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

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House: House of Representatives

Portfolio: Treasury

Commencement: The day of Royal Assent

Links: The relevant links to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at http://www.aph.gov.au/bills/. When Bills have been passed they can be found at ComLaw, which is at http://www.comlaw.gov.au/.

Purpose

The Bill amends the *Income Tax Assessment Act 1997* (the ITAA 1997) to provide an additional deduction, by way of a temporary investment allowance, for certain business investments for new, tangible depreciating assets and new expenditure on existing assets.

Background

The Small Business and General Business Tax Break was announced as part of the Nation Building and Jobs Plan on 3 February 2009.[1] It provides a temporary bonus income tax deduction for new investment in tangible depreciating assets undertaken between 13 December 2008 and 31 December 2009. This deduction is in addition to the tax depreciation deductions that are able to be claimed in relation to depreciating assets under existing Subdivision 40–B of the ITAA 1997. The tax break expands and extends the temporary investment allowance announced by the Government on 12 December 2008.[2] For assets purchased or constructed between 13 December and 30 June 2009, the taxpayer

1. W Swan MP (Treasurer), *Small Business and General Business Tax Break*, media release, 3 February 2009, viewed 11 May 2009, http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/013.htm&pageID=003&min=wms&Year=&DocType=0

2. W Swan MP (Treasurer), *Investment Allowance to Boost Business Investment*, media release, 12 December 2008, viewed 11 May 2009, http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2008/141.htm&pageID=003&min=wms&Year=2008&DocType=0

may claim a bonus deduction of 30 per cent of the cost of the eligible asset. For assets purchased or constructed after 30 June 2009 but before 31 December 2009, the taxpayer may only claim a 10 per cent deduction, provided the taxpayer must start to use the asset, or have it installed ready for use by 31 December 2010.[3]

On 25 February 2009, the Treasurer released an exposure draft of the Tax Laws Amendment (Small Business and General Business Tax Break) Bill 2009 for public comment.[4] Following the receipt of public comments (which closed on 10 March 2009), the Government introduced the current, formal Bill into Parliament on 19 March 2009. There does not appear to be any significant difference between the exposure draft and the formal Bill.

In his Second Reading Speech for the Bill, the Treasurer told the House that the Tax Break is one of a number of measures being implemented by the Government to support domestic economic growth and employment in the face of a deteriorating global economic environment and contraction of the global economy. The Treasurer said that the tax break will cost $3.8 billion. Small business entities (being entities that have an annual turnover of no more than $2 million) need to invest a minimum of $1,000 to qualify for the tax break, but other businesses need to invest a minimum of $10,000.

Financial implications

According to the Explanatory Memorandum to the Bill, the temporary bonus tax deduction is estimated to have a total cost to the Budget of $3.8 billion from 2009–10 to 2011–12:

2007-08	2008-09	2009-10	2010-11	2011-12
Nil	Nil	-$1,440m	-$1,800m	-$515m

3. W Swan MP (Treasurer), 'Second reading speech: Tax Laws Amendment (Small Business and General Business Tax Break) Bill 2009', House of Representatives, *Debates*, 19 March 2009, pp. 3230–3232, viewed 11 May 2009, http://www.aph.gov.au/hansard/reps/dailys/dr190309.pdf

4. See the Treasury, Draft Legislation for the Small Business and General Business Tax Break and associated explanatory material, released on 25 February 2009, viewed 11 May 2009, http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1487

Main provisions

Purpose of new Division 41

Item 4 of **Schedule 1** inserts a **new Division 41** into the ITAA 1997 to provide an additional deduction for certain new business investments.

Proposed section 41-5 states that 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'.

Entitlement to deduction for investment

Proposed paragraphs 41-10(a), **(b)**, **(c)** and **(d)** set out the four conditions for entitlement to a deduction for the investment. These conditions are as follows.

(a) Eligible asset must be a depreciating asset

The eligible asset must be a depreciating asset other than an intangible asset (**proposed paragraph 41-10(1)(a)**).

The term '*depreciating asset*' is defined in subsection 995–1(1) (being the Dictionary section for the ITAA 1997) as having the meaning given by section 40-30. Subsection 40-30(1) provides that a '*depreciating asset'* is an asset that has a limited effective life and can reasonably be expected to decline in value over the time it is used, except:

(a) land; or

(b) an item of trading stock; or

(c) an intangible asset, unless it is mentioned in subsection 40-30(2).

Subsection 40–30(2) provides that the following intangible assets are depreciating assets, if they are not trading stock:

- mining, quarrying or prospecting rights,
- mining, quarrying or prospecting information,
- items of intellectual property,
- in-house software,
- an indefeasible right to use a telecommunications cable system (an IRU),
- spectrum licences,

- datacasting transmitter licences,
- telecommunications site access rights.

The term *'intellectual property'*, except so far as the contrary intention appears, is defined in subsection 995(1) of the ITAA 1997 as follows:

> ***"Intellectual property"***: an item of intellectual property consists of the rights (including equitable rights) that an entity has under a Commonwealth law as:
>
> (a) the patentee , licensee, of a patent; or
>
> (b) the owner, or licensee, of a registered design; or
>
> (c) the owner, or a licensee, of a copyright;
>
> or of equivalent rights under a foreign law.

(b) An amount can be deducted under section 40-25 of the ITAA 1997 in relation to that depreciating asset

Proposed paragraph 41-10(b) requires that in order to be eligible to claim the additional deduction for new business investment, the taxpayer must be able to claim a deduction for that income year under section 40-25 in respect of that depreciating asset. Section 40-25 of the ITAA 1997 sets out how, in calculating assessable income, a taxpayer claims a deduction of amounts for depreciating assets held at any time in the income year.

(c) The income years for which the additional deduction can be claimed

Proposed paragraph 41-10(c) states that the additional deduction can be claimed for the income year 2008–09, 2009–10, 2010–11 or 2011–12.

(d) The total recognised new investment must equal or exceed the new investment threshold for the relevant income year

Proposed paragraph 41-10(1)(d) provides that 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.

The expressions '*recognised new investment amount*' and '*new investment threshold*' are defined in **proposed subsection 41-20** and **proposed subsection 41-35.**

As explained in the Explanatory Memorandum for the Bill, for the purposes of calculating a '*recognised new investment amount*', the amount needs to be included in an asset's cost. It only includes capital expenditure and does not include amounts that can be deducted under other provisions.[5] An asset's cost has two elements. The first element of cost is calculated at the time the taxpayer starts to hold the asset and is generally the amounts he has paid to hold the asset at that time.[6] The second element consists of the amounts the taxpayer has paid 'to bring the asset to its present condition and location'.[7]

Proposed paragraph 41-35(a) states that for a small business entity during the relevant income year the 'new investment threshold' is $1,000. Otherwise the 'new investment threshold' is $10,000: **proposed paragraph 41–35(b)**.

Concluding comments

According to MYOB's Australian Small Business Survey, March 2009, only 30 per cent of businesses planned to invest in their operations in the next six months.[8] This has led to calls for extending the one-off tax break.[9]

The additional 30 per cent tax deduction in the first year in which the tax deduction can be claimed (2009-10) will bring forward business spending which has already been earmarked for investment. Several accounting firms have commented that these investments are not additional purchases brought on as a result of the tax break.[10]

The tax break means that over the life of the asset businesses can claim 130 per cent of the cost. However, an obstacle for small and medium enterprises is the availability of capital to the purchase asset. Of the small businesses surveyed, less than half expected an increase in revenue over the next twelve months with 30 per cent of businesses expecting this increase to be between 6 and 10 per cent.[11]

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5. Explanatory Memorandum, Tax Laws Amendment (Small Business and General Business Tax Break) Bill 2009, p. 21.
6. See sections 40–180 and 40–185 of the ITAA 1997. See also Explanatory Memorandum, p. 22.
7. Explanatory Memorandum, p. 22. See also sections 40–185 and 40–190 of the ITAA 1997, particularly paragraph 40–190(2)(a).
8. MYOB Australian Small Business Survey, Indicator Report – March 2009, p. 30.
9. See, 'CPA Australia calls for extended tax credits', *Queensland Business Review*, 8 May 2009. See also, J. Farre, 'Retailers call for extension to small business tax breaks', *Australian Food News*, 2 March 2009.
10. See M. Fenton-Jones, 'Poor drafting hampers tax allowance', *Australian Financial Review*, 28 April 2009, p. 48.
11. MYOB Australian Small Business Survey, p. 28.

Among the reported investments brought forward are the construction of a retail mall, the purchase of passenger motor vehicles,[12] construction cranes and commercial vehicles, and the replacement of existing near-depreciated assets.

The attraction for large businesses of the tax break is that major capital spending for future years can be established under a contract (or started to be constructed) before 30 June 2009 to be eligible for the 30 per cent bonus tax deduction, or before 31 December 2009 for the 10 per cent bonus tax deduction.

For small businesses the one-off tax break is an incentive to group purchases of composite assets, for example, computers, printers and IT equipment which can be shown to improve productivity in order to qualify for the bonus deduction. However, in the current global downturn which has affected just under half of the small businesses surveyed by MYOB[13] and with the continued decline in trading, the bonus tax deduction may not be enough to encourage these businesses to make additional purchases or to borrow to invest.

While the additional tax deduction is geared particularly to assist manufacturing which was in decline before the onset of the global recession, having the depreciating asset in place before 30 June 2010 is proving to be difficult, particularly plant equipment imported from overseas.

12. The additional 30 per cent tax deduction only applies up to the luxury car limit of $57,180. The excess cost above the limit is ineligible.

13. See MYOB Australian Small Business Survey, Special Focus Report: Global Financial Crisis perceptions, impact and support – March 2009, p. 14.

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Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.