



Guide to small business and general business tax break

Overview

The Small Business and General Business Tax Break measure has been passed by Parliament and is now law. The measure was announced on 3 February 2009 as part of the Government's *Nation Building and Jobs Plan*. It provides an additional deduction for business investment in new, tangible depreciating assets and new expenditure on existing assets.

The Small Business and General Business Tax Break (the tax break) is one of the measures implemented by the government to support economic activity and employment in Australia and stimulate new capital investment by Australian businesses in the face of a deteriorating global economic environment.

Available for new investment in eligible, tangible depreciating assets

Generally, the tax break is available for new investment in tangible depreciating assets for which a capital allowance deduction is available under Subdivision 40-B of the *Income Tax Assessment Act 1997* (ITAA 1997). For more information see '[What is an eligible asset?](#)' and '[What is new investment?](#)'

Investment thresholds apply

New investment in an asset must be made between 13 December 2008 and 31 December 2009 for any deduction to apply and the amount of your investment in an asset needs to meet a certain threshold. The 'new investment threshold' is:

- \$1,000 for small business entities, and
- \$10,000 for all other business.

As these thresholds exclude goods and services tax (GST) all examples in this guide ignore any GST impact and are all GST exclusive.

Broadly, you are a small business entity if you have a turnover of less than \$2 million for the current and/or the previous income year. For more information see '[Which new investment threshold applies?](#)'

The cost of items forming part of a set and the cost of identical or substantially identical assets may be added together for the purposes of meeting the thresholds. For more information see '[What can be counted towards the threshold?](#)' and '[Has the relevant new investment threshold been satisfied?](#)'

Asset must be used principally in Australia for the principal purpose of carrying on a business

To claim the tax break, when 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. 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.

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. For more information see '[Was the purpose test satisfied?](#)'

What rate of deduction applies?

If you are a small business entity, the tax break is worked out using a rate of 50%. If you are not a small business entity, the tax break is worked out using a rate of either 30% or 10% depending on when you committed to investing in the asset and used it, or installed it ready for use.

Provided all of the eligibility criteria are satisfied for the income year, the tax break can be claimed as a tax deduction in the income tax return for the income year in which the asset is first used or installed ready for use.

The following gives more detail on how to work out the rate of deduction that applies:

Small business entities

To qualify for the 50% deduction, you must:

- be a small business entity

- commit to investing in the asset between 13 December 2008 and 31 December 2009
- meet your 'new investment threshold', and
- first use the asset or have it installed ready for use, or (in the case of new investment in an existing asset) bring the asset to its modified or improved state, on or before 31 December 2010.

Other business entities

To qualify for the 30% deduction you must:

- commit to investing in the asset between 13 December 2008 and 30 June 2009
- meet your 'new investment threshold', and
- first use the asset or have it installed ready for use, or bring the asset to its modified or improved state, on or before 30 June 2010.

To qualify for the 10% deduction you must:

- commit to investing in the asset between 1 July 2009 and 31 December 2009
- meet your 'new investment threshold', and
- first use the asset or have it installed ready for use, or bring the asset to its modified or improved state on or before 31 December 2010.

You will also qualify for the 10% deduction if you:

- commit to investing in an asset between 13 December 2008 and 30 June 2009, and
- first start to use the asset or have it installed ready for use, or bring the asset to its modified or improved state, after 30 June 2010 but on or before 31 December 2010.

The following table summarises the key dates relating to the different rates.

Business entity	Investment commitment time (inclusive)	Date of first use or installed ready for use (inclusive)	Rate
Small business	13 December 2008 to 31 December 2009	By 31 December 2010	50%
Other business	13 December 2008 to 30 June 2009	By 30 June 2010	30%
	1 July 2009 to 31 December 2009	By 31 December 2010	10%
	13 December 2008 to 30 June 2009	1 July 2010 to 31 December 2010	10%



For more information see ['Calculating the bonus deduction'](#).

Generally, a business 'commits' to investing when: it enters into a contract under which the asset will be held or improved; it starts to construct the asset or improvement; or starts to hold the asset in some other way. For more information see ['When is an investment considered to occur?'](#)

Claiming the tax break

Provided all of the eligibility criteria are satisfied, the tax break can be claimed as a tax deduction in the income tax return for the income year in which you first use the asset or have it installed ready for use. This also applies to entities using a substituted accounting period.

The deduction will be claimable at the new 'Small business and general business tax break' label. Please refer to the relevant return instructional guides for more information when it is time to claim the deduction.

The tax break deduction is in addition to deductions for the decline in value you are entitled to claim for the asset. The tax break will not be taken into account in working out the amount of any balancing adjustment amounts, capital gains or

capital losses when you stop holding the asset.

Detailed explanation

What is an eligible asset?

To be eligible for the tax break, the asset must be a tangible 'depreciating asset' for which a capital allowance deduction is available under section 40-25 of the ITAA 1997.

There are several exceptions to this rule – that is, assets which are made eligible for the tax break that would otherwise be excluded (meeting all other eligibility requirements):

- Assets for which a small business entity claims capital allowance deductions under Subdivision 328-D of the ITAA 1997 may be eligible assets.
- Tangible depreciating assets that receive deductions under the research and development provisions may also be eligible for the tax break.
- Cars for which you use the '12% of original value' method to work out your car expense deductions may be eligible assets.

A depreciating asset is an asset with a limited effective life that can reasonably be expected to decline in value over time.

Land, trading stock and intangible assets are excluded from the definition of a depreciating asset. These assets are not eligible for the tax break.

All intangible assets are ineligible for the tax break including software.

Example

Annie operates a bakery. On 10 March 2009, she acquires a coffee machine, a new computer and some software. The coffee machine and computer are both tangible, depreciating assets. Annie may be able to claim the tax break in relation to these assets, if all of the other criteria are satisfied. However, the software is an intangible asset and is therefore not eligible for the tax break.

Note: If a computer is purchased with pre-loaded software included in the price, you need to work out the value of the software and exclude that from the cost of the computer for the purposes of working out your investment amount for tax break purposes.

Assets that receive capital allowance deductions under other Subdivisions

Assets that receive capital allowance deductions under other Subdivisions of Division 40 of the ITAA 1997 are not eligible for the tax break.

These Subdivisions provide concessional capital allowance deductions for certain depreciating assets through being able to claim deductions over a shorter period of time than the asset's effective life. They also cover assets that are not depreciating assets.

Example

Angus operates a primary production business. In April 2009 he enters into a contract for a new combine harvester — to be delivered in September 2009.

The combine harvester is a tangible, depreciating asset for which a deduction is available under Subdivision 40-B. The tax break will apply to this asset (subject to all other criteria being met). At the same time, Angus replaces the pump for the dam on his property which he uses principally for the purpose of conserving water.

Capital allowance deductions for the pump are available under Subdivision 40-F (which applies to water facilities used in primary production). Section 40-50 requires Angus to claim capital allowance deductions in relation to the pump under Subdivision 40-F rather than under Subdivision 40-B. The pump will not qualify for the tax break. Angus still benefits from being able to write off the pump over three years (as permitted under Subdivision 40-F) which is less than its effective life.

Capital works

Capital expenditure incurred in constructing capital works such as buildings and structural improvements for which a

capital works deduction is available under Division 43 of the ITAA 1997 are not eligible for the tax break.

Example

Annie decides to build an extension on to her bakery to provide more space for customers to sit and eat. Annie is able to claim a deduction under Division 43 for the cost of constructing the extension, and so this expenditure would not be eligible for the tax break.

Are repairs eligible for the tax break?

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.

[Taxation Ruling TR 97/23](#) provides guidance on what types of expenditures can be deducted under section 25–10.

Assets that receive deductions under the Research and Development provisions

Normally an asset is not eligible for capital allowance deductions under Subdivision 40-B to the extent that it receives deductions under the Research and Development (R&D) provisions contained in the *Income Tax Assessment Act 1936*.

This would mean that while an asset that is partly used for R&D would qualify for the tax break, an asset that is used exclusively for R&D would be excluded. An incentive to reduce the R&D-related use of an asset (in order to claim the tax break) would be counter to the overarching intent of the R&D provision of promoting innovation.

Tangible depreciating assets are not precluded from the tax break merely because they receive a deduction under the R&D provisions. However, the 'purpose test' will still need to be met in order for such assets to qualify.

Cars

There are four methods that you can use to work out deductions for car expenses for an income year. The choice of method will also determine whether you can claim capital allowance deductions under Division 40 in relation to the car.

If you use the 'one-third of actual expenses' and 'log book' methods, you are able to claim deductions under Subdivision 40-B and may be eligible for the tax break.

If you use the '12% of original value' and 'cents per kilometre' methods to determine your car expenses, you are not eligible for capital allowance deductions.

However, you will not be excluded from the tax break merely because you use the 12% 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.

You cannot claim the tax break in an income year you use the cents per kilometre method. However, this method can only be used for up to 5,000 business kilometres, implying limited business use. That is, if you are using this method, you would generally find it difficult to meet the purpose test and so would not be eligible for the tax break anyway.

In comparison, the 12% of original value method can only be used if you travel more than 5,000 business kilometres.

Example

On 20 March 2009, Bernard acquires a station wagon to use in his mobile computer repair business. Because he does not keep a logbook or adequate car expense records, he cannot use either the log book or one-third of actual expenses methods. However, he can still use the 12% of original cost method to work out his car expense deductions for the 2008–09 income year.

Bernard cannot claim a deduction under section 40-25 for the car's decline in value for the 2008–09 income year. However, he will still be able to claim the tax break if he can satisfy all of the other criteria.

Luxury cars

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 if you are eligible to claim the tax break for a luxury car, you will have to use the car limit when working out the amount of your deduction.

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% rate, the maximum bonus deduction available for the acquisition cost of a car in 2008-09 is \$17,154.

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.

Assets held by small business entities – small business pools

A 'small business entity' that allocates an asset to a small business pool would not be entitled to a capital allowance deduction under Subdivision 40-B in relation to that asset, receiving instead a deduction for the pool under Subdivision 328-D of the ITAA 1997.

A small business that uses Division 328 can still be eligible for the tax break if the asset would otherwise have been deductible under Subdivision 40-B had the business not chosen to use Division 328.

A small business entity does not have to stop using capital allowances for small business entities rules to be eligible for the tax break in relation to the asset. It is the fact that the asset is one for which a deduction would be available under Subdivision 40-B that matters.

Summary of eligible and non-eligible assets

The following table provides a general summary of the kinds of assets that may be eligible for the tax break subject to all other eligibility criteria being satisfied, and those that are not eligible.

Eligible	Not eligible
<ul style="list-style-type: none"> ■ Tangible depreciating assets for which a deduction is available under section 40-25 of the ITAA 1997 including: <ul style="list-style-type: none"> – cars (except those using the 'cents per kilometre' method). ■ Tangible depreciating assets used by small business entities ■ Tangible depreciating assets used in R&D 	<ul style="list-style-type: none"> ■ Intangible assets such as computer software and intellectual property rights ■ Cars using the 'cents per kilometre' method ■ Land and trading stock ■ Capital works – buildings, construction expenditure, earthworks ■ Water facilities



For more information about depreciating assets:

[Guide to depreciating assets 2007-08](#)

[Capital allowances: depreciating assets – rulings, law and objections](#)

What is new investment?

You must make a decision to invest either in a new asset or an existing asset between 13 December 2008 and 31 December 2009. Investment in an existing asset would include improvements or modifications to the asset.

An asset is new for the purposes of the tax break if it has never previously been used or installed ready for use either by you or another entity for any purpose, anywhere. This means that second-hand assets are not eligible for the tax break.

You are not eligible for the tax break in relation to an asset that has been previously used overseas. However, a new imported asset may qualify. An asset will also be excluded from the tax break if it has previously been used for a non-business purpose and is then converted to business use.

However, an asset will not be excluded from the tax break because you purchased it from someone who held it as trading stock or held it ready for sale.

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).

Example

Belinda is contemplating the purchase of a 'demonstrator' vehicle from a dealer for \$25,000 to use in her business. Although the dealer had acquired the car new from the factory, he would regularly use the car to drive to and from work. The prior use by the car dealer does not constitute reasonable testing and trialling of the car. Therefore the car is not considered new and Belinda would not be eligible to claim the tax break for the car.

Example

Collie Mining Company arranges to lease a new dragline (a piece of machinery used in open cut mining) from Big Machine Leasing. Under their 'sale and lease back' contract, Collie Mining Company is responsible for acquiring and assembling the necessary components. After testing the dragline in operational use, the ownership is transferred to Big Machine Leasing. The prior use of the dragline only amounts to reasonable testing and trialling.

Additional investment undertaken from 13 December 2008 in assets you held or entered into a contract to hold on or before 12 December 2008, however, may be eligible.

Which taxpayer is entitled to the tax break deduction?

The tax break is to be claimed by the taxpayer that is entitled to deductions for the asset's decline in value.

Only the holder of a depreciating asset can claim a deduction for its decline in value. In most cases, the legal owner of a depreciating asset will be its holder.

If a depreciating asset is owned jointly, each person's interest in the asset is treated as a depreciating asset. Each person works out their deductions for the decline in value of the asset based on their interest in the asset.

In certain circumstances, the holder is not the legal owner. Some of these cases are discussed below. If you are unsure about whether you are the holder of a depreciating asset refer to: [Guide to depreciating assets](#).

Assets subject to hire purchase agreements

If a depreciating asset is subject to a hire purchase agreement, the hirer is regarded as the holder provided it is reasonable to expect that they will actually acquire the asset.

Assets held under leases

Eligible assets held under a lease may still qualify for the tax break. However, the tax break is to be claimed by the entity in the leasing arrangement who would claim deductions for the decline in value of the asset.

Generally, the lessor is the legal owner of the depreciating asset in a leasing arrangement. Therefore, it is the lessor that would claim the deductions for the decline in value of the asset and any tax break available.

As with capital allowance deductions, how the tax break is factored into lease prices will be a matter for commercial negotiations.

Where the lessor in a leasing agreement holds an eligible asset, it is the new investment threshold that applies to the lessor that is relevant.

Further, the lessor must be able to demonstrate that when the asset starts to be used or is installed ready for use it is reasonable to conclude that they, (that is, the lessor), will use the asset principally in Australia for the principal purpose of carrying on their business.

This means that the lessor does not need to look through to the actual use of the asset by any individual lessee in satisfying this test. However, the lessor cannot claim the tax break on an asset which it is reasonable to conclude will never be located in Australia.

Example

Big Machine Leasing is the legal owner of the dragline being leased to the Collie Mining Company. Therefore, Big Machine Leasing will be the taxpayer entitled to claim deductions for the decline in value of the asset and the tax break (provided all of the criteria are satisfied).

However, Big Machine Leasing may pass on the benefit it receives from the tax break as part of its leasing agreement with Collie Mining Company (for example, in the form of lower lease charges).

A lessee may hold an eligible asset if they have the option of becoming the legal owner of the asset at some point in time and it is reasonable to expect that the option will be exercised.

In this situation, the lessee, as the holder of the asset, could claim the tax break in relation to the asset (provided all of the criteria are satisfied), along with the deductions for the decline in value of the asset.

In the case of a leased luxury car, the lessee is generally treated as the holder of the car and is entitled to claim deductions for the decline in value of the car. Therefore, it is the lessee that will be entitled to claim the tax break for the car. The lessor's use of the asset in its leasing business will not exclude the lessee from being able to claim the tax break. For more information about luxury cars see '[Working out the cost of a car](#)'.

Partnership assets

Where an asset is a partnership asset, it is the partnership rather than any individual partner who is entitled to the deductions for the decline in value for the asset.

An asset may be considered to be a partnership asset if it is used by a partnership for the purposes of business carried on by the partnership. However, whether an asset is a partnership asset can only be determined from the terms of the partnership agreement and the conduct of the partners towards the asset.

If the asset is not a partnership asset and an individual partner is the legal owner of the asset, that partner may still be able to claim both the deductions for decline in value and tax break in relation to the asset (provided all of the criteria are satisfied – for example, the partner must use the asset for the principal purpose of carrying on a business).

Which new investment threshold applies?

New investment in relation to an asset (usually the asset's goods and services tax (GST) exclusive cost) needs to meet a certain threshold before it can qualify for the tax break. The new investment threshold is:

- \$1,000 for small business entities, and
- \$10,000 for all other taxpayers.

When is a business a small business entity?

A taxpayer is a small business entity for an income year, rather than at a point in time. You are a small business entity for the current income year if you carry on a business in the current year and:

- carried on a business during the previous income year and your aggregated turnover for that year was less than \$2 million, and/or
- expect your aggregated turnover to be less than \$2 million again for the current income year.

To qualify for the lower threshold, you need to be a small business entity for the income year in which you undertake new investment in an eligible asset, put that investment to use, or claim the tax break.

Example

Emily operates a small business repairing jewellery. She meets the definition of a small business entity and uses the simplified depreciation rules under Division 328 of the ITAA 1997.

On 15 May 2009, she enters into contracts to purchase a new desk for \$500 and a new laptop for \$1,500. Both assets are to be delivered on 30 May 2009. Emily wants to work out whether she can claim the tax break on each asset. As a small business entity, Emily qualifies for the \$1,000 new investment threshold.

The desk is a low cost asset with a value less than \$1,000, so Emily can claim an immediate write-off for the desk. However, she can not claim the tax break as the new investment threshold has not been met.

The laptop is a new, tangible depreciating asset. If Emily had not chosen to use the small business entity rules in Division 328, she would have been able to claim a deduction under Subdivision 40-B.

The cost of the laptop is more than \$1,000, so Emily allocates this asset to a small business depreciation pool. The effective life of the laptop is three years, so she allocates the laptop to a general small business pool for assets with effective lives of less than 25 years. The new investment threshold is also satisfied. On this basis, Emily can claim the tax break on the laptop at the 50% rate.

What can be counted towards the threshold?

Generally, you need to satisfy the relevant new investment threshold for each individual asset. Investments across a number of unrelated assets cannot be aggregated for the purpose of meeting the new investment threshold.

Example

Edward operates a landscaping business and is not a small business entity. To better manage his business accounts he acquires a computer and a new multifunction photocopier.

Both assets individually have a cost of less than \$10,000 and so the relevant new investment threshold is not

satisfied in relation to either asset.

Edward cannot group his expenditure on the computer and the photocopier for the purposes of meeting the new investment threshold, even though they will be used in a similar setting.

However, multiple investments in the same, individual asset may be aggregated in meeting the new investment threshold. Once the threshold has been met in relation to an individual asset, you will be able to claim the tax break in relation to all subsequent investments in the asset that meet the requirements for the deduction.

Batches and sets of assets

Notwithstanding the general rule, you are permitted to aggregate your investment in assets that are identical, or substantially identical, and in assets that form part of a set for the purposes of meeting the threshold.

You still need to consider each asset individually. The assets forming the 'batch' or the set still need to be new tangible, depreciating assets and the criteria around the timing of your investment in each asset still applies. That is, aggregation across batches and sets of assets only applies for threshold purposes.

Whether assets form part of 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.

The concept of a set requires more than one depreciating asset. In some cases, however, more than one item makes up a single depreciating asset. An example would be a three volume dictionary. This is a single depreciating asset, not a set of three separate depreciating assets as the three volumes have a single integrated function. Similarly, a computer — consisting of a hard drive, monitor and mouse — would not be considered to be a set, as it forms a single composite asset (with the components naturally aggregated for threshold purposes).

Example

Edward buys a range of power tools for his business — a lawn mower, brush cutter and leaf blower. While these assets add to Edward's stock of machinery, they are not a set. It would make no difference if Edward purchased them at the same time and from the same supplier or manufacturer.

Example

Frederica operates a courier service. In her main office is a base station for the two-way radio system she uses to communicate with drivers who are out making deliveries. Each delivery van has a handset in it. The base station and handsets are a set as they are intended to function together.

Items are identical if they are the same in all respects. Items are substantially identical if they are the same in most respects even though there may be some minor or incidental differences. Factors you would consider include colour, shape, function, texture, composition, brand and design.

Example

Gail buys some chairs for her cafe. She purchases a bar stool and a canvas chair for the cafe and a leather executive chair for her office. While these are all chairs, they are not identical or substantially identical.

Jointly held assets

Where assets are jointly held, you will be able to recognise all other business interests in the asset for the purposes of meeting the threshold that applies to you individually but will only be able to claim the tax break on your interest in the asset.

What is a recognised new investment amount?

Recognised new investment amounts are the units used to work out if you have satisfied the relevant new investment threshold and, if so, the amount of the tax break you are entitled to.

When was the new investment undertaken?

To be a 'recognised new investment amount' for an asset in any income year, the amount needs to be included in an asset's cost.

The cost of an asset for capital allowances purposes (and therefore the tax break) only includes capital expenditure and does not include amounts that you can deduct under other provisions.

GST

Generally the cost of an asset for capital allowance purposes, and therefore the tax break, is reduced for any input tax credits in relation to the cost of the asset.

All of the examples in this guide ignore any GST impact and are all GST exclusive.

What is the asset's cost?

The framework for working out an asset's cost for capital allowances purposes is the same framework that applies to the tax break. An asset's cost has two elements.

An asset's first element of cost is worked out at the time you begin to hold the asset. It generally consists of the amounts that you have paid in order to start to hold the asset.

An asset's second element of cost consists of the amounts that you have paid in order to bring the asset to its present condition and location, such as the cost of improvements or modifications.

Working out the cost of a car

A limit applies to the first element of cost you can use to work out deductions for the decline in value of a luxury car.

Specifically, luxury cars that are mainly designed for carrying passengers have their first element of cost reduced to the car limit for the financial year in which you started to hold the car. The car limit for 2008-09 is \$57,180 and is indexed annually in line with the Consumer Price Index (Motor Vehicles).

As the tax break uses the same asset cost as the capital allowance regime, the first element of cost of a luxury car for the purposes of the tax break is reduced to the car limit.

Special cost rules

■ Split or merged assets:

When modifications to an existing asset create a new asset, the tax break is only available in relation to the modifications rather than to the new asset as a whole.

■ Forgiven debt or involuntary disposals:

Where the cost of an asset is reduced under the capital allowance rules due to the involuntary disposal of an asset or the forgiveness of debt, it is the unreduced cost that applies for the purposes of the tax break.

When is an investment considered to occur?

In order for an amount to be a recognised new investment amount, its 'investment commitment time' must be between 13 December 2008 and 31 December 2009. The 'investment commitment time' is when you are committed to investing in an eligible asset.

Where an amount becomes included in an asset's first element of cost, the investment commitment time will be the point in time you have:

- entered into a contract under which you hold the asset or will start to hold at some point in time
- started to construct the asset, or
- started to hold the asset in some other way.

To satisfy the investment commitment time test for such an amount, it is enough that you entered into a contract in relation to the asset between 13 December 2008 and 31 December 2009. However, for businesses that are not small business entities, to qualify for the tax break at the 30% rate the contract needs to be entered into before 30 June 2009.

This means that you do not necessarily have to have paid for the asset outright or have taken delivery of the asset within this period. You may not start to hold the asset straight away — that may come at a later point — but it must occur on or before 30 June 2010 in order for you to be able to claim the tax break at the 30% rate. To qualify for the tax break at the 10% rate the investment commitment time needs to occur on or before 31 December 2009.

If you are a small business entity, then only the 50% rate and the 31 December 2009 deadline is relevant.

Where you enter into a contract to have an eligible asset constructed to meet your specifications, the investment commitment time is determined by when the contract was entered into and not when the physical construction of the asset occurred.

Self-constructed assets

If you choose to self-construct an eligible asset you may also qualify for the tax break. You have started to construct an eligible asset when you first incur expenditure in respect of the construction of the asset.

Example

Greenfield Power is a power supply company that builds its own transmission lines. During mid 2008, the company started to contemplate building a number of new transmission lines. Over the remainder of 2008, preliminary design planning and work was undertaken in anticipation of the project going ahead.

On 15 January 2009, the company's directors sign off a decision to proceed with construction of the lines. While the company does not start to physically construct the transmission lines at this point, it places an order for some of the materials it will need. Upon placing the order for the materials, the company is liable to pay a deposit and, therefore, incurs expenditure in relation to the materials.

On 10 February 2009 the relevant division of the company starts to finalise the specification of the lines and places further orders for materials.

The investment commitment time for each of the transmission lines is 15 January 2009 as this is when the company first incurred expenditure in respect of the construction of the assets.

New investment in existing assets

An amount can be included in an existing asset's second element of cost because, for example, it is improved or modified.

The investment commitment time for such an amount will be the point in time you entered into a contract for the improvement or modification or started its construction.

Example

Helena operates a publishing business. On 20 November 2008, she purchased a second-hand printing press. As the asset is not new it does not qualify for the tax break. Even if the asset was new, it would not qualify as the investment was undertaken before 13 December 2008.

On 1 May 2009, Helena enters into a contract to acquire and fit a new sheet feeding mechanism to the printing press. The work is completed on 1 July 2009 at a cost of \$150,000. The investment commitment time for the modification of the printing press is 1 May 2009 — which is between 13 December 2008 and before 31 December 2009.

Refreshing of contracts

You need to have invested in an eligible asset between 13 December 2008 and 31 December 2009. This requirement cannot be circumvented by refreshing a contract entered into before 13 December 2008.

Exercising an option under an existing contract

If, prior to 13 December 2008, you enter into a contract which includes the option to acquire an eligible asset at a later point in time then provided that option is exercised on or prior to 31 December 2009, you may still be able to claim the tax break.

This means that the investment commitment time is deemed to have occurred when the option is exercised rather than on the date of the original contract. This approach ensures that the tax break provides an incentive not to delay or defer capital spending in the short-term.

When was the new investment put to use?

For each new investment in an eligible asset, the 'first use time' needs to occur on or before 31 December 2010 for the amount to be a recognised new investment amount. If you are not a small business entity, the deadline is earlier — 30 June 2010 — if the tax break is to be claimed at the 30% rate.

For new assets, the 'first use time' is when you start to use the asset or have it installed ready for use. Where second elements of cost are incurred after that time, the 'first use time' for the amount will be when the asset is brought to its changed condition or location (for example, when the improvement or modification of the asset is completed).

Note that where the investment commitment time is prior to 1 July 2009 but the first use time is after 30 June 2010, if you are not a small business entity, you will not be entitled to the tax break at the 30% rate. However, provided the first use

time is on or before 31 December 2010, you will still be able to claim the tax break at the 10% rate (provided all the criteria are met).

Was the purpose test satisfied?

If you are claiming the tax break, you must be able to demonstrate that, at the first use time, it is reasonable to conclude that you will use the asset principally in Australia for the principal purpose of carrying on a business.

Passive rental income

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.

Does the mutuality principle apply to the tax break?

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.

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.

Superannuation funds

It is considered that in most situations superannuation funds will not be eligible to claim the deduction. To qualify for the deduction the relevant asset must be used principally in Australia for the principal purpose of carrying on a business. Superannuation funds generally do not carry on a business, however, they will often be associated with a business which may be eligible.

Used in Australia

An asset does not necessarily have to be located in Australia at its first use time. However, the purpose test will not be satisfied if it is reasonable to conclude that it will never be used in Australia.

Subsequent non-business use

The tax break will not be clawed back for any subsequent non-business use of the asset or if the asset is subsequently disposed of provided that the purpose test was genuinely satisfied at the time you started to use the asset or had it installed ready for use.



For more information about what it means to carry on a business, refer to:

[Am I in business?](#) (NAT 2598)

[Taxation Ruling TR 97/11](#) – income tax: am I carrying on a business of primary production? (The examples used in this ruling relate to primary production activities but the principles can be applied to other activities.)

Have you already claimed the tax break on this amount?

You cannot claim the tax break for more than one income year. Once a recognised investment amount has been used to work out the amount of your tax break for an income year, it cannot be claimed again.

Has the relevant new investment threshold been satisfied?

Working out if the relevant new investment threshold has been satisfied requires you to compare the amount of your recognised new investment amounts for the asset for that income year against the threshold.

An amount can be a recognised new investment amount in more than one year, providing the tax break has not previously been claimable for that amount. This allows recognised new investment amounts below the threshold to be carried over to the following year.

Example

Hugo owns a golf course. He does not meet the definition of a small business entity so his new investment threshold is \$10,000. He orders and takes delivery of a new \$9,000 golf cart in June 2009. His recognised new investment amount for 2008–09 is only \$9,000, so he cannot claim the tax break for that year.

In July 2009 he upgrades the cart at a cost of \$1,200. His recognised new investment amount for 2009–10 is \$10,200, as he had not previously claimed the tax break on the \$9,000 amount. Hugo receives the tax break at a rate

of 10% for 2009-10.

Once the tax break has been claimable for an amount, it can still be used towards meeting the threshold for subsequent years — that is, it can be carried over for threshold purposes — but cannot be claimed again.

Example

From the example above, had Hugo's new golf cart cost \$10,000 then he would have been able to claim the tax break on that amount for 2008-09, at the higher 30% rate.

His recognised new investment amount for 2009-10 in relation to the golf cart would be \$1,200. Hugo could count both this amount and the \$10,000 from 2008-09 towards meeting the new investment threshold for 2009-10. However, he would only be able to claim the tax break on the \$1,200 and at the 10% rate.

Example

Ilsa operates a tourism business in Sydney. She is not a small business entity. Prior to 13 December 2008 she purchased a second-hand boat. Ilsa decides to reconfigure the decks of the boat, so that she can use it for dinner cruises, at a cost of \$20,000.

She signs a contract for the modifications on 15 December 2008 and takes delivery of the modified vessel on 10 April 2009, commencing business in June 2009.

Ilsa's \$20,000 meets all of the requirements for a recognised new investment amount. Further, this amount clearly exceeds \$10,000. As the asset was brought to its changed condition prior to 1 July 2009, Ilsa will be able to claim the tax break at the 30% rate in 2008-09.

Amounts relating to different types of assets cannot be aggregated in order to meet the threshold. The usual capital allowances rules will apply to determine whether amounts relate to one asset or more than one asset.

However, amounts relating to multiple assets can be aggregated where the assets form a batch of identical or substantially identical assets or a set of assets. A batch or set of assets need not be acquired in the same transaction or in the same income year.

Example

Sue's Super Market operates a chain of speciality supermarkets across Australia. The company's new investment threshold is \$10,000. In June 2009, the company decides to refurbish seven of its stores including the replacement of all of the existing shelving.

Each unit of shelving has a cost of \$120. However, the company requires 10,000 of these units for the refurbishment. Since the shelving units are substantially identical, the cost of the 10,000 units can be aggregated for the purposes of meeting the new investment threshold.

The company enters into a contract for the shelving on 28 June 2009 and completes the fit out of all seven stores in September 2009.

Each shelving unit therefore has a recognised new investment amount of \$120. However, the company can aggregate across these assets giving it total recognised new investment amounts for 2009-10 of \$1.2 million (which clearly exceeds its threshold of \$10,000).

Since the investment commitment time in relation to each of these amounts was prior to 30 June 2009 and their first use time was prior to 30 June 2010, the company will be able to claim the tax break at the 30% rate.

The total tax break claimable by the company as part of its 2009-10 tax return in relation to the shelving will be \$360,000.

Calculating the bonus deduction

The tax break provides a bonus tax deduction — that is, you can use the tax break to reduce your assessable income for a particular income year. The amount of the tax break is not refundable and does not in itself lead directly to a cash payment to you.

To the extent that you are in a tax loss situation for the income year in which you claim the tax break, the bonus deduction will form part of that loss.

Small business entities

If you are a small business entity, then only the 50% rate is relevant. If you are eligible for the lower threshold in an income year, you will be able to deduct 50% of your 'recognised new investment amounts' in relation to an asset for that income year.

Example

Ben operates a courier service. He orders and takes delivery of a new, more fuel-efficient, delivery van on 25 June 2009 at a cost of \$30,000.

The van is a tangible, depreciating asset for which a deduction is available under section 40-25.

Ben's investment in the van has an investment commitment time of 25 June 2009 which is between 13 December 2008 and 31 December 2009.

Ben's first use time in relation to the van is also 25 June 2009 which is before the deadline of 31 December 2010.

This gives Ben a recognised new investment amount in relation to the van of \$30,000 for the 2008-09 income year.

In 2007-08 Ben was carrying on a business and his aggregated turnover was less than \$2 million and it is likely to be less than \$2 million again in 2008-09.

Ben's new investment threshold is \$1,000, which his investment in the van clearly exceeds.

Ben has satisfied all of the eligibility criteria that apply to him and can claim the tax break at the 50% rate. He can claim a bonus deduction of \$15,000 in his 2008-09 tax return.

All other taxpayers

For the 2008-09 income year, the only bonus deductions able to be claimed by you if you are not a small business entity will be at the 30% rate.

Only the investment commitment time is relevant to working out if you are entitled to the 30% rate in 2009-10, as you would need to have put the asset to use prior to 1 July 2009 in order to be entitled to a deduction in relation to the asset under section 40-25 (and hence to the tax break).

It is possible for you to have multiple claims in relation to an asset at two different rates in the 2009-10 income year. If you:

- undertake new investment in an eligible asset between 13 December 2008 and 30 June 2009
- have recognised new investment amounts with an investment commitment time between 13 December 2008 and 30 June 2009 that exceed the relevant threshold, and
- first use the asset in the 2009-10 income year,

you would be able to claim the tax break on those amounts at the 30% rate as part of your 2009-10 income tax return. If you:

- then also undertake new investment in the same asset after 30 June 2009, and
- the asset was brought to its modified state in the 2009-10 income year,

then you would also be able to claim the tax break on those amounts at the 10% rate as part of your 2009-10 income tax return.

For the 2010-11 and 2011-12 income years, only bonus deductions at the 10% rate will be able to be claimed. If you are claiming the tax break in the 2010-11 year you will not have installed eligible assets or have modified assets in time to access a deduction at the 30% rate.

If you have an investment commitment time between 13 December 2008 and 30 June 2009 and first use time after 30 June 2010 you do not meet the criteria to claim the tax break at the 30% rate. However, provided the first use time is on or before 31 December 2010, you will be able to claim the tax break at the 10% rate.

Example

Frank's investment in his oven was as follows:

- Investment commitment time = 29 June 2009
- First use time = 17 August 2009
- Recognised new investment amount = \$15,000

For 2009-10, Frank can claim the tax break at the 30% rate. His bonus deduction is \$5,000 for the 2009-10 income year.

Gail will not be eligible for the 30% rate. Gail's investment in her oven was as follows:

- Investment commitment time = 10 August 2009
- First use time = 17 August 2009
- Recognised new investment amounts = \$15,000 (\$14,500 + \$500)

Gail's bonus deduction will be \$1,500 for the 2009-10 income year.

More information



If you require more information, you can phone our Business Tax Break Infoline on **1300 337 921**

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