

Small Business and General Business Tax Break

Frequently Asked Questions

Version 1

25 February 2009

NOTES TO PARTICIPANTS

The draft legislation discussed in this paper is subject to the outcomes of this public consultation and passage through Parliament. The discussion should only be read as a guide to how the legislation ultimately might operate, subject to change.

INTRODUCTION

1. The Small Business and General Business Tax Break was announced on 3 February 2009 as part of the Government's *Nation Building and Jobs Plan*. Further information was provided in the Treasurer's Press Release No 12 of 3 February 2009 (available from www.treasurer.gov.au).
2. This set of frequently asked questions is being released with draft legislation and explanatory memorandum for the Tax Break. The answer to each question includes references to the relevant sections of the draft legislation and parts of the explanatory memorandum.

OVERVIEW

3. The Tax Break provides additional support – in the form of a bonus tax deduction – for Australian businesses undertaking capital investment in 2009.
 - 3.1. The Tax Break is available for new, tangible depreciating assets for which a deduction is available under the core provisions of Division 40 of the *Income Tax Assessment Act 1997* (ITAA97) or new expenditure on existing, eligible assets.
 - 3.2. A bonus tax deduction is available where a business acquires an eligible asset after 12 December 2008 but before the end of December 2009 and has it installed ready for use before the end of December 2010.
 - 3.2.1. Where a business acquires the eligible asset before the end of June 2009 and has it installed ready for use before the end of June 2010 the bonus deduction will be 30 per cent of the cost of the asset (exclusive of GST). Otherwise the deduction will be 10 per cent of the cost of the asset.
 - 3.3. A business acquires an asset when they enter into a contract to hold an asset, start to construct an asset or start to hold the asset in some other way.
 - 3.4. Small business entities will only need to spend a minimum of \$1,000 per asset in order to qualify for the Tax Break. All other businesses will need to meet a minimum expenditure threshold of \$10,000 per asset.
 - 3.4.1. These expenditure thresholds apply to both 30 per cent and 10 per cent bonus deductions.
 - 3.5. The Tax Break subsumes the temporary investment allowance announced in the Treasurer's Press Release No. 141 of 12 December 2008. Legislation to implement the investment allowance was not introduced to Parliament.
 - 3.6. The Tax Break draws, where possible, on concepts from Division 40 of the ITAA97, but the Tax Break has a different objective to the uniform capital allowances regime.
4. All references to legislation in this paper are references to the *Income Tax Assessment Act 1997*, unless otherwise stated.

FREQUENTLY ASKED QUESTIONS

QUESTION 1 — WHAT IS THE STATUS OF THE TAX BREAK?

5. Legislation to implement the Tax Break has not been introduced into Parliament. Treasury has released draft legislation for public consultation. The draft legislation and draft explanatory memorandum are available from the Treasury website (www.treasury.gov.au).

QUESTION 2 — DO SECOND HAND ASSETS QUALIFY?

6. The Tax Break will not apply to second hand assets.
7. The draft legislation and explanatory memorandum, available from the Treasury website (www.treasury.gov.au) provide additional guidance on what counts as a 'new' asset for the purposes of the Tax Break.

Draft legislation: Schedule 1, part 2, paragraph 41-120(1)(e) and section 41-130

Draft explanatory memorandum: Paragraph 1.40

QUESTION 3 — WHAT DOES 'NEW' MEAN?

8. The Tax Break will be available for new, tangible depreciating assets or new expenditure on existing assets. 'New' refers to assets that have not been used before by anyone, anywhere.

Draft legislation: Schedule 1, part 2, paragraph 41-120(1)(e) and section 41-130

Draft explanatory memorandum: Paragraphs 1.38 to 1.41

QUESTION 4 — DO CARS QUALIFY?

9. The Tax Break is available for new, tangible depreciating assets which a deduction is available under the core provisions of Division 40 or new expenditure on existing assets.
10. New motor vehicles used for business purposes are an example of the kind of assets that could qualify for the Tax Break (provided all the criteria are met). Further detail around how the Tax Break will apply to cars can be found under question 15 of this document.

Draft explanatory memorandum: Paragraphs 1.29 to 1.34

QUESTION 5 — ARE DEMONSTRATOR VEHICLES NEW OR SECOND HAND ASSETS?

11. Demonstrator vehicles can qualify as ‘new’ assets, provided they have only been used for reasonable testing and trialling.

Draft legislation: Schedule 1, part 2, subsection 41-120(2)

Draft explanatory memorandum: Paragraph 1.41

QUESTION 6 — WILL ASSETS HELD UNDER LEASES QUALIFY?

12. Provided the asset being leased is a new, tangible depreciating asset for which a deduction is available under the core provisions of Division 40, then the asset will be eligible for the Tax Break (subject to the other criteria being met).

Draft explanatory memorandum: Paragraph 1.43

13. Division 40 provides a framework for determining who in a leasing arrangement is able to claim depreciation deductions in respect of the asset and hence who would be entitled to claim the bonus deduction in a leasing situation. As is currently the case with capital allowance deductions, how the Tax Break is factored into lease prices will be a matter for commercial negotiations.

Draft explanatory memorandum: Paragraph 1.44

QUESTION 7 — DO BUILDINGS QUALIFY?

14. The Tax Break will be available for new tangible depreciating assets for which a deduction is available under the core provisions of Division 40 and new expenditure on existing assets. Capital works covered by Division 43 will not qualify for the Tax Break.

Draft explanatory memorandum: Paragraph 1.27

QUESTION 8 — ARE PRIMARY PRODUCTION ASSETS, DEPRECIATED UNDER SUBDIVISION 40-F, ELIGIBLE FOR THE TAX BREAK?

15. The core provisions of the uniform capital allowance in Subdivision 40-B will provide the framework for determining which assets are eligible and who is entitled to claim the bonus deduction.
16. This means that assets that already receive concessional capital allowance deductions under other subdivisions — such as assets used for primary production depreciated under Subdivision 40-F — will not qualify for the Tax Break.

Draft explanatory memorandum: Paragraphs 1.25 to 1.26

QUESTION 9 — IS THE TAX BREAK ONLY AVAILABLE TO SMALL BUSINESS ENTITIES?

17. No – both the 30 per cent and 10 per cent bonus deductions are available to all businesses. However, small business entities will only need to spend a minimum of \$1,000 per asset in order to qualify for the Tax Break. All other businesses will need to meet a minimum expenditure threshold of \$10,000 per asset. These expenditure thresholds apply to both 30 per cent and 10 per cent bonus deductions.

Draft legislation: Schedule 1, part 2, section 41-135

Draft explanatory memorandum: Paragraphs 1.45 to 1.47

QUESTION 10 — DO SMALL BUSINESSES USING DIVISION 328 QUALIFY?

18. A small business taxpayer who chooses to deduct amounts for depreciating assets under Subdivision 328-D will not be ineligible for the Tax Break merely because they make such a choice.

Draft legislation: Schedule 1, part 2, paragraph 41-105(2)(b)

Draft explanatory memorandum: Paragraphs 1.35 to 1.36m

QUESTION 11 — IS THE MAXIMUM BONUS DEDUCTION 30 PER CENT OR 40 PER CENT?

19. The Tax Break, at a rate of 30 per cent or 10 per cent, subsumes the previously announced Temporary Investment Allowance. The maximum rate of bonus deduction is 30 per cent for an asset acquired after 12 December 2008 until 30 June 2009 and installed ready for use by 30 June 2010. Otherwise the rate is 10 per cent.

Draft legislation: Schedule 1, part 2, subsection 41-115

Draft explanatory memorandum: Paragraphs 1.75 to 1.78

QUESTION 12 — WHAT IF I DON'T MEET THE JUNE 2010 INSTALLATION DEADLINE?

20. If you acquire or start to hold an eligible asset between 13 December 2008 and the end of June 2009 and miss the end of June 2010 installation deadline you will miss out on the 30 per cent bonus deduction. However, provided the asset is installed by the end of December 2010 you will still qualify for the 10 per cent bonus deduction.

Draft legislation: Schedule 1, part 2, subsection 41 115(3)

Draft explanatory memorandum: Paragraphs 1.75 to 1.78

QUESTION 13 — WILL THE TAX BREAK BE REDUCED FOR NON-BUSINESS USE?

21. Unlike deductions under Subdivision 40-B, the Tax Break will not be apportioned for any non-business use of the asset.

22. However, a taxpayer must be able to demonstrate that at the time they started to use the asset or had it installed ready for use, the asset was to be used in Australia and for the principal purpose of carrying on a business.

Draft legislation: Schedule 1, part 2, paragraph 41-120(1)(d)

Draft explanatory memorandum: Paragraphs 1.64 to 1.66

QUESTION 14 — WILL THE TAX BREAK BRING FORWARD THE DEDUCTIONS I WOULD NORMALLY CLAIM OVER THE ASSET'S EFFECTIVE LIFE OR IS IT ON TOP OF THESE DEDUCTIONS?

23. The Tax Break will provide a bonus deduction rather than bringing forward normal deductions for an asset's decline in value. This means that, over time a taxpayer could effectively claim deductions of up to 130 per cent of the asset's value.
24. The Tax Break will not impact on balancing adjustment events. For example, the Tax Break will not affect the tax treatment of an asset upon disposal.

Draft explanatory memorandum: Paragraph 1.79

QUESTION 15 — WILL THE CAR LIMIT APPLY TO THE TAX BREAK?

25. Under the core provisions of Division 40, luxury cars (those that cost more than the car limit) have their cost reduced to the car limit for the purpose of calculating capital allowance deductions. As the Tax Break relies on the core provisions of Division 40, the car limit will apply to eligible luxury cars.
26. This means that a taxpayer who is eligible to claim the Tax Break for a luxury car will have to use the car limit when working out the amount of their deduction.
27. The car limit for 2008-09 is \$57,180 and is indexed annually in line with the index number for the motor vehicle purchase sub-group of the CPI. This means that, at the 30 per cent rate, the maximum bonus deduction available for a car in 2008-09 is \$17,154.

Draft explanatory memorandum: Paragraphs 1.59 and 1.60