



10 March 2009

Mr Matthew Flavel
Small Business and General Business Tax Break – Consultation
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600
investmentallowance@treasury.gov.au

Dear Matthew

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

Thank you for the opportunity to comment on the government's proposed Investment Allowance Bill.

The Property Council is the peak body representing the interests of owners and investors in Australia's \$320 billion property investment sector.

Our members include the major Australian listed and unlisted real estate investment trusts (A-REITs), developers, property advisors and direct investors.

The Property Council strongly supports the Government's Investment Allowance to try to boost business investment and bolster economic activity.

As discussed in our earlier conversation, the Property Council has a number of recommendations that will enhance the operation of the allowance and avoid unnecessary confusion or disputes:

1) Extend the period for eligible investment to more effectively stimulate the economy.

In the current economic climate, the industry has seen a fall in activity with many businesses cancelling projects and pulling back from planned investment. In practical terms, given the time needed for implementing new projects, the Investment Allowance is primarily only available to pre-committed projects.

The timeframe needs to be longer if the Government wants to more effectively stimulate increased business activity.

2) Ensure there is no cost base reduction for Trust distributions.

We understand that there is no intention to "claw-back" the Investment Allowance through sale or trust distributions.

The Voice of Leadership

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Currently, the benefit of the allowance may be washed out through cost base reductions for unitholders upon Trust distribution.

A consequential amendment needs to be made to the Capital Gains Tax event E4 (s104-71), to state that deductions available under Division 41 are excluded from the non-assessable part of a payment made by a Trustee of a Trust.

3) Ensure taxpayers with non 30 June year-end get the same timeframe.

Currently, the Investment Allowance assumes that the taxpayer has a 30 June year-end and unfairly cuts short the investment timeframe for taxpayers with early year end balances.

A taxpayer with a December balance date cannot take advantage of the full timeframe to June.

The Investment Allowance timeframes need to be adjusted to take into account taxpayers with December balance dates.

4) Ensure that the legislation does not exclude legitimate business from the Investment Allowance.

The industry is concerned that the ATO will apply a particularly narrow definition of "business" that will prevent some Trusts, Superannuation funds and other legitimate businesses from obtaining the Investment Allowance.

Tax Ruling 2002/11, provides a narrow interpretation of "business" that does not encompass all practical types of business. It will not for instance consider a Superannuation Trust with an investment in a single property a business, despite the fact that it is in every practical respect carrying on a business. This equally applies to special purpose vehicles holding a single property that is run as a business.

This will result in some legitimate businesses receiving amended assessments when they use the Investment Allowance. These organisations will likely end up in protracted disputes with the ATO.

This issue can be addressed by a minor amendment to the Investment Allowance Bill that broadens eligibility to all businesses. There are a number of ways this can be achieved including clarifying that "business" includes a GST registered enterprise for the purposes of the Bill.

We are happy to discuss the options with you directly.

5) Clarify that investments in components for an asset can be Amalgamated.

The Bill should clarify that multiple investments in necessary components of a single asset can be amalgamated for the purposes of the dollar thresholds.

Within the property industry, it is possible to buy individual components of an air conditioning system in a building (for instance) that as a whole cost more than \$10,000. Without each component, the air conditioning asset is useless and they constitute a single asset, bought in sections.

Equally, the Bill should allow the cost of multiple identical assets bought as a single order to be amalgamated for the purposes of the dollar thresholds.

It is not unusual to purchase a number of computers or air conditioners etc for a single office, department or project that together, exceed the \$10,000 threshold. These types of investments are necessary to help boost business activity.

We would be happy to discuss any of the issues raised in this submission at your convenience.

In the interim, please feel free to contact Andrew Mihno on 0406 45 45 49.

Yours Faithfully

A handwritten signature in black ink, appearing to read 'R Fitzgerald', with a stylized flourish at the end.

Roberto Fitzgerald
Executive Director
International & Capital Markets Division
Property Council of Australia