

11 March 2009

The General Manager
Small Business and General Business Tax Break – Consultation
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: investmentallowance@treasury.gov.au.

Dear Sir

Legislation for small business and general business tax break

The National Institute of Accountants (NIA) is one of the three professional accounting bodies in Australia. The NIA has over 20,000 members who work in all areas of the accounting profession, including advising on taxation matters, superannuation and financial planning. In addition, two-thirds of the NIA's members work in and with small business.

The NIA welcomes the opportunity to comment on the draft legislation for the small business and general business tax break. We appreciate that the tax break forms part of the Government's Nation Building and Jobs Plan package and that the policy underpinning the tax break and the package is not subject to consultation at this stage.

In any event, the NIA notes that the Australian Taxation Office (ATO) has consulted on the interpretation of the tax break following the Treasurer's Press Release No 12 of 3 February 2009; which has already attracted considerable attention from our members.

We appreciate that the effectiveness of the legislation in terms of achieving its objective as part of a fiscal stimulus package, will depend largely on the interpretation and implementation by the ATO. We note in this regard that there are various provisions which require the ATO to take a beneficial interpretation and we anticipate that this will be the case. The NIA will certainly encourage the ATO to take a beneficial interpretation, which we also appreciate is a matter for the ATO and not Treasury. However, the Explanatory Memorandum could clarify that given the objective and the context of the National Building package, that a beneficial interpretation should be adopted at all times.

In the spirit of a stimulus package, the NIA is pleased, for instance, that the legislation provides no 'claw back' in the event that use of the relevant asset changes. Other beneficial provisions include the definition of a 'new' asset to include those used for reasonable testing and trialling.

NATIONAL OFFICE

Level 6
555 Lonsdale Street
Melbourne VIC 3000
Australia

GPO Box 1637
Melbourne Vic 3001
Australia

Telephone
61 3 8665 3100
Facsimile:
61 3 8665 3130

Email:
natoffice@nia.org.au

www.nia.org.au

ABN 81 004 130 643

Areas of the draft legislation which have caused confusion include the provision that 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. We refer to question 14 of the Frequently Asked Questions. This part of the legislation and Explanatory Memorandum should be clarified. Further examples under paragraph 1.75 – calculating the bonus deduction – would be useful, especially to illustrate how a taxpayer can claim for an asset where the sum of the capital allowance and the tax break deductions can be more than 100 per cent of its value and how over time, a taxpayer could effectively claim deductions of up to 130 per cent of the asset's value, as stated.

Other areas of confusion include around the meaning of 'recognised new investment' in paragraph 1.50 of the Explanatory Memorandum and we suggest that this section could be clarified through more border-line examples. The taxpayer will still need to make a judgment when they first start using the asset in order to claim the tax break in terms of the 'purpose test'. Again we anticipate that the ATO will allow a beneficial interpretation of the provision.

One example which falls under various headings in the legislation might involve a taxpayer who buys 4 buses at \$100,000 each on 20 June, takes delivery on 29 June, makes no payments at all, claims \$120,000 investment allowance on July 1, sells 3 buses and then owns the first one without any cash outlay, and can still claim \$12,500 depreciation each year for 8 years. It should be clarified as to whether this particular scenario is allowed under the legislation.

Other areas of confusion surround the 'first use' of the asset provision and the meaning of 'installed and ready to use' under paragraph 1.61 following in the Explanatory Memorandum. More border-line examples in the Explanatory Memorandum would be useful as the provision is subject to interpretation, depending on the nature of the asset and the business being carried on by the taxpayer.

If you have any queries or require further information on our comments, please don't hesitate to contact Vicki Stylianou on 02 6260 8619 or 0419 942 733 (or vicki.stylianou@nia.org.au).

Yours faithfully

Andrew Conway
Deputy Chief Executive Officer