

# Small Business and General Business Tax Break

Frequently Asked Questions

Version 3

12 May 2009

## NOTES TO USERS

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

The Government has announced that it will move amendments to the legislation currently before the Parliament to implement the expansion of the Tax Break announced in the 2009-10 Budget.

<b>INTRODUCTION</b> .....	<b>3</b>
Previous versions.....	3
Overview.....	4
<b>FREQUENTLY ASKED QUESTIONS</b> .....	<b>6</b>
2009-10 Budget.....	6
Question 1 – Were changes to the Tax Break announced in the Budget? .....	6
Question 2 – Is the 50 per cent on top of the rates previously announced?.....	6
Question 3 – Does the 30 June 2009 deadline still apply?.....	6
Question 4 – How do I know if I am a small business for the Tax Break? .....	6
Question 5 – Can other businesses still benefit from the Tax Break? .....	6
Implementation of the Tax Break .....	7
Question 6 – Has the Tax Break been legislated? .....	7
Question 7 – Were changes made to the legislation as a result of public consultation? .....	7
Claiming the Tax Break .....	7
Question 8 – How and when can I claim the Tax Break? .....	7
Question 9 – What if I’m in a tax loss situation?.....	8
Question 10 – Does the Tax Break affect any other deductions?.....	8
Question 11 – What is the maximum bonus deduction? .....	8
Key dates for the Tax Break.....	8
Question 12 – What are the key dates for the 50 per cent deduction? .....	8
Question 13 – What are the key dates for the 30 per cent deduction? .....	8
Question 14 – What are the key dates for the 10 per cent deduction? .....	9
Question 15 – What if I don’t meet the installation deadline?.....	9
Question 16 – What about assets acquired before 13 December 2008?.....	9
Question 17 – What if I have the option to acquire a new asset that I haven’t exercised yet? .....	9
Question 18 – Are the key dates different if I use a substituted accounting period? .....	9
Assets that are eligible for the Tax Break.....	10
Question 19 – How do I know if an asset is eligible for the Tax Break?.....	10
Question 20 – Do small businesses using Division 328 still qualify?.....	10

Question 21 – What is a ‘new’ asset for the purpose of the Tax Break? .....	10
Question 22 – Are second-hand assets eligible? .....	10
Question 23 – Are repairs eligible for the Tax Break? .....	10
Question 24 – Are assets purchased overseas eligible? .....	11
Question 25 – Is software eligible?.....	11
Question 26 – Are water facilities eligible?.....	11
Question 27 – Do buildings qualify for the Tax Break? .....	11
<b>Who can claim the Tax Break</b> .....	<b>12</b>
Question 28 – Who can claim the Tax Break?.....	12
Question 29 – Can I still claim the Tax Break if I lease an asset?.....	12
Question 30 – How does the Tax Break apply to partnership assets? .....	12
Question 31 – Does the mutuality principle apply to the Tax Break? .....	13
<b>Meeting the investment threshold</b> .....	<b>13</b>
Question 32 – Is there a minimum amount I need to invest?.....	13
Question 33 – How do I know which threshold applies?.....	13
Question 34 – How do I work out the cost of an eligible asset? .....	14
Question 35 – Do I need to satisfy the threshold for every investment I make in an asset? .....	14
Question 36 – How does the Tax Break apply to batches and sets of assets?.....	14
Question 37 – How does the Tax Break apply to jointly held assets?.....	14
<b>Business use of the asset</b> .....	<b>15</b>
Question 38 – Will the Tax Break be reduced for any non-taxable use of the asset? .....	15
Question 39 – What is meant by ‘carrying on a business’? .....	15
Question 40 – Can a rental property qualify for the Tax Break? .....	15
Question 41 – Does the asset need to be used in Australia? .....	15
<b>Cars and the Tax Break</b> .....	<b>16</b>
Question 42 – Do all cars qualify, or are there restrictions?.....	16
Question 43 – Does the car limit apply to the Tax Break? .....	16
Question 44 – Are ‘demonstrator’ vehicles eligible? .....	16

## 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. The Tax Break extends and expands the temporary investment allowance announced in December 2008.
  - (a) Further information is available in the Treasurer's Media Release No 13 of 3 February 2009 and Media Release No. 141 of 12 December 2008 (available from [www.treasurer.gov.au](http://www.treasurer.gov.au)).
2. As part of the 2009-10 Budget, the Government announced that small businesses will be able to claim a bonus deduction of 50 per cent for eligible assets that they commit to investing in prior to 31 December 2009. The existing rates and deadlines will continue to apply to all other businesses.
3. Legislation to implement the Tax Break is currently before the Parliament. You can follow the progress of the legislation on the Australian Parliament House website ([www.aph.gov.au](http://www.aph.gov.au)).
4. The Government has announced that it will move amendments to the legislation currently before the Parliament to implement the expansion of the Tax Break announced in the 2009-10 Budget.
5. This set of frequently asked questions is being released by the Treasury to assist businesses in understanding how the Tax Break is intended to operate.
6. All references to legislation in this paper are references to the *Income Tax Assessment Act 1997* (ITAA 1997), unless otherwise stated.

## PREVIOUS VERSIONS

7. This is the third version of these frequently asked questions. It provides information on the changes announced in the Budget as well as on other aspects of the Tax Break.
  - (a) The first version was released with exposure draft legislation for public consultation on 25 February 2009.
  - (b) The second version was released on 19 March 2009 when legislation to implement the Tax Break was introduced in the Parliament. It also reflected changes in the Government's policy following the public consultation process.
8. This version also provides further information on:
  - (a) how the Tax Break applies to taxpayers that use substituted accounting periods;
  - (b) whether repairs are eligible for the Tax Break;
  - (c) whether assets purchased overseas are eligible for the Tax Break;
  - (d) how the Tax Break operates in relation to partnerships;

- (e) what is meant by the term 'carrying on a business';
  - (f) whether assets used in rental properties are eligible for the Tax Break; and
  - (g) how the car limit applies to low emission vehicles.
9. Previous versions included references to the Tax Break Bill and Explanatory Memorandum. These have been removed as amendments to the legislation and associated changes to the Explanatory Memorandum are anticipated.

## OVERVIEW

10. The Tax Break is available for businesses that undertake new investment in new tangible, depreciating assets – that is, plant and equipment – for which a deduction is available under Subdivision 40-B and new investment in existing assets.
11. If you are a small business, you will be able to claim a bonus tax deduction of **50 per cent** of the cost of an eligible asset that you:
- (a) commit to investing in between 13 December 2008 and 31 December 2009; and
  - (b) start to use or have installed ready for use by 31 December 2010.
12. If you are not a small business, you will be able to claim a bonus deduction of **30 per cent** of the cost of an eligible asset that you:
- (a) commit to investing in between 13 December 2008 and 30 June 2009; and
  - (b) start to use or have installed ready for use by 30 June 2010.
13. If you cannot meet the 30 June 2009 deadline, you may still be entitled to a bonus deduction of **10 per cent** of the cost of an eligible asset that you:
- (a) commit to investing in between 1 July 2009 and 31 December 2009; and
  - (b) start to use or have asset installed ready for use by 31 December 2010.
14. You can commit to investing in an asset by:
- (a) entering into a contract under which you will hold the asset; or
  - (b) starting to construct the asset.

**Table 1: Small Business**

Installed by	Investment by:
	31 December 2009
30 June 2009	50% in 2008-09
30 June 2010	50% in 2009-10
31 December 2010	50% in 2010-11

**Table 2: Other taxpayers**

Installed by	Investment by:	
	30 June 2009	31 December 2009
30 June 2009	30% in 2008-09	
30 June 2010	30% in 2008-09	10% in 2008-09
31 December 2010	10% in 2008-09	10% in 2008-09

15. If you are a small business, you need to invest a minimum of \$1,000 to qualify for the Tax Break. All other businesses need to invest a minimum of \$10,000.
16. However, all businesses can aggregate their investment in batches of assets that are identical, or substantially identical, and in sets of assets for the purposes of meeting the relevant threshold (\$1,000 or \$10,000).
17. At the time you start to use the asset or have it installed ready for use, it must be reasonable to conclude that you will use the asset principally in Australia for the principal purpose of carrying on a business.
18. The Tax Break is to be claimed by the taxpayer who holds the asset for the purposes of Division 40 of the ITAA 1997; that is, same person who claims capital allowance deductions in relation to the asset is entitled to the Tax Break.
19. An asset's cost for the purposes of the Tax Break is its cost under Subdivision 40-C (this is generally its GST exclusive cost).

# FREQUENTLY ASKED QUESTIONS

## 2009-10 BUDGET

### Question 1 — Were changes to the Tax Break announced in the Budget?

20. Yes. As part of the 2009-10 Budget, the Government announced that it will expand the Tax Break for small businesses.
21. Small businesses will now be able to claim a bonus deduction of 50 per cent of the cost of eligible assets that they commit to investing in between 13 December 2008 and to 31 December 2009, and have installed by 31 December 2010.

### Question 2 — Is the 50 per cent on top of the rates previously announced?

22. No. There is now only one rate that applies to small business; that is, 50 per cent. The 30 per cent and 10 per cent rates will continue to apply to all other businesses.

### Question 3 — Does the 30 June 2009 deadline still apply?

23. The 30 June 2009 deadline is important if you are *not* a small business and you want to be able to claim the Tax Break at the 30 per cent rate (see Question 13).
24. However, if you are a small business you have until 31 December 2009 to commit to investing in an asset and until 31 December 2010 to have it installed.

### Question 4 — How do I know if I am a small business for the Tax Break?

25. Under the tax law (section 328-110), a small business entity is generally a taxpayer who is carrying on a business and has an annual turnover of less than \$2 million. However, the Australian Taxation Office (ATO) can assist you with understanding whether or not you are a small business entity (see [www.ato.gov.au](http://www.ato.gov.au))
26. You are a small business for purpose of the Tax Break, if you meet the definition of a small business entity (contained in section 328-110) in either:
  - (a) the income year that you commit to investing in the asset,
  - (b) the income year that you start to use the asset or have it installed ready for use; or
  - (c) the income year that you claim the Tax Break.

### Question 5 — Can other businesses still benefit from the Tax Break?

27. Yes. The rates and deadlines previously announced will still apply if you are not a small business.

## IMPLEMENTATION OF THE TAX BREAK

### Question 6 — Has the Tax Break been legislated?

28. The Tax Laws Amendment (Small Business and General Business Tax Break) Bill 2009 was introduced into the House of Representatives on 19 March 2009. You can access a copy of the legislation and associated explanatory memorandum from the Australian Parliament House website ([www.aph.gov.au](http://www.aph.gov.au)).
29. You can also monitor the passage of legislation through the Parliament from the Australian Parliament House website ([www.aph.gov.au](http://www.aph.gov.au)).

### Question 7 — Were changes made to the legislation as a result of public consultation?

30. On 25 February 2009, the Treasurer released exposure draft legislation on the Tax Break for public consultation. Interested parties were invited to make submissions on the exposure draft legislation by 10 March 2009.
  - (a) A summary of the issues raised through the consultation process is available on the Treasury website ([www.treasury.gov.au](http://www.treasury.gov.au)).
31. A number of changes were made to the legislation following the consultation process.
  - (a) Taxpayers will be allowed to combine the value of batches of substantially identical assets and assets that form part of a set to meet the investment threshold (see Question 36).
  - (b) Taxpayers who exercise an option to acquire a new asset under an existing contract will be eligible for the Tax Break if this option is exercised on or after 13 December 2008 (see Question 17).
  - (c) Once the new investment threshold has been satisfied in relation to each individual asset, all subsequent investments in the asset made prior to 31 December 2009 will qualify for the Tax Break (see Question 35).
  - (d) Where an eligible asset is jointly held, a taxpayer will be able to recognise all other business interests in the asset for the purposes of meeting the relevant investment threshold (see Question 37).
  - (e) The provisions around when the Tax Break can be claimed were refined to ensure consistent treatment of taxpayers using substituted accounting periods.

## CLAIMING THE TAX BREAK

### Question 8 — How and when can I claim the Tax Break?

32. Provided all of the eligibility criteria are satisfied, you can claim the Tax Break as a tax deduction in your income tax return for the income year in which you start to use an eligible asset or have it installed ready for use. This also applies if you use a substituted accounting period.

### Question 9 — What if I'm in a tax loss situation?

33. The Tax Break provides a bonus tax deduction – it is not a rebate or a refundable tax offset. To the extent that you are in a tax loss situation for the income year that you claim the Tax Break, the bonus deduction will form part of that loss. The usual rules regarding the carrying forward of tax losses will apply.

### Question 10 — Does the Tax Break affect any other deductions?

34. The Tax Break will provide a bonus deduction. It has no impact on deductions for an asset's decline in value claimed under Division 40. This means that, over time, a taxpayer could effectively claim deductions of up to 150 per cent of the asset's value.
35. The Tax Break will not impact on balancing adjustment events, capital gains or capital losses if you stop holding the asset.

### Question 11 — What is the maximum bonus deduction?

36. If you are a small business, the only applicable rate of bonus deduction is 50 per cent. The 50 per cent rate expands the Tax Break for small business.
37. If you are not a small business, the maximum rate at which the Tax Break can be claimed is 30 per cent. The Tax Break, at a rate of 30 per cent or 10 per cent, extended and expanded the temporary investment allowance announced in December 2008.

## KEY DATES FOR THE TAX BREAK

### Question 12 — What are the key dates for the 50 per cent deduction?

38. The 50 per cent bonus deduction is available to small businesses only. Other businesses may be eligible for the 30 per cent or 10 per cent rates of deduction (see Questions 13 and 14).
39. To qualify for the 50 per cent bonus deduction, you need to contract for, or start to construct, an eligible asset between **13 December 2008** and **31 December 2009** and start to use the asset, or have it installed ready for use, by **31 December 2010**.

### Question 13 — What are the key dates for the 30 per cent deduction?

40. The 30 per cent bonus deduction will now only apply if you are not a small business.
41. To qualify for the 30 per cent bonus deduction, you need to contract for, or start to construct, an eligible asset between **13 December 2008** and **30 June 2009** and start to use the asset, or have it installed ready for use, by **30 June 2010**.

### Question 14 — What are the key dates for the 10 per cent deduction?

42. The 10 per cent bonus deduction will now only apply if you are not a small business.
43. To qualify for the 10 per cent bonus deduction, you need to contract for, or start to construct, an eligible asset between **1 July 2009** and **31 December 2009** and start to use the asset, or have it installed ready for use, by **31 December 2010**.

### Question 15 — What if I don't meet the installation deadline?

44. If you are not a small business and you contract for an eligible asset, or start to construct it, by **30 June 2009** but miss the 30 June 2010 deadline for starting to use the asset, or having it installed ready for use, you will not be able to claim the 30 per cent bonus deduction.
45. However, provided the asset is installed by **31 December 2010** you will still qualify for the 10 per cent bonus deduction (provided you satisfy all of the eligibility criteria).
46. If you invest in an asset by 31 December 2009 but do not meet the **31 December 2010** deadline for having the asset installed ready for use, you will miss out on the bonus deduction. This deadline also applies if you are a small business.

### Question 16 — What about assets acquired before 13 December 2008?

47. You will not be able to claim the Tax Break if you entered into a contract to acquire an eligible asset, or started to construct it, prior to 13 December 2008. This ensures that only investments committed in light of the announcement of the temporary investment allowance on 12 December 2008 can qualify.

### Question 17 — What if I have the option to acquire a new asset that I haven't exercised yet?

48. If, prior to 13 December 2008, you entered into a contract that included an option to acquire an eligible asset at a later point in time and if that option is exercised on or prior to 31 December 2009, you may still be able to claim the Tax Break. This approach ensures that the Tax Break provides an incentive not to delay or defer capital spending in the short term.

### Question 18 — Are the key dates different if I use a substituted accounting period?

49. If you use a substituted accounting period, the key dates for entering into a contract for an asset and using or having the asset installed ready for use, are the same as those in Questions 12 to 16.

## **ASSETS THAT ARE ELIGIBLE FOR THE TAX BREAK**

### **Question 19 — How do I know if an asset is eligible for the Tax Break?**

50. The Tax Break is available for new tangible, depreciating assets for which a deduction is available under Subdivision 40-B and new investment in existing assets.
51. Subdivision 40-B contains the core provisions of the uniform capital allowance regime which allow taxpayers to claim deductions for a depreciating asset's decline in value over its effective life.
52. If you currently use depreciating assets in your business, you may already be familiar with how this part of the tax law works. The ATO can assist you with understanding more about the capital allowance regime in Division 40 and depreciating assets (see [www.ato.gov.au](http://www.ato.gov.au)).

### **Question 20 — Do small businesses using Division 328 still qualify?**

53. If you are a small business taxpayer who chooses to deduct amounts for depreciating assets under Subdivision 328-D, you will still be eligible for the Tax Break if you acquire an asset that would have been deductible under Subdivision 40-B.
54. You do not have to stop using the rules under Subdivision 328-D in order to be eligible for the Tax Break in relation to an asset. It is whether the asset is one for which a deduction would be available under Subdivision 40-B that matters.

### **Question 21 — What is a 'new' asset for the purpose of the Tax Break?**

55. For the purposes of the Tax Break, a new asset is one that has not been previously used anywhere, by anyone, for any purpose except where it has only been used for reasonable testing and trialling. This means that second-hand assets, even if they are new to your business or imported from overseas, do not qualify for the Tax Break.

### **Question 22 — Are second-hand assets eligible?**

56. The Tax Break is not available for second-hand assets. This ensures that the Tax Break is carefully targeted toward new investment that will upgrade and extend our economy's productive capacity and prepare the ground for economic recovery.
57. An asset will still be considered to be new if it has only been used for the purposes of reasonable testing and trialling (by any entity).

### **Question 23 — Are repairs eligible for the Tax Break?**

58. Generally, expenditure incurred in repairing an income-producing asset is immediately deductible under section 25-10, and thus would not be eligible for the Tax Break. Conversely, substantial improvements, additions, alterations, modernisations or reconstructions are generally not repairs. These types of expenditures may constitute a second element of an asset's cost under Subdivision 40-B, and hence be eligible for the Tax Break.

59. Taxation Ruling TR 97/23 provides guidance on what types of expenditures can be deducted under section 25-10. The ATO can also assist you in determining whether expenditure is for a repair ([www.ato.gov.au](http://www.ato.gov.au)).

### **Question 24 — Are assets purchased overseas eligible?**

60. If the asset meets the relevant criteria (that is, it is a new, tangible depreciating asset for which a deduction is available under Subdivision 40-B), then it will be eligible for the Tax Break. The fact that it is purchased from overseas will not disqualify it. However, second-hand assets are not eligible for the Tax Break. This includes second-hand imported assets.

### **Question 25 — Is software eligible?**

61. Software is an intangible asset. The Tax Break is only available for tangible assets, hence software is not eligible. Previous investment allowances also excluded intangible assets.
62. Where a taxpayer purchases a package that consists of hardware and software, apportionment between the hardware and software would occur, based on the cost of the items if they were purchased separately (as per section 40-195). Only the portion of the package's cost that is attributable to the hardware will be eligible for the Tax Break, provided the eligibility criteria are satisfied.

### **Question 26 — Are water facilities eligible?**

63. Assets that receive capital allowance deductions under other Subdivisions of Division 40 are not eligible for the Tax Break. This includes assets that receive capital allowance deductions under Subdivision 40-F, such as water conservation facilities.
- (a) These assets are able to be written off over a shorter period of time than the asset's effective life.
64. Taxpayers with assets that are deductible under Subdivision 40-F cannot 'opt in' to Subdivision 40-B in order to claim the Tax Break.
65. If you currently use depreciating assets in your business, you may already be familiar with how this part of the tax law works. The ATO can assist you with understanding more about the uniform capital allowance regime in Division 40 (see [www.ato.gov.au](http://www.ato.gov.au)).

### **Question 27 — Do buildings qualify for the Tax Break?**

66. The Tax Break will be available for new tangible depreciating assets for which a deduction is available under Subdivision 40-B and new expenditure on existing assets. Capital works covered by Division 43 will not qualify for the Tax Break.
67. The ATO can assist you with understanding more about the uniform capital allowance regime in Division 40 and the deductions for capital works available under Division 43 (see [www.ato.gov.au](http://www.ato.gov.au)).

## WHO CAN CLAIM THE TAX BREAK

### Question 28 — Who can claim the Tax Break?

68. Provided all of the eligibility criteria are met, the Tax Break is to be claimed by the taxpayer that holds the asset for the purposes of Division 40. That is, it must be the same taxpayer that claims capital allowance deductions in relation to the asset.
69. If you currently use depreciating assets in your business, you may already be familiar with how this part of the tax law works. The ATO can assist you with understanding more about the uniform capital allowance regime in Division 40 (see [www.ato.gov.au](http://www.ato.gov.au)).

### Question 29 — Can I still claim the Tax Break if I lease an asset?

70. Division 40 provides a framework for determining who in a leasing arrangement is able to claim capital allowance deductions in respect of the asset and hence who would be entitled to claim the bonus deduction in a leasing situation.
  - (a) The principle is that the Tax Break is to be claimed by the same person who claims capital allowance deductions in relation to the asset.
  - (b) 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.
71. Previous investment allowances allowed the entitlement to the bonus deduction to be transferred from the lessor to the lessee under a leasing agreement. However, these investment allowances did not allow the carry forward of tax losses resulting from the investment allowance. If the taxpayer that claims the Tax Break is in a tax loss position, they will be able to carry this loss forward into future years.

### Question 30 — How does the Tax Break apply to partnership assets?

72. The principle that the Tax Break is to be claimed by the same person who claims capital allowance deductions in relation to the asset also applies to partnership assets.
73. Where an eligible asset is held by a partnership, it is the partnership rather than any individual partner that is eligible to claim capital allowance deductions in relation to the asset. So, the partnership would be the taxpayer that is able to claim the Tax Break.
74. In situations where the asset is not a partnership asset, but where an individual partner remains the economic and legal owner, whether the partner will be able to claim the Tax Break depends on whether the asset satisfies the 'principal purpose of carrying on a business' test.
75. The ATO can assist you with understanding whether or not an asset is a partnership asset (see [www.ato.gov.au](http://www.ato.gov.au)).

### **Question 31 — Does the mutuality principle apply to the Tax Break?**

76. Whether a mutual association will be able to claim the Tax Break will depend on its particular situation. For example, whether a mutual association is carrying on a business is a matter of fact and circumstance.
77. However, if the association can satisfy all of the eligibility criteria then it can claim the Tax Break. For example, if the association is able to claim a deduction in relation to the asset under Subdivision 40-B (that is, it uses the asset to produce assessable income), it may be eligible for the Tax Break.
78. The ATO can assist you with understanding whether or not you or your association are carrying on a business and with understanding more about the uniform capital allowance regime in Division 40 (see [www.ato.gov.au](http://www.ato.gov.au)).

### **MEETING THE INVESTMENT THRESHOLD**

#### **Question 32 — Is there a minimum amount I need to invest?**

79. Small businesses need to invest a minimum of \$1,000 to qualify for the Tax Break. All other businesses need to invest a minimum of \$10,000. The threshold for other businesses applies to both the 30 per cent and 10 per cent bonus deductions.
80. Generally, you need to satisfy this threshold in relation to each (individual) eligible asset in order to claim the Tax Break.
  - (a) What counts as an individual asset is the same for the Tax Break as it is for Division 40 purposes.
  - (b) However, you are able to group your expenditure on batches of substantially identical assets or sets of assets for the purposes of meeting the threshold (see Question 36 below for further information).
  - (c) Once you have met the threshold for an individual asset, any subsequent investments you make in the asset before 31 December 2009 will also qualify for the Tax Break (see Question 35 below for further information).
81. The ATO can assist you with understanding what an asset is for the purposes of the uniform capital allowance regime in Division 40 (see [www.ato.gov.au](http://www.ato.gov.au)).

#### **Question 33 — How do I know which threshold applies?**

82. For small businesses, the threshold is \$1,000 (see Question 4 to determine whether you are a small business for the purpose of the Tax Break).
83. For other businesses, the \$10,000 threshold will apply. To qualify for the Tax Break, the asset's cost must be equal to, or exceed, the relevant investment threshold (see Question 28 below for further information).
84. The ATO can assist you with understanding whether you are a small business (see [www.ato.gov.au](http://www.ato.gov.au)).

### **Question 34 — How do I work out the cost of an eligible asset?**

85. An asset's cost for the purposes of the Tax Break is the same as its cost under Subdivision 40-C (generally its GST exclusive cost). That is, the same as its cost for the purpose of calculating capital allowance deductions under Division 40.
86. The ATO can assist you with understanding how to work out the cost of your asset for the purposes of the uniform capital allowance regime in Division 40 (see [www.ato.gov.au](http://www.ato.gov.au)).

### **Question 35 — Do I need to satisfy the threshold for every investment I make in an asset?**

87. The legislation allows you to aggregate multiple investments in an individual eligible asset for the purposes of meeting the threshold. When you have met the relevant threshold once in relation to an individual asset, all subsequent investments that you make in the asset prior to 31 December 2009 will qualify for the Tax Break.
88. However, as a general rule, you cannot aggregate your investments in multiple, different assets for the purposes of meeting the threshold - even if you intend to use them in a similar setting or for a similar purpose.

### **Question 36 — How does the Tax Break apply to batches and sets of assets?**

89. You can aggregate your investment in assets that are identical, or substantially identical, and in assets that form a set for the purposes of meeting the relevant threshold.
90. Whether assets form a set will need to be determined on a case-by-case basis. Items may be regarded as a set if they are dependent on each other, marketed as a set, or designed and intended to be used together.
91. The ATO can assist you in understanding whether certain assets form a set or are substantially identical (see [www.ato.gov.au](http://www.ato.gov.au)).

### **Question 37 — How does the Tax Break apply to jointly held assets?**

92. Where an eligible asset is jointly held, a taxpayer will be able to recognise all other business interests in that underlying asset for the purposes of meeting the relevant investment threshold. However, they will only be able to claim the Tax Break to the extent of their interest in the underlying asset.

## **BUSINESS USE OF THE ASSET**

### **Question 38 — Will the Tax Break be reduced for any non-taxable use of the asset?**

93. Unlike deductions under Division 40 the Tax Break will not be reduced for any non-taxable use of the asset or apportioned based on the actual taxable use of the asset over a particular income year. This differs from previous investment allowances, where assets were required to be used wholly and exclusively for a taxable purpose. The approach used by the Tax Break improves certainty for taxpayers.
94. However, if you are the entity claiming the Tax Break, you must be able to demonstrate that at the time you started to use the asset, or had it installed ready for use, it was reasonable to conclude that you will use the asset principally in Australia for the principal purpose of carrying on your business.
95. The ATO can assist you with understanding whether or not you are carrying on a business, the meaning of 'principal purpose' and whether an asset is being used in Australia (see [www.ato.gov.au](http://www.ato.gov.au)).

### **Question 39 — What is meant by 'carrying on a business'?**

96. The ATO has previously issued guidance on what it means to be 'carrying on a business' (refer to Taxation Ruling 97/11) and this is what is intended by the use of the term in the legislation. The ATO can assist you in determining whether you are carrying on a business ([www.ato.gov.au](http://www.ato.gov.au)).

### **Question 40 — Can a rental property qualify for the Tax Break?**

97. Investors who receive passive income from a rental property are unlikely to satisfy the test of 'carrying on a business', and therefore would not be able to claim the Tax Break. However, if you are unsure whether you or your client is 'carrying on a business' for tax purposes, you may wish to seek further guidance from the ATO ([www.ato.gov.au](http://www.ato.gov.au)).

### **Question 41 — Does the asset need to be used in Australia?**

98. To claim the Tax Break, when you start to hold the asset it must be reasonable to conclude that you will use the asset principally in Australia. An asset does not necessarily have to be located in Australia when you start to use it or have it installed ready for use. However, the purpose test will not be satisfied if it is reasonable to conclude that the asset will never be used in Australia.

## CARS AND THE TAX BREAK

### Question 42 — Do all cars qualify, or are there restrictions?

99. There are four methods that taxpayers can use to work out deductions for car expenses for an income year. The choice of method will also determine whether the taxpayer can claim capital allowance deductions under Division 40 in relation to the car.
100. Taxpayers who use the 'one-third of actual expenses' and 'log book' methods are able to claim deductions under Subdivision 40-B and may be eligible for the Tax Break.
101. Taxpayers using the '12 per cent of original value' and 'cents per kilometre' methods to determine the car expenses are not eligible for capital allowance deductions.
102. However, taxpayers will not be excluded from the Tax Break merely because they use the 12 per cent of original value method. That is, the legislation rules these cars 'in' for the purposes of the Tax Break even though a deduction is not available under Subdivision 40-B.
103. Taxpayers cannot claim the Tax Break in an income year they use the cents per kilometre method. However, this method can only be used for up to 5,000 business kilometres, implying limited business use.
  - (a) That is, taxpayers using this method would generally find it difficult to meet the purpose test and so would not be eligible for the Tax Break anyway.
  - (b) In comparison, the 12 per cent of original value method can only be used if you travel more than 5,000 business kilometres.

### Question 43 — Does the car limit apply to the Tax Break?

104. Under 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. 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.
105. The car limit for 2008-09 is \$57,180 and is indexed annually in line with the motor vehicle purchase sub-group of the CPI. This means that, at the 50 per cent rate, the maximum bonus deduction available for the acquisition cost of a car in 2008-09 is \$28,590.
106. Although for luxury car tax purposes a higher threshold applies to fuel efficient cars in some circumstances, there is only one car limit for Division 40 purposes. Accordingly, the Division 40 car limit will be used for calculating the Tax Break, regardless of whether the vehicle is a fuel efficient vehicle.
107. The ATO can assist you with understanding the car limit (see [www.ato.gov.au](http://www.ato.gov.au)).

### Question 44 — Are 'demonstrator' vehicles eligible?

108. Demonstrator vehicles can qualify as 'new' assets provided they have only been used for reasonable testing and trialling.