



Tax Laws Amendment (Small Business and General Business Tax Break) Act 2009

No. 31, 2009

**An Act to amend the law relating to taxation, and
for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act to amend the law relating to taxation, and
for related purposes**

[Assented to 22 May 2009]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (Small
Business and General Business Tax Break) Act 2009*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Additional deduction for certain new business investment

Income Tax Assessment Act 1997

1 Section 12-5 (table item headed “capital allowances”)

After:

mining and quarrying Subdivision 40-H
and
Subdivision 40-I

insert:

new business investment, additional deduction Division 41

2 Subsection 40-35(1)

After “Divisions”, insert “41,”.

3 Subsection 40-215(1)

After “this Division”, insert “, Division 41”.

4 After Division 40

Insert:

Division 41—Additional deduction for certain new business investment

Guide to Division 41

41-1 What this Division is about

You may be able to deduct an amount in relation to a depreciating asset for the 2008-09, 2009-10, 2010-11 or 2011-12 income year if:

- (a) you can deduct an amount for the decline in value for the asset for the relevant year under Subdivision 40-B; and

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|--|
| <p>(b) you make certain new investments in respect of the asset in the period starting on 13 December 2008 and ending on 31 December 2009; and</p> <p>(c) the total of those new investments is at least \$1000 (for small businesses) or \$10,000 (for other businesses).</p> |
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Operative provisions

41-5 Object of Division

The object of this Division is to provide a temporary business tax break for Australian businesses using assets in Australia, with a view to encouraging business investment and economic activity.

41-10 Entitlement to deduction for investment

- (1) You can deduct an amount for an income year in relation to an asset if:
- (a) the asset is a *depreciating asset, other than an intangible asset; and
 - (b) you can deduct an amount under section 40-25 in relation to the asset for the income year; and
 - (c) the income year is the 2008-09, 2009-10, 2010-11 or 2011-12 income year; and
 - (d) the total of the *recognised new investment amounts for the income year in relation to the asset equals or exceeds the *new investment threshold for the income year in relation to the asset.
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- (2) Subsection 73BA(7) of the *Income Tax Assessment Act 1936* (deductions regarding assets used in research and development activities) does not apply to a deduction under subsection (1).
- (3) For the purposes of paragraph (1)(b), in determining whether you can deduct the amount in relation to the asset under section 40-25 for the income year:
 - (a) disregard section 40-55 if the asset is a *car for which you use the “12% of original value” method for that income year; and
 - (aa) disregard section 40-90 (reduction in cost where debt is forgiven); and
 - (ab) disregard subsection 40-365(5) (reduction in cost for replacement asset where involuntary disposal); and
 - (b) disregard Subdivision 328-D (capital allowances for small business entities); and
 - (c) disregard subsection 73BA(7) of the *Income Tax Assessment Act 1936* (deductions regarding assets used in research and development activities).

Counting additional recognised new investment amounts for the purposes of meeting the threshold

- (4) For the purposes of paragraph (1)(d), treat each of the following as a *recognised new investment amount for the income year in relation to the asset (the **relevant asset**):
 - (a) a recognised new investment amount for a previous income year in relation to the relevant asset;
 - (b) a recognised new investment amount for the income year or a previous income year in relation to another asset, if:
 - (i) the other asset is part of a set of assets including the relevant asset; or
 - (ii) the other asset is identical, or substantially identical, to the relevant asset;
 - (c) a recognised new investment amount for the income year or a previous income year in relation to an asset *held by another entity, if:
 - (i) subsection 40-35(1) (jointly held depreciating assets) applies in relation to the relevant asset because it is your interest in an asset (the **underlying asset**); and

- (ii) the asset held by the other entity is the other entity's interest in the underlying asset.

41-15 Amount of deduction

- (1) The amount that you can deduct is:
 - (a) if the *new investment threshold for the income year in relation to the asset is \$1000 (small business entities)—50% of the total of the *recognised new investment amounts for the income year in relation to the asset; or
 - (b) if paragraph (a) does not apply but subsection (3), (4) or (5) applies—10% of that total; or
 - (c) otherwise—the sum of:
 - (i) 30% of the total of the recognised new investment amounts for the income year in relation to the asset that meet the condition in subsection (2); and
 - (ii) 10% of the total of the other recognised new investment amounts for the income year in relation to the asset.
 - (2) A *recognised new investment amount meets the condition in this subsection if:
 - (a) the *investment commitment time for the amount occurred before 1 July 2009; and
 - (b) the *first use time for the amount occurred before 1 July 2010.
 - (3) This subsection applies if the income year is the 2011-12 income year.
 - (4) This subsection applies if:
 - (a) you can deduct the amount because of paragraph 41-10(4)(a); and
 - (b) the *new investment threshold for the income year in relation to the asset exceeds the total of the *recognised new investment amounts for the income year in relation to the asset that meet the condition in subsection (2).
 - (5) This subsection applies if:
 - (a) you can deduct the amount because of paragraph 41-10(4)(b) or (c); and
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- (b) the *new investment threshold for the income year in relation to the asset exceeds the sum of:
 - (i) the total of the *recognised new investment amounts for the income year in relation to the asset that meet the condition in subsection (2); and
 - (ii) the total of the amounts treated under paragraph 41-10(4)(b) or (c) (as the case requires) as recognised new investment amounts for the income year in relation to the asset that meet the condition in subsection (2).

41-20 Recognised new investment amount

- (1) An amount is a *recognised new investment amount* for the income year in relation to the asset if:
 - (a) either:
 - (i) the amount is included in the first element of the asset's *cost (worked out in accordance with Subdivision 40-C); or
 - (ii) the amount is included in the second element of the asset's cost under paragraph 40-190(2)(a); and
 - (b) the *investment commitment time for the amount occurs in the period:
 - (i) starting at 12.01 am, by legal time in the Australian Capital Territory, on 13 December 2008; and
 - (ii) ending on 31 December 2009; and
 - (c) the *first use time for the amount occurs:
 - (i) no later than the end of the income year; and
 - (ii) no later than 31 December 2010; and
 - (d) at the first use time for the amount, it is reasonable to conclude that you will use the asset principally in Australia for the principal purpose of *carrying on a *business; and
 - (e) if the amount is included in the first element of the asset's cost—the first use time for the amount is the first time you or any other entity have used the asset, or have it installed ready for use, for any purpose; and
 - (f) you have not been entitled to a deduction under this Division for any previous income year in relation to the amount.

- (2) Treat the requirements in paragraph (1)(d) as *not* being met if, at the first use time for the amount, it is reasonable to conclude that the asset will never be located in Australia.
- (3) For the purposes of paragraph (1)(e), disregard any previous use of the asset that was merely for the purposes of reasonable testing or trialling.
- (4) Treat the requirements in paragraph (1)(e) as *not* being met if the amount becomes included in the first element of the asset's *cost at a time because of paragraph 40-205(a) (splitting depreciating assets) or 40-210(a) (merging depreciating assets).
- (5) In determining the amount of a *recognised new investment amount, disregard:
 - (a) subsection 40-90(2) (reduction in cost where debt is forgiven); and
 - (b) paragraph 40-365(5)(a) (reduction in cost for replacement asset where involuntary disposal).

41-25 Investment commitment time

- (1) The *investment commitment time* for the amount is:
 - (a) if the amount is included in the first element of the asset's *cost—the time at which you:
 - (i) enter into a contract under which you *hold the asset at that time, or will hold the asset at a later time; or
 - (ii) start to construct the asset; or
 - (iii) start to hold the asset in some other way; or
 - (b) if the amount is included in the second element of the asset's cost—the time at which you enter into a contract, or start construction, for the economic benefit in relation to which the amount becomes, or will become, included in that element under paragraph 40-190(2)(a).

Integrity rule

- (2) Subsection (3) applies in relation to an amount if:
 - (a) at a time, you:
 - (i) enter into a contract under which you *hold an asset at that time, or will hold the asset at a later time; or

- (ii) start to construct an asset; or
 - (iii) start to hold an asset in some other way; and
- (b) at a later time, you engage in conduct that results in you:
- (i) entering into a contract under which you hold the asset mentioned in paragraph (a) (or an identical or substantially similar asset) at that later time, or will hold that asset (or an identical or substantially similar asset) at an even later time; or
 - (ii) starting to construct an asset that is identical or substantially similar to the asset mentioned in paragraph (a); or
 - (iii) starting to hold the asset mentioned in paragraph (a) (or an identical or substantially similar asset) in some other way; and
- (c) you engage in that conduct for the purpose, or for purposes that include the purpose, of becoming entitled to a deduction under this Division.
- (3) Despite paragraph (1)(a), the *investment commitment time* for an amount to which that paragraph would otherwise apply is the time mentioned in paragraph (2)(a).
- (3A) For the purposes of paragraph (1)(a) and subsection (2), treat yourself as having started to construct an asset at a time if you first incur expenditure in respect of the construction of the asset at that time.
- (3B) For the purposes of paragraph (1)(b), treat yourself as having started construction for an economic benefit at a time if you first incur expenditure in respect of the construction for the benefit at that time.

Options

- (4) To avoid doubt, for the purposes of this section, you do not enter into a contract under which you *hold an asset merely because you acquire an option to enter into such a contract.

41-30 First use time

The *first use time* for the amount is:

- (a) if the amount is included in the first element of the asset's *cost—the time at which you start to use the asset, or have it *installed ready for use; or
- (b) if the amount is included in the second element of the asset's cost—the later of:
 - (i) the time at which it becomes included in that element under paragraph 40-190(2)(a); or
 - (ii) the time mentioned in paragraph (a).

41-35 New investment threshold

The *new investment threshold* for an income year (the *relevant income year*) in relation to an asset means:

- (a) \$1000 if you are a *small business entity during any of the following income years:
 - (i) the income year in which occurs the *investment commitment time for any *recognised new investment amount for the asset in relation to the relevant income year;
 - (ii) the income year in which occurs the *first use time for any such amount;
 - (iii) the relevant income year; or
- (b) otherwise—\$10,000.

5 Subsection 995-1(1)

Insert:

first use time has the meaning given by section 41-30.

6 Subsection 995-1(1)

Insert:

investment commitment time has the meaning given by section 41-25.

7 Subsection 995-1(1)

Insert:

new investment threshold has the meaning given by section 41-35.

8 Subsection 995-1(1)

Insert:

recognised new investment amount has the meaning given by section 41-20.

[*Minister's second reading speech made in—
House of Representatives on 19 March 2009
Senate on 14 May 2009*]

(55/09)
