

# Investment Tax Break 2009 Bill Passed!



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On 24 February 2009, our [website](#) reported on the Federal Government's plans for an investment allowance for businesses ('investment tax break'). Changes to the *Tax Laws Amendment (Small Business & General Business Tax Break) Bill 2009* ('the Bill') were announced with the release of the 09/10 Federal Budget last week and the Bill was passed by the senate on 14 May 2009. It now awaits royal assent.

*The following information should help you to take advantage of this incentive and to plan your asset acquisition to maximum benefit.*

## **The Investment Tax Break offers a temporary additional tax deduction on the cost of most new tangible depreciating assets, such as plant and equipment.**

- A bonus tax deduction of 50% of the cost of an asset is only available to small businesses that acquire an eligible new depreciating asset between 13 December 2008 and 31 December 2009 and install it ready for use by 31 December 2010.
- A deduction of 30% is available to all businesses on the cost of eligible assets acquired after 12 Dec 2008 and on or before 30 June 2009 and first used before 30 June 2010.
- A 10% deduction is available for all businesses that don't qualify for the 50% or 30% deductions, but nevertheless purchase eligible assets after 12 December 2008 and before 1 January 2010 with first use before 1 January 2011.

A small business is a business with a turnover of less than \$2 million. For small businesses the minimum expenditure to claim a deduction on the asset is \$1,000, and for other businesses, a minimum expenditure threshold of \$10,000 applies.

## **To benefit, you need to meet all of the eligibility criteria.**

The asset must be a new asset or new expenditure on existing assets. The asset must be a tangible asset for which a deduction is available under the core provisions of Division 40 (Capital Allowances) in the *Income Tax Assessment Act 1997* ('ITAA97'). This means that intangible assets, rights, software, and intellectual property are ineligible. Nor will the tax break apply to non-depreciating assets such as land and trading stock, other assets to which Division 40 does not apply such as capital works, or other assets for which deductions can be claimed under other divisions.

Eligible assets must be for use in carrying on a business in Australia. Where an asset is partly used for private or non-taxable purposes, only the portion that is used for a taxable

purpose in carrying on a business will count toward meeting the threshold. The allowance can be claimed through the income tax return in which the first capital allowance is claimed for the asset.

*Summary of asset eligibility*

The following table provides a general summary of eligible / ineligible assets under the proposed investment allowance rules.

<i>Eligible</i>	<i>Not eligible</i>
<ul style="list-style-type: none"> <li>• Tangible, depreciating assets including: cars (except those using the ‘cents per kilometre’ method), equipment, and plant.</li> <li>• Tangible, depreciating assets used by small business entities.</li> <li>• Tangible, depreciating R&amp;D assets.</li> </ul>	<ul style="list-style-type: none"> <li>• Intangible assets, such as software and intellectual property rights.</li> <li>• Cars using the ‘cents per kilometre’ method.</li> <li>• Land and trading stock.</li> <li>• Capital works – buildings, construction expenditure, earthworks.</li> <li>• Water facilities.</li> </ul>

**A jointly held asset can be eligible.**

If an asset is jointly held, your business will be able to use the amounts paid by the other joint holders for the purpose of meeting the expenditure threshold, but will only be able to claim the investment allowance on its investment in the asset.

Also, a taxpayer can now aggregate their investment in assets that are substantially identical, or that form a set, to meet the threshold.

**If your business is going to enter a contract to acquire the asset, you should be aware of the above dates and abide by the cut-offs.**

Small businesses should execute the contract before 31 December 2009 to benefit from the full 50% deduction.

Other businesses should execute contracts by 30 June 2009 to benefit from the bonus 30% tax deduction.

Resist the temptation to backdate a contract in order to catch the deductions as to do so is a serious offence.

You can enter into a contract with an option to acquire an eligible asset at a later point in time, but the investment commitment will be deemed to have occurred only when the option is exercised. This means, to benefit from the tax deductions, you must exercise the option and actually acquire the asset before the cut-off. If your business enters an

agreement to purchase an asset, you should ensure there are an offer, agreement, and formal acceptance of the terms of the contract. It is also good to demonstrate fulfilment of the contract according to an agreed timeframe.

**Investment can be over subsequent years.**

If you meet the investment threshold in one income year, expenditure on the same asset in a subsequent income year does not have to meet the threshold again to qualify for the tax bonus, but can be carried over. However, you cannot claim the tax bonus more than once on each investment amount.

**Assets can be self-constructed.**

If the asset is going to be self-constructed by your business, the investment commitment time for the purposes of the Investment Tax Benefit deduction is when construction of the asset begins. According to the Bill, this should be given a wide meaning, to include where the taxpayer has demonstrated a 'clear intention or commitment to proceed.' This wider meaning relates to the moment where a contract would have been entered into, had this been a contractual engagement. This means as long as you commit to building the asset (demonstrable for example by passing a written decision, or alternatively setting dates, purchasing materials or engaging labour) before the cut-off dates, you can receive the deductions.

**The Bill contains anti-avoidance rules, to prevent renegotiation of existing contracts with intention of coming within the Investment Tax Break timeframe.**

These rules are contained in the proposed amendments to section 41-25(2) and (3) of the ITAA 1997. They state that if you enter a contract, or start to build, or otherwise hold an asset at an earlier time; and then you engage in conduct that results in you entering a contract, or starting to build, or otherwise holding that same asset, or an identical, or substantially similar asset at a later time; and you engaged in that conduct for purposes that include the purpose of becoming entitled to an investment tax break, then you will be deemed to have entered or engaged at the first time, and not within the time-limits of the Investment Tax Break. It is provided, however, that if you previously entered an option to acquire an asset, you can exercise that option within the time limits of the Investment Tax Break and successfully receive the additional tax deductions.

**The asset must be principally for business use in Australia.**

This means, for example, if your business owns a car (which is a depreciating asset), and it provides that car to an employee for private use (usually as a fringe benefit), it is accepted that the employers use of the car is for the purpose of carrying on the business, so therefore if all other conditions are met, the tax break is available on such a car. Provided all of the eligibility requirements of the Investment Tax Break are fulfilled for the asset, there is no reduction of the tax deduction for any non business use.

**The Investment Tax Break is claimable in the income year in which the asset is first used or installed ready for use.**

It will be available to the taxpayer who is entitled to the capital allowance deduction under the Capital Allowance rules in respect of the asset. The Investment Tax Break is

granted on top of the usual capital allowance deduction available for the asset. More than one Investment Tax Break cannot be claimed on one amount.

**The investment allowance benefit belongs to the taxpayer entitled to depreciation deductions under the general depreciation rules.**

Tax depreciation is claimable by the ‘holder’ of the asset. The following are examples of how the relevant holding rules under 4 Section 40-40, ITAA1997 apply.

The kind of depreciating asset:	‘Holding’ entity:
A luxury car in respect of which a lease has been granted	The lessee (while the lessee has the right to use the car) and not the lessor
A depreciating asset that is fixed to land subject to a quasi-ownership right (including any extension or renewal of such a right) where the owner of the right has a right to remove the asset	The owner of the quasi-ownership right (while the right to remove exists)
An improvement to land (whether a fixture or not) subject to a quasi-ownership right (including any extension or renewal of such a right) made, or itself improved, by any owner of the right for the owner’s own use where the owner of the right has no right to remove the asset	The owner of the quasi-ownership right (while it exists)
A depreciating asset that is subject to a lease where the asset is fixed to land and the lessor has the right to recover the asset	The lessor (while the right to recover exists)
A right that an entity legally owns but which another entity (the economic owner) exercises or has a right to exercise immediately, where the economic owner has a right to become its legal owner and it is reasonable to expect that: a. the economic owner will become its legal owner; or b. it will be disposed of at the direction and for the benefit of the economic owner	The economic owner and not the legal owner

**There is no clawback.**

Once the eligibility criteria have been met for the Investment Tax Break to be applicable, subsequent events cannot result in the investment tax break being lost in any way. This means, for example that the sale or disposal of the particular asset cannot remove the original benefit.

**In Summary:**

It is possible to plan for maximum benefit from this Investment Tax Break by being mindful of the eligibility dates, expenditure criteria, and principle use requirements. Also remember that the asset can be jointly held or self constructed. Finally, seek professional advice before entering a contract and be mindful of the anti-avoidance provisions.