

Small Business and General Business Tax Break

Frequently Asked Questions

Version 2

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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.

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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).
2. Legislation to implement the Tax Break is currently before the Parliament. 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. The answer to each question includes references to the relevant sections of the Bill and associated explanatory memorandum, as introduced into the Parliament.
3. All references to legislation in this paper are references to the *Income Tax Assessment Act 1997* (ITAA 1997), unless otherwise stated.

OVERVIEW

4. The Tax Break available for new investment in new tangible, depreciating assets – that is, plant and equipment – for which a deduction is available under Subdivision 40-B of the ITAA 1997 and new investment in existing assets.
5. You will be able to claim a bonus deduction of 30 per cent of the cost of an eligible asset that you contract for, or start to construct, between 13 December 2008 and 30 June 2009 provided you start to use or have the asset installed ready for use by 30 June 2010.
6. 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 if you contract for, or start to construct, after this date and before 31 December 2009, provided you start to use or have the asset installed ready for use by 31 December 2010.
7. 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.
8. Small business entities 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.
9. The Tax Break draws on many concepts from Division 40 of the ITAA 1997.
 - (a) For example, it is the taxpayer that holds the asset for Division 40 purposes that can claim the Tax Break.
 - (b) An asset's cost for the purposes of the Tax Break is its cost under Subdivision 40-C of the ITAA 1997 (this is generally its GST-exclusive cost).

FREQUENTLY ASKED QUESTIONS

IMPLEMENTATION OF THE TAX BREAK

Question 1 — Has the Tax Break been legislated?

10. 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).
11. You can also monitor the passage of legislation through the Parliament from the Australian Parliament House website (www.aph.gov.au).

Question 2 — Were changes made to the legislation as a result of public consultation?

12. 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).
13. 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 27).
 - (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 11).
 - (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 26).
 - (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 28).
 - (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 3 — How and when can I claim the Tax Break?

14. 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.

Legislation: Schedule 1, item 4, paragraph 41-10(b)

Explanatory memorandum: Paragraphs 1.123-1.130

Question 4 — What if I'm in a tax loss situation?

15. 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.

Legislation: Schedule 1, item 4, Paragraphs 41-20

Explanatory memorandum: Paragraphs 1.123-1.124

Question 5 — Does the Tax Break affect any other deductions?

16. 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 of the ITAA 1997. This means that, over time, a taxpayer could effectively claim deductions of up to 130 per cent of the asset's value.
17. The Tax Break will not impact on balancing adjustment events, capital gains or capital losses if you stop holding the asset.

Legislation: N/A

Explanatory memorandum: Paragraphs 1.32-1.34

Question 6 — Is the maximum bonus deduction 30 per cent or 40 per cent?

18. 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, extends and expands the temporary investment allowance announced in December 2008.

Draft legislation: Schedule 1, part 2, subsection 41-15

Draft explanatory memorandum: Paragraphs 1.123-1.130

KEY DATES FOR THE TAX BREAK

Question 7 — What are the key dates for the 30 per cent deduction?

19. 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**.

Legislation: Schedule 1, item 4, section 41-15, Paragraphs 41-20(1)(b) and section 41-25

Explanatory memorandum: Paragraphs 1.24-1.27 and Paragraphs 1.98-1.112

Question 8 — What are the key dates for the 10 per cent deduction?

20. To qualify for the 10 per cent bonus deduction, you need to contract for, or start to construct, an eligible asset by **31 December 2009** and start to use the asset, or have it installed ready for use, by **31 December 2010**.

Legislation: Schedule 1, item 4, section 41-15, Paragraphs 41-20(1)(b) and section 41-25

Explanatory memorandum: Paragraphs 1.24-1.27 and Paragraphs 1.98-1.112

Question 9 — What if I don't meet the installation deadline?

21. If you contract for an eligible asset, or start to construct it, by **30 June 2009** but miss the end of 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.
22. 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).
23. 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 10 per cent bonus deduction.

Legislation: Schedule 1, item 4, **section** 41-15, Paragraphs 41-20(1)(b) and section 41-25

Explanatory memorandum: Paragraphs 1.24-1.27 and Paragraphs 1.129

Question 10 — What about assets acquired before 13 December 2008?

24. You will not be able to claim the Tax Break if you entered into a contract to acquire an eligible asset, or start 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.

Legislation: Schedule 1, item 4, section 41-15, Paragraphs 41-20(1)(b)

Explanatory memorandum: Paragraphs 1.4-1.7

Question 11 — What if I have the option to acquire a new asset that I haven't exercised yet?

25. 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.

Legislation: Schedule 1, item 4, subsection 41-25(4)

Explanatory memorandum: Paragraphs 1.108-1.109

ASSETS THAT ARE ELIGIBLE FOR THE TAX BREAK

Question 12 — How do I know if an asset is eligible for the Tax Break?

26. The Tax Break is available for new tangible, depreciating assets for which a deduction is available under Subdivision 40-B of the ITAA 1997 and new investment in existing assets.
27. Subdivision 40-B of the ITAA 1997 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.
28. If you currently use depreciating assets in your business, you may already be familiar with how this part of the tax law works. The Australian Taxation Office (ATO) can assist you with understanding more about the capital allowance regime in Division 40 and depreciating assets (see www.ato.gov.au).

Legislation: Schedule 1, item 4, section 41-10

Explanatory memorandum: Paragraphs 1.35-1.56

Question 13 — Do small business entities using Division 328 still qualify?

29. 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.
30. 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 the fact that the asset is one for which a deduction would be available under Subdivision 40-B that matters.

Legislation: Schedule 1, item 4, Paragraphs 41-10(3)(b)

Explanatory memorandum: Paragraphs 1.53-1.55

Question 14 — What is a ‘new’ asset for the purpose of the Tax Break?

31. 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.

Legislation: Schedule 1, item 4, section 41-20

Explanatory memorandum: Paragraphs 1.57-1.60

Question 15 — Are second-hand assets eligible?

32. 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.

Legislation: Schedule 1, item 4, section 41-20

Explanatory memorandum: Paragraph 1.2 and paragraphs 1.57-1.60

Question 16 — Is software eligible?

33. 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.

Legislation: Schedule 1, item 4, section 41-10

Explanatory memorandum: Paragraphs 1.35-1.56

Question 17 — Are water facilities eligible?

34. 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.

35. Taxpayers with assets that are deductible under cannot Subdivision 40-F ‘opt in’ to Subdivision 40-B in order to claim the Tax Break.

36. 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).

Legislation: Schedule 1, item 4, section 41-10

Explanatory memorandum: Paragraphs 1.39-1.41

Question 18— Do buildings qualify for the Tax Break?

37. 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.
38. 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).

Legislation: Schedule 1, item 4, section 41-10

Explanatory memorandum: Paragraphs 1.39-1.42

WHO CAN CLAIM THE TAX BREAK

Question 19 — Who can claim the Tax Break?

39. 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, the same person who claims capital allowance deductions in relation to the asset.
40. 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).

Legislation: Schedule 1, item 4, section 41-10

Explanatory memorandum: Paragraphs 1.61-1.74

Question 20 — Can I still claim the Tax Break if I lease an asset?

41. 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.
42. 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.

Legislation: Schedule 1, item 4, section 41-10

Explanatory memorandum: Paragraphs 1.63-1.71

Question 21 — How does the Tax Break apply to partnership assets?

43. 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.
44. 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.
45. The ATO can assist you with understanding whether or not an asset is a partnership asset (see www.ato.gov.au).

Legislation: Schedule 1, item 4, section 41-5 and section 41-35

Explanatory memorandum: Paragraphs 1.72-1.74

Question 22 — Does the mutuality principle apply to the Tax Break?

46. 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.
47. However, if the association can satisfy all of the eligibility criteria then they 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.
48. 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).

Legislation: Schedule 1, item 4, section 41-10

Explanatory memorandum: Paragraphs 1.61-1.74

MEETING THE INVESTMENT THRESHOLD

Question 23 — Is there a minimum amount I need to invest?

49. Small business entities 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. These thresholds apply for both the 30 per cent and 10 per cent bonus deductions.
50. 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 27 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 26 below for further information).
51. 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).

Legislation: Schedule 1, item 4, section 41-35

Explanatory memorandum: Paragraphs 1.75-1.77

Question 24 — How do I know which threshold applies?

52. To qualify for the \$1,000 threshold, you need to 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.
53. Otherwise, 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 X below for further information).
54. The ATO can assist you with understanding whether you meet the definition of a small business entity (see www.ato.gov.au).

Legislation: Schedule 1, item 4, section 41-35

Explanatory memorandum: Paragraphs 1.75-1.77

Question 25 — How do I work out the cost of an eligible asset?

55. An asset's cost for the purposes of the Tax Break is the same as its cost under Subdivision 40-C of the ITAA 1997 (generally its GST-exclusive cost). That is, the same as its cost for the purpose of calculating capital allowance deductions under Division 40.
56. 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).

Legislation: Schedule 1, item 4, section 41-20

Explanatory memorandum: Paragraphs 1.86-1.97

Question 26 — Do I need to satisfy the threshold for every investment I make in an asset?

57. 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.
58. 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.

Legislation: Schedule 1, item 4, section 41-20

Explanatory memorandum: Paragraphs 1.118-1.122

Question 27 — How does the Tax Break apply to batches and sets of assets?

59. 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.
60. 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.
61. The ATO can assist you in understanding whether certain assets form a set or are substantially identical (see www.ato.gov.au).

Legislation: Schedule 1, item 4, paragraph 41-10(4)(b)

Explanatory memorandum: Paragraphs 1.80-1.83

Question 28 — How does the Tax Break apply to jointly held assets?

62. 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.

Legislation: Schedule 1, item 4, paragraph 41-10(4)(b)

Explanatory memorandum: Paragraphs 1.84-1.85

BUSINESS USE OF THE ASSET

Question 29 — Will the Tax Break be reduced for any non-taxable use of the asset?

63. Unlike deductions under Division 40 (and previous investment allowances), 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 approach improves certainty for taxpayers.
64. 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.
65. 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).

Legislation: Schedule 1, item 4, Paragraphs 41-20(1)(d)

Explanatory memorandum: Paragraphs 1.113-1.116

Question 30 — Does the asset need to be used in Australia?

66. 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 you will never be used in Australia.

Legislation: Schedule 1, item 4, Paragraphs 41-20(2)

Explanatory memorandum: Paragraphs 1.113-1.116

CARS AND THE TAX BREAK

Question 31 — Do all cars qualify, or are there restrictions?

67. 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.
68. 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.
69. 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.
70. 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.

71. 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.

Legislation: Schedule 1, part 2, subsection 41-10(b)

Explanatory memorandum: Paragraphs 1.47-1.52

Question 32 — Does the car limit apply to the Tax Break?

72. 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.
73. 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 30 per cent rate, the maximum bonus deduction available for a car in 2008-09 is \$17,154.
74. The ATO can assist you with understanding the car limit (see www.ato.gov.au).

Legislation: Schedule 1, item 4, section 41-20(3)

Explanatory memorandum: Paragraphs 1.93-1.95

Question 33 — Are 'demonstrator' vehicles eligible?

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

Legislation: Schedule 1, item 4, section 41-20

Explanatory memorandum: Paragraph 1.60