
32 use the “12% of original value” method for that income year;
33 and

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Small business and general business tax break **Schedule 1**

- 1 (b) disregard Subdivision 328-D (capital allowances for small
2 business entities); and
3 (c) disregard section 73BA of the *Income Tax Assessment Act*
4 *1936* (deductions regarding assets used in research and
5 development activities).

6 **41-115 Amount of deduction**

- 7 (1) If the income year is the 2008-09 income year, the amount of the
8 deduction is 30% of the total of the *recognised new investment
9 amounts for the income year in relation to the asset.
- 10 (2) If the income year is the 2009-10 income year, the amount of the
11 deduction is the total of:
12 (a) 30% of the total of the *recognised new investment amounts
13 for the income year in relation to the asset for which the
14 *investment time occurred before 1 July 2009; and
15 (b) 10% of the total of the other recognised new investment
16 amounts for the income year in relation to the asset.
- 17 (3) If the income year is the 2010-11 income year, the amount of the
18 deduction is 10% of the total of the *recognised new investment
19 amounts for the income year in relation to the asset.

20 **41-120 Recognised new investment amount**

- 21 (1) An amount is a *recognised new investment amount* for the income
22 year in relation to the asset if:
23 (a) either:
24 (i) the amount is included in the first element of the asset's
25 *cost (worked out in accordance with
26 Subdivision 40-C); or
27 (ii) the amount is included in the second element of the
28 asset's cost under paragraph 40-190(2)(a); and
29 (b) the *investment time for the amount occurs in the period:
30 (i) starting at 12.01 am, by legal time in the Australian
31 Capital Territory, on 13 December 2008; and
32 (ii) ending on 31 December 2009; and
33 (c) the *first use time for the amount occurs:
34 (i) no later than the end of the income year; and
35 (ii) no later than 31 December 2010; and

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Schedule 1 Small business and general business tax break

- 1 (d) at the first use time for the amount:
- 2 (i) if the amount is included in the first element of the
- 3 asset's cost—you start to use the asset in Australia, or
- 4 have it *installed ready for use in Australia, for the
- 5 principal purpose of *carrying on a *business; or
- 6 (ii) if the amount is included in the second element of the
- 7 asset's cost—you use the asset in Australia, or have had
- 8 it installed ready for use in Australia, for the principal
- 9 purpose of carrying on a business; and
- 10 (e) if the amount is included in the first element of the asset's
- 11 cost—the first use time for the amount is the first time you or
- 12 any other entity have used the asset, or have it installed ready
- 13 for use, for any purpose; and
- 14 (f) you have not been entitled to a deduction under this Division
- 15 for any previous income year in relation to the amount.
- 16 (2) For the purposes of paragraph (1)(e), disregard any previous use of
- 17 the asset that was merely for the purposes of reasonable testing or
- 18 trialling.
- 19 (3) Treat the requirements in paragraph (1)(e) as *not* being met if:
- 20 (a) the amount becomes included in the first element of the
- 21 asset's *cost at a time because of section 40-205 (splitting
- 22 depreciating assets) or 40-210 (merging depreciating assets);
- 23 and
- 24 (b) the amount became included in the cost of the asset that had
- 25 been split, or in one or more of the assets that had been
- 26 merged, before 12.01 am, by legal time in the Australian
- 27 Capital Territory, on 13 December 2008.

28 **41-125 Investment time**

- 29 (1) The *investment time* for the amount is:
- 30 (a) if the amount is included in the first element of the asset's
- 31 *cost—the time at which you:
- 32 (i) enter into a contract under which you *hold the asset at
- 33 that time, or will hold the asset at a later time; or
- 34 (ii) start to construct the asset; or
- 35 (iii) start to hold the asset in some other way; or
- 36 (b) if the amount is included in the second element of the asset's
- 37 cost—the time at which you enter into a contract, or

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Small business and general business tax break **Schedule 1**

1 commence construction, for the economic benefit in relation
2 to which the amount becomes, or will become, included in
3 that element under paragraph 40-190(2)(a).

4 *Integrity rule*

5 (2) Subsection (3) applies in relation to an amount if:

6 (a) at a time, you:

7 (i) enter into a contract under which you *hold an asset at
8 that time, or will hold the asset at a later time; or

9 (ii) start to construct an asset; or

10 (iii) start to hold an asset in some other way; and

11 (b) at a later time, you engage in conduct that results in you:

12 (i) entering into a contract under which you hold the asset
13 mentioned in paragraph (a) (or an identical or
14 substantially similar asset) at that later time, or will hold
15 that asset (or an identical or substantially similar asset)
16 at an even later time; or

17 (ii) starting to construct an asset that is identical or
18 substantially similar to the asset mentioned in
19 paragraph (a); or

20 (iii) starting to hold the asset mentioned in paragraph (a) (or
21 an identical or substantially similar asset) in some other
22 way; and

23 (c) you engage in that conduct for the purpose, or for purposes
24 that include the purpose, of becoming entitled to a deduction
25 under this Division.

26 (3) Despite paragraph (1)(a), the *investment time* for an amount to
27 which that paragraph would otherwise apply is the time mentioned
28 in paragraph (2)(a).

29 **41-130 First use time**

30 The *first use time* for the amount is:

31 (a) if the amount is included in the first element of the asset's
32 *cost—the time at which you start to use the asset, or have it
33 *installed ready for use; or

34 (b) if the amount is included in the second element of the asset's
35 cost—the later of:

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Schedule 1 Small business and general business tax break

- 1 (i) the time at which it becomes included in that element
2 under paragraph 40-190(2)(a); or
3 (ii) the time mentioned in paragraph (a).

4 **41-135 New investment threshold**

5 The *new investment threshold* for an income year (the *relevant*
6 *income year*) in relation to an asset means:

- 7 (a) \$1000 if you are a *small business entity during any of the
8 following income years:
9 (i) the income year in which occurs the *investment time
10 for any *recognised investment amount for the asset in
11 relation to the relevant income year;
12 (ii) the income year in which occurs the *first use time for
13 any such amount;
14 (iii) the relevant income year; or
15 (b) otherwise—\$10,000.

16 **3 Subsection 995-1(1)**

17 Insert:

18 *first use time* has the meaning given by section 41-130.

19 **4 Subsection 995-1(1)**

20 Insert:

21 *investment time* has the meaning given by section 41-125.

22 **5 Subsection 995-1(1)**

23 Insert:

24 *new investment threshold* has the meaning given by
25 section 41-135.

26 **6 Subsection 995-1(1)**

27 Insert:

28 *recognised new investment amount* has the meaning given by
29 section 41-120.