



3<sup>rd</sup> March 2009

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

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To whom it may concern,

We are writing to express our absolute disgust at the proposed wording of the draft legislation in particular to **Section 1.38 through 1.40** of the **Explanatory Memorandum**.

**Is the asset new?**

1.38 Division 40 of ITAA97 does not include the concept of 'new' or 'second hand' assets. However, this is an important feature of the eligibility criteria for the Tax Break.

1.39 The Tax Break aims to provide a stimulatory effect to the economy by encouraging the acquisition of assets which have not been used in the economy previously.

1.40 An asset is 'new' for the purposes of the Tax Break if it has never been installed ready for use before either by the taxpayer or another entity for any purpose, anywhere prior to 12 December 2008. This means that second-hand assets are not eligible for the Tax Break.

*[Schedule 1, part 2, paragraph 41-120(1)(e) and section 41-130]*

1.41 However, 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). *[Schedule 1, part 2, subsection 41-120(2)]*

Our company will be one of many adversely affected if the above draft legislation is introduced without allowing the proposed Tax Break to cover second hand assets.

We have already seen the adverse effect with many companies reluctant to move on purchasing any equipment since the announcement was first made, as they didn't know whether the Investment Allowance would cover used equipment and we have certainly noticed that since the draft legislation was released activity in the domestic market place has deteriorated even further.

Our company is involved in the importing and exporting of used mining and construction equipment. The used equipment dealers in Australia provide a very important service to the mining and construction industry within Australia; we feel this will be severely impacted if the legislation is passed as proposed.

The supply of new equipment in the market we operate in is limited to three main suppliers being Caterpillar, Hitachi and Komatsu all foreign owned entities. During the last few years whilst we have had boom times within the mining industry the used equipment dealers were able to fulfil a requirement when the lead times for new equipment ballooned due to demand outstripping availability, some waiting lists were up to 3 years for new equipment.

In effect the draft legislation will now provide a more or less non-competitive environment given there are only 3 major players and many mines and contractors will stick with the brands they currently run. If you currently run Caterpillar you will buy Caterpillar.

One could argue that the same stimulatory effect to the economy would occur if a company was supplied a second hand piece of equipment that had been imported into Australia versus a new piece of equipment – both sourced from offshore and never been used is the economy previously.

To deny used equipment dealers the opportunity to compete with the new suppliers by selling comparable imports will have a far greater stifling effect on the economy as can be seen from the following examples

## Example 1.0

Big Mining Company Pty Ltd purchases a new mining truck in March 2008 for \$1,000,000. The truck is delivered and commissioned in June 2008. Mining Company Pty Ltd then claims the Investment Allowance of 30%, which in effect reduces his tax payable for the year by \$90,000. Here the company is able to finance the full \$1.0M and then put \$90,000 back into his cash flow.

In a crude sense whilst the Investment Allowance is at 30%, all used equipment will be overpriced by 9%.

However, if Small Mining Company Pty Ltd didn't have the ability to purchase new and source a second hand unit then:

## Example 1.1

Used Equipment Dealer Pty Ltd has been trying to sell a Mining Truck for \$545,000 as it was worth 54.5% of a new truck at \$1.0M.

However with the Investment Allowance to keep the same price ration the truck is reduced by 9% and they are able to secure a sale to Small Mining Company Pty Ltd in March 2008 for \$500,000.

The truck is delivered and commissioned in April 2008. Here the company is able to finance the full \$500k but without the Investment Allowance there is nothing put back into the cash flow.

However in both instances provided the truck was put to work immediately would this not be considered to have a stimulatory effect on the economy given that it is an asset that was previously idle (whether it be new, imported or an item currently sitting for sale in a dealers yard), now being used to generate income and also providing at least one new job for someone to drive it?

The final point of our submission is that if Big Mining Company ordered 10 new trucks, assuming they would all be eligible for the 30% Investment Allowance, and as part of the purchase of these new trucks they traded in 10 old trucks how can this then be said to have a stimulatory effect on the economy. Surely this would only occur if they increased the size of their fleet. In this instance the company would simply use the Tax Break to update their fleet, which provides no stimulus, as the net position remains the same.

Given that the price of second hand equipment will be depressed as a result of this Tax Break in its current form any dealer taking a trade will price this accordingly thus making an even playing field for used equipment dealers even more one-sided as there will be a glut of trades come onto the market to compete with used equipment stocks that are not moving as they are overpriced.

In our opinion in order to maintain a level playing field if the government is mainly concerned about it having a stimulatory effect on the economy then we feel that it shouldn't matter if the equipment is new or used but that in order to claim the investment allowance any equipment purchased should be in addition to that currently held, you must be increasing your fleet.

Thank you for the opportunity of putting our thoughts forward and we trust that they will be seriously considered prior to the draft legislation being introduced to Parliament for approval.

Yours sincerely

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