2008-2009

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAX LAWS AMENDMENT (SMALL BUSINESS AND GENERAL BUSINESS TAX BREAK) BILL 2009

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Treasurer, the Hon Wayne Swan MP)

Table of contents

Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

Abbreviation	***Definition***
ITAA 1997	*Income Tax Assessment Act 1997*
GST	goods and services tax
R&D	research and development
Tax Break	Small Business and General Business Tax Break

General outline and financial impact

Small Business and General Business Tax Break

This Bill amends the income tax law to provide a temporary bonus income tax deduction for new investment in tangible depreciating assets undertaken between 13 December 2008 and 31 December 2009.

Date of effect: These amendments apply to assessments for the 2008-09, 2009-10, 2010-11 and 2011-12 income years.

Proposal announced: This measure was announced in the Treasurer's Media Release No. 012 of 3 February 2009 and Media Release No. 141 of 12 December 2008.

Financial impact: The amendments are estimated to have a total cost to the Budget of $3.8 billion from 2009-10 to 2011-12.

Impact on fiscal balance: This measure will have the following revenue implications:

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

Compliance cost impact: Low.

Chapter 1
Small Business and General Business Tax Break

Outline of chapter

1.1 This Bill amends the income tax law to provide an additional deduction for certain business investment — the Small Business and General Business Tax Break (the Tax Break) — for new, tangible depreciating assets and new expenditure on existing assets.

1.2 The Tax Break is targeted toward new investment that will boost business investment and build confidence in the Australian economy in the face of the global recession.

1.3 All references to legislative provisions in this chapter are references to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise stated. This Bill inserts a new Division 41 into the ITAA 1997 to provide a legislative framework for the Tax Break.

Context of amendments

1.4 The Tax Break is one of the measures being implemented by the Government to support economic activity and employment in Australia in the face of a deteriorating global economic environment.

1.5 The role of the Tax Break is to stimulate new investment by Australian businesses. The temporary nature of the measure provides an incentive for businesses to bring forward and sustain new capital investment in the current economic climate.

1.6 The Tax Break was announced on 3 February 2009 as part of the Government's *Nation Building and Jobs Plan*. Additional details were provided in the Treasurer's Media Release No. 012 of 3 February 2009.

1.7 The Tax Break increases and extends the 10 per cent temporary investment allowance announced in the Treasurer's Media Release No. 141 of 12 December 2008.

Summary of new law

1.8 The Tax Break is limited to new tangible, depreciating assets for which a deduction is available under Subdivision 40-B of the ITAA 1997 and new investment in existing assets.

1.9 The amount of a taxpayer's investment in an asset needs to exceed a certain threshold and the asset must be used principally in Australia for the principal purpose of carrying on a business.

1.10 The Tax Break is worked out using a rate of either 30 per cent or 10 per cent depending on when the taxpayer committed to investing in the asset. The Tax Break can be claimed in the income year that the asset is first used or installed ready for use.

New assets and new investment

1.11 For the purposes of the Tax Break, an asset is new if it has never been used or installed ready for use by anyone, anywhere. Second-hand assets are not eligible for the Tax Break.

1.12 Further, a taxpayer must make a decision to invest either in a new asset or an existing asset between 13 December 2008 and 31 December 2009.

1.13 Assets that a taxpayer held or entered into a contract to hold on or before 12 December 2008 will not qualify. However, additional investment in such assets undertaken from 13 December 2008 may be eligible for the Tax Break.

Eligible assets

1.14 'Depreciating assets' has the meaning given by Division 40 of the ITAA 1997 — it excludes most intangible assets, land and trading stock. Tangible depreciating assets include business machinery and equipment.

1.15 A capital allowance deduction in relation to the asset must also be available under the core provisions of Division 40 contained in Subdivision 40-B.

1.16 There are several exceptions to this rule — that is, assets which are made eligible for the Tax Break that would otherwise be excluded (noting that all other requirements still need to be met):

- Cars for which a taxpayer uses the '12 per cent of original value' method to work out their car expense deductions may be eligible assets.

- Assets for which a small business entity claims capital allowance deductions under Subdivision 328-D may be eligible assets.

- Tangible, depreciating assets that receive deductions under the research and development (R&D) provisions may also be eligible for the Tax Break.

Expenditure thresholds

1.17 New investment in relation to an asset (usually the asset's goods and services tax (GST) exclusive cost) needs to exceed 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.

1.18 Generally, the new investment threshold needs to be met for each individual asset. However, multiple investments — or recognised new investment amounts — in an individual asset may be amalgamated in meeting the new investment threshold.

1.19 Taxpayers are also permitted to amalgamate their investment in a batch of identical, or substantially identical, assets; and assets that form part of a set for the purposes of meeting the relevant new investment threshold.

Used principally in Australia for the principal purpose of carrying on a business

1.20 A taxpayer must be able to demonstrate that at the time they started to use the asset or had it installed ready for use, it was reasonable to conclude that the asset was to be principally used in Australia for the principal purpose of carrying on a business.

1.21 Unlike deductions under Subdivision 40-B, the Tax Break will not be apportioned for any non-taxable use of the asset.

Claiming the Tax Break

1.22 The taxpayer who is entitled to the capital allowance deduction (under Subdivision 40-B of the ITAA 1997) in relation to the asset's decline in value is entitled to claim the Tax Break.

1.23 The Tax Break will be able to be claimed as part of the taxpayer's income tax return. Provided all eligibility criteria are met, the income year in which the Tax Break can be claimed will generally be the income year in which the taxpayer first puts the asset to use.

1.24 To qualify for the 30 per cent bonus deduction a taxpayer must:

- commit to investing in the asset between 13 December 2008 and 30 June 2009; and
- first start to 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 30 June 2010.

1.25 To qualify for the 10 per cent bonus deduction a taxpayer must:

- commit to investing in the asset by 31 December 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 on or before 31 December 2010.

1.26 A taxpayer will also qualify for the 10 per cent bonus deduction it they:

- commit to investing in an asset by 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.

1.27 Table 1.1 summarises the key dates relating to the different rates at which the Tax Break could be claimed for taxpayers using *standard* income years (subject to all other conditions being met).

Table 1.1

	NEW INVESTMENT BY:	
INSTALLED BY:	**30 June 2009**	**31 December 2009**
30 June 2009	**30% in 2008-09**	
30 June 2010	**30% in 2009-10**	**10% in 2009-10**
31 December 2010	**10% in 2010-11**	**10% in 2010-11**

Detailed explanation of new law

1.28 The Tax Break aims to provide a stimulatory effect to the economy by encouraging Australian business investment in new tangible, depreciating assets for use in Australia. ***[Schedule 1, item 4, section 41-5]***

Application

1.29 The amendments in this Bill commence on Royal Assent but will operate retrospectively. That is, they authorise a bonus tax deduction for taxpayers that make new investments in eligible assets from 13 December 2008 (subject to all criteria being met). ***[Section 2]***

Guide to Division 41

1.30 This Bill inserts a new Division 41 into the ITAA 1997 to provide an additional deduction for certain new business investments — that is, the legislative framework for the Tax Break. ***[Schedule 1, items 1 to 4, section 41-1]***

1.31 There are a series of steps that a taxpayer needs to work through in order to establish whether they are eligible for the Tax Break in relation to an asset for a particular income year. Once eligibility has been established, the amount of the bonus deduction can be calculated.

No impact of other deductions

1.32 The Tax Break will not impact on a taxpayer's deductions for the decline in value of their depreciating asset under Subdivision 40-B.

1.33 Neither will the Tax Break be taken into account in working out the amount of any balancing adjustment amounts, capital gains or capital losses when the taxpayer stops holding the asset.

1.34 This means that over the life of the asset the sum of the capital allowance and Tax Break deductions can be more than 100 per cent of the asset's value.

Is this kind of asset eligible?

1.35 To be eligible for the Tax Break, the asset must be a tangible 'depreciating asset' for which a deduction is available under section 40-25 of the ITAA 1997. ***[Schedule 1, item 4, paragraphs 41-5(1)(a) and (b)]***

Is the asset a tangible depreciating asset?

1.36 Section 40-30 of the ITAA 1997 defines a ***depreciating asset*** as an asset with a limited effective life that can be reasonably expected to decline in value over time.

1.37 Land, trading stock and intangible assets are all excluded from the definition of a depreciating asset in section 40-30. These assets are not eligible for the Tax Break.

1.38 Subsection 40-30(2) does rule some intangible assets back into the definition of a depreciating asset, but these exceptions do not apply to the Tax Break. That is, all intangible assets are ineligible.

Example 1.1

> 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.

Is a deduction available under section 40-25?

1.39 In general terms, section 40-25 entitles a taxpayer to deductions for the decline in value of a depreciating asset over its effective life.

1.40 Assets that receive capital allowance deductions under other Subdivisions of Division 40 are excluded by subsection 40-50(1) from claiming deductions under Subdivision 40-B and are not eligible for the Tax Break. Taxpayers with assets that are deductible under these Subdivisions are not able to opt in to Subdivision 40-B in order to claim the Tax Break.

1.41 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 and are therefore beyond the scope of the Tax Break.

Example 1.2

> 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. 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.

1.42 Capital works for which deductions are available under Division 43 of the ITAA 1997 are not eligible for the Tax Break.

Example 1.3

> From Example 1.1, Annie also 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 expense of constructing the extension, and so this expenditure would not be eligible for the Tax Break.

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

1.44 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.

1.45 The Bill provides that tangible, depreciating assets are not precluded from the Tax Break merely because they receive a deduction under the R&D provisions. ***[Schedule 1, item 4, paragraph 41-5(2)(c)]***

1.46 Assets allocated to low-value pools under Subdivision 40-E are still considered to be deductible under section 40-25. The pooling provisions are used to calculate the decline in value that is deducted under section 40-25.

Working out if a car is eligible

1.47 Division 28 of the ITAA 1997 provides the framework for determining 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.

1.48 Taxpayers who use the 'one-third of actual expenses' and 'log book' methods are able to claim deductions under Division 40 for the car's decline in value for an income year. Under subsection 40-25(6), if the 'one-third of actual expenses' method is used then only one-third of the car's decline in value is deductible.

1.49 Section 40-55 provides that 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. Capital allowances are already considered to be factored into these rates.

1.50 However, taxpayers will not be excluded from the Tax Break merely because they use the 12 per cent of original value method. These taxpayers will still be ineligible for capital allowance deductions under Division 40 but may be entitled to the Tax Break. ***[Schedule 1, item 4, paragraph 41-5(2)(a)]***

1.51 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.

1.52 Although the one-third of actual expenses and 12 per cent of original value methods are only available where there is substantial business use (ie, a minimum of 5,000 business kilometres applies), they would not normally provide the best tax deduction where the car is principally for business use. Assets eligible for the Tax Break would generally only use these methods because of their simpler compliance requirements.

Example 1.4

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 is precluded from using either the log book or one-third of actual expenses methods. However, he can still use the 12 per cent 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.

Assets held by small business entities

1.53 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.

1.54 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. ***[Schedule 1, item 4, paragraph 41-5(2)(b)]***

1.55 A small business entity does 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.

Summary

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

Table 1.2

Eligible	*Not eligible*
• Tangible, depreciating assets for which a deduction is available under section 40-25 including: – cars (except those using the 'cents per kilometre' method). • Tangible, depreciating assets used by small business entities. • Tangible, depreciating assets used in R&D.	• 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.

Is the asset new?

1.57 Division 40 of the ITAA 1997 does not contain a concept of *new* or *second-hand* assets. However, this is an important feature of the eligibility criteria for the Tax Break. An asset is new for the purposes of the Tax Break if it has never been used or installed ready for use either by the taxpayer or another entity for any purpose, anywhere prior to 13 December 2008. This means that second-hand assets are not eligible for the Tax Break. ***[Schedule 1, item 4, paragraph 41-20(1)(e) and section 41-30]***

1.58 A taxpayer is 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.

1.59 However, an asset will not be precluded from the Tax Break because a taxpayer purchased it from someone who held it as trading stock or held it ready for sale.

1.60 Further, 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). ***[Schedule 1, item 4, subsection 41-20(2)]***

Example 1.5

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 1.6

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.

Which taxpayer is entitled to the bonus deduction?

1.61 The taxpayer claiming the Tax Break needs to be able to satisfy the eligibility criteria set out in the legislation.

1.62 The Tax Break is to be claimed by the taxpayer that is entitled to deductions for the asset's decline in value under Subdivision 40-B. ***[Schedule 1, item 4, paragraph 41-5(1)(b)]***

1.63 Section 40-40 contains a table that is used to work out which entity holds an asset for Division 40 purposes; this is replicated in full below (noting that items 8 and 9 will not be relevant to the Tax Break).

Table 1.3

Item	*This kind of depreciating asset:*	*Is held by this entity:*
1	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
2	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)
3	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)
4	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)
5	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

Item	***This kind of depreciating asset:***	***Is held by this entity:***
6	A *depreciating asset that an entity (the ***former holder***) would, apart from this item, hold under this table (including by another application of this item) where a second entity (also the ***economic owner***): (a) possesses the asset, or has a right as against the former holder to possess the asset immediately; and (b) has a right as against the former holder the exercise of which would make the economic owner the holder under any item of this table; and it is reasonable to expect that the economic owner will become its holder by exercising the right, or that the asset will be disposed of at the direction and for the benefit of the economic owner	The economic owner and *not* the former holder
7	A *depreciating asset that is a partnership asset	The partnership and *not* any particular partner
8	*Mining, quarrying or prospecting information that an entity has and that is relevant to: (a) *mining operations carried on, or proposed to be carried on by the entity; or (b) a *business carried on by the entity that includes *exploration or prospecting for *minerals or quarry materials obtainable by such operations; whether or not it is generally available	The entity
9	Other *mining quarrying or prospecting information that an entity has and that is not generally available	The entity
10	Any *depreciating asset	The owner, or the legal owner if there is both a legal and equitable owner

Note 1: Some assets may have holders under more than one item in the table.

Note 2: As well as hire purchase agreements, items 5 and 6 cover cases like assets subject to chattel mortgages, sales subject to retention of title clauses and assets subject to bare trusts.

Assets held under leases

1.64 Eligible assets held under a lease may still qualify for the Tax Break. However, the bonus deduction is to be claimed by the entity in the leasing arrangement who would claim capital allowance deductions in relation to the asset under Subdivision 40-B.

1.65 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.

1.66 Where the lessor in a leasing agreement holds an eligible asset for Division 40 purposes it is the new investment threshold that applies to the lessor that is relevant.

1.67 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 (ie, the lessor) will use the asset principally in Australia for the principal purpose of carrying on their business.

1.68 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 1.7

> From Example 1.6, Big Machine Leasing is the legal owner of the dragline being leased to the Collie Mining Company.
>
> Applying item 10 in the table in section 40-40, Big Machine Leasing will be the taxpayer entitled to claim deductions in relation to the asset under section 40-25 and the Tax Break (provided all of the criteria are satisfied).
>
> However, it may pass on the benefit of the Tax Break as part of its leasing agreement with Collie Mining Company (eg, in the form of lower lease charges).

1.69 A lessee may hold an eligible asset for Division 40 purposes 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 (see item 6 in the table in section 40-40 extracted above).

1.70 In this situation, the lessee, as the economic owner, could claim the Tax Break in relation to the asset (provided all of the criteria are satisfied), along with the capital allowance deductions available under Subdivision 40-B.

1.71 Note that where a lease has been granted in respect of a new luxury car which the lessee has a right to use the lessor's use of the asset in its leasing business will not exclude the lessee from being able to claim the Tax Break.

Example 1.8

From Example 1.2, the contract Angus entered into for the combine harvester is a hire purchase agreement with a finance company. Under the terms of the agreement he will pay a fixed amount for a number of years after which he will acquire the asset.

Because it is expected that Angus will acquire the asset, applying item 6 (and having regard to note 2) in the table in section 40-40, Angus will be the taxpayer entitled to claim deductions in relation to the asset under section 40-25 and the Tax Break (provided all of the criteria are satisfied).

Partnership assets

1.72 Where an asset is a partnership asset, it is the partnership rather than any individual partner who is entitled to the capital allowance deductions in relation to the asset under section 40-25 (see item 7 in the table in section 40-40).

1.73 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.

1.74 If the asset is not a partnership asset and an individual partner is both the economic and legal owner of the asset, that partner may still be able to claim both the capital allowance deductions and Tax Break in relation to the asset (provided all of the criteria are satisfied).

Which new investment threshold applies?

1.75 The new investment threshold is $1,000 for small business entities and $10,000 for all other taxpayers that may be able to claim the Tax Break. ***[Schedule 1, item 4, section 41-35]***

1.76 A taxpayer is a small business entity for an income year, rather than at a point in time. Section 328-110 provides that a taxpayer is a ***small business entity*** for the current income year if they:

- carried on a business during the previous year and their aggregated turnover for that year was less than $2 million; and
- expect their aggregated turnover to be less than $2 million again in the current income year.

1.77 To qualify for the lower threshold, a taxpayer needs to be a small business entity for the income year in which they undertake new investment in an eligible asset, put that investment to use, or claim the Tax Break. ***[Schedule 1, item 4, paragraph 41-35(a)]***

Example 1.9

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 30 per cent rate.

What can be counted towards the threshold?

1.78 As a general rule, a taxpayer needs 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. ***[Schedule 1, item 4, paragraph 41-5(1)(d)]***

Example 1.10

> 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.

1.79 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, the taxpayer will be able to claim the Tax Break in relation to all subsequent investments in the asset that are completed on or before 31 December 2009. ***[Schedule 1, item 4, paragraph 41-5(3)(a)]***

Batches and sets of assets

1.80 Notwithstanding the general rule, a taxpayer is permitted to aggregate their investment in assets that are identical, or substantially identical, and in assets that form a set for the purposes of meeting the threshold. ***[Schedule 1, item 4, paragraph 41-5(3)(b)]***

1.81 The taxpayer still needs 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 a taxpayer's investment in each asset still applies. That is, aggregation across batches and sets of assets only applies for threshold purposes.

1.82 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.

1.83 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 1.11

From Example 1.10, 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 1.12

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 that 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.

Jointly held assets

1.84 Section 40-35 provides that where a depreciating asset (the underlying asset) is held by more than one entity, each taxpayer is to treat their interest in the underlying asset as an asset in its own right.

1.85 Where assets are jointly held, a taxpayer will be able to recognise all other business interests in the asset for the purposes of meeting the threshold that applies to them individually but will only be able to claim the Tax Break on their interest in the asset. ***[Schedule 1, item 4, paragraph 41-5(3)(c)]***

What is a recognised new investment amount?

1.86 ***Recognised new investment amounts*** are the units used to work out if the taxpayer has satisfied the relevant new investment threshold and, if so, the amount of the additional deduction the taxpayer is entitled to.

When was the new investment undertaken?

1.87 To be a 'recognised new investment amount' for an asset in any income year, the amount needs be included in an asset's cost. ***[Schedule 1, item 4, paragraph 41-20(1)(a)]***

1.88 The cost of an asset for Division 40 purposes (and therefore the Tax Break) only includes capital expenditure and does not include amounts that you can deduct under other provisions.

GST

1.89 Subdivision 27-B of the ITAA 1997 deals with the interaction between the GST input tax credits and capital allowance deductions. 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 explanatory memorandum ignore any GST impact — that is, the amounts referred to are all GST exclusive.

What is the asset's cost?

1.90 Subdivision 40-C provides the framework for working out an asset's cost for capital allowance purposes, and this same framework applies to the Tax Break. According to Subdivision 40-C, an asset's cost has two elements.

1.91 An asset's first element of cost is worked out at the time a taxpayer begins to hold the asset. It is generally the amounts that the taxpayer has paid in order to start to hold the asset. Sections 40-180 and 40-185 contain the rules to be used in working out an asset's first element of cost in different circumstances.

1.92 Sections 40-185 and 40-190 contain the rules for taxpayers to use in working out an asset's second element of cost. Only amounts which are second elements of cost under paragraph 40-190(2)(a) are taken into account for the purposes of the Tax Break. These are amounts that the taxpayer has paid in order to bring the asset to its present condition and location.

Example 1.13

From Example 1.10, Edward also uses a motor vehicle for his business. As a result of Edward's use of the vehicle, he needs to replace the tyres. The cost of replacing the tyres is not included in the second element of the vehicle's cost because it would ordinarily be immediately deductible as a repair.

Edward subsequently attaches a towbar to the vehicle. The towbar enhances the vehicle's capacity to transport equipment and parts that are used in Edward's landscaping business.

The expenditure incurred by Edward to acquire and attach the towbar to the vehicle forms part of the second element of cost of the vehicle under paragraph 40-190(2)(a). The expenditure is capital expenditure incurred in bringing the asset to its present condition.

Example 1.14

Frank and Gail are both small business entities that operate cafes. Frank and Gail happen to decide to purchase identical new ovens to improve the energy efficiency of their kitchens.

On 29 June 2009, Frank enters into a contract with the supplier of the oven for $5,000, including installation. The $5,000 is included in the asset's first element of cost. The supplier installed the oven on 17 August 2009.

Gail enters into a contract with the supplier of the oven on 10 August 2009 for $4,500, which does not include installation. The $4,500 is included in the asset's first element of cost.

An electrician charges Gail $500 to install the oven on 17 August 2009. Because Gail has already started to hold the asset, the installation cost is included in the asset's second element of cost. Although consisting of two elements, the total cost of Gail's oven is also $5,000.

Working out the cost of a car

1.93 Section 40-230 places a limit on the first element of cost a taxpayer can use to work out capital allowance deductions for a car.

1.94 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 the taxpayer 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).

1.95 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

1.96 The Bill also contains provisions in relation to the splitting and merging of assets to ensure that even 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. ***[Schedule 1, item 4, subsection 41-20(4)]***

1.97 Where a taxpayer is forced under Division 40 to reduce the cost of an asset — for example in relation to a replacement asset following involuntary disposal or the forgiveness of a debt — it is the unreduced cost that applies for the purposes of the Tax Break. ***[Schedule 1, item 4, subsection 41-20(5)]***

When is an investment considered to occur?

1.98 The framework for the Tax Break also includes the concept of an ***investment commitment time***, which is when the taxpayer is committed to investing in an eligible asset. ***[Schedule 1, item 4, subsection 41-25(1)]***

1.99 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. ***[Schedule 1, item 4, paragraph 41-20(1)(b)]***

1.100 Where an amount becomes included in an asset's first element of cost (worked out as at the time the taxpayer begin to hold the asset), the investment commitment time will be the point in time the taxpayer has:

- entered into a contract under which they 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.

1.101 To satisfy the investment commitment time test for such an amount, it is enough that the taxpayer has entered into a contract in relation to the asset between 13 December 2008 and 31 December 2009. However, to qualify for the Tax Break at the 30 per cent rate the contract needs to be entered into before 30 June 2009.

1.102 This means that the taxpayer does not necessarily have to have paid for the asset outright or have taken delivery of the asset within this period. The taxpayer may not start to hold the asset straight away — that may come at a later point — but it must occur before 30 June 2010 in order for the taxpayer to be able to claim the Tax Break at the 30 per cent rate. To qualify for the Tax Break at the 10 per cent rate the investment commitment time needs to occur before 31 December 2009.

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

Example 1.15

From Example 1.14, both Frank and Gail entered into contracts to start to hold their respective ovens after 12 December 2008 and before 31 December 2009. Both Frank's $5,000 investment and Gail's $4,500 and $500 investments could be recognised new investment amounts provided they meet the other eligibility criteria.

Self-constructed assets

1.104 A taxpayer that chooses to self-construct an eligible asset may also qualify for the Tax Break. The taxpayer has started to construct an eligible asset when they have demonstrated a clear intention or commitment to proceed. This ensures that the test for self-constructed assets is broadly analogous to the case where a taxpayer enters into a binding contract.

Example 1.16

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 work was undertaken in anticipation of the project going ahead.

On 15 January 2009, the company's directors signed off a decision to proceed with construction of the lines. However, the company does not physically start to construct the transmission lines or order materials at this stage.

On 10 February 2009 the relevant division of the company started to finalise the specification of the lines and placed the first of a series of orders for the necessary materials.

The investment commitment time for each of the transmission lines is 15 January 2009 as this is when the company evidenced a clear intention to proceed with the construction.

New investment in existing assets

1.105 An amount can become included in as a second element of cost for an existing asset because it relates to an economic benefit that contributes to bringing the asset to its new condition and/or location.

1.106 The investment commitment time for such an amount will be the point in time the taxpayer has entered into a contract for that economic benefit or commenced construction of that economic benefit.

Example 1.17

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

1.107 A taxpayer needs 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. ***[Schedule 1, item 4, subsections 41-25(2) and (3)]***

Exercising an option under an existing contract

1.108 If, prior to 13 December 2008, a taxpayer enters 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, the taxpayer may still be able to claim the Tax Break.

1.109 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. ***[Schedule 1, item 4, subsection 41-25(4)]***

When was the new investment put to use?

1.110 For new assets, the ***first use time*** is when the taxpayer starts to use the asset or has 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 (and so the amount is included in the asset's second element of cost). ***[Schedule 1, item 4, section 41-35]***

1.111 For each new investment in an eligible asset, this first use time needs to occur on or before 31 December 2010 for the amount to be a recognised new investment amount (for any income year). The deadline is earlier — 30 June 2010 — for amounts that attract the Tax Break at its higher 30 per cent rate. ***[Schedule 1, item 4, paragraph 41-20(c)]***

1.112 Note that where the investment commitment time is prior to 1 July 2009 but the first used time is after 30 June 2010 the taxpayer will not be entitled to the Tax Break at the 30 per cent rate. However, provided the first use time is on or before 31 December 2010, the taxpayer will still be able to claim the Tax Break at the 10 per cent rate (provided all the criteria are met).

Example 1.18

From Example 1.16, Greenfield Power Pty Ltd complete construction of some of the transmission lines in late December 2010 at which point the lines are installed ready for use. However, some of the lines commissioned in February 2009 are not completed until March 2011.

It is assumed that the cost of each asset exceeds $10,000 — the new investment threshold that applies to the company.

Those lines that were installed ready for use on or before 31 December 2010 will qualify for the Tax Break at the 10 per cent rate. However, those that were completed in March 2011 will not qualify for the Tax Break.

Example 1.19

From Example 1.14, both Frank and Gail had their ovens installed on 17 August 2009, so they satisfy this part of the test and the amounts they have invested are still on track to being recognised new investment amounts.

Was the purpose test satisfied?

1.113 Unlike deductions under Division 40, 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.

1.114 However, the taxpayer claiming the Tax Break must be able to demonstrate that at the first use time it is reasonable to conclude that they will use the asset principally in Australia for the principal purpose of carrying on a business. ***[Schedule 1, item 4, paragraph 41-20(1)(d)]***

1.115 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. ***[Schedule 1, item 4, subsection 41-20(2)]***

1.116 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 the taxpayer started to use the asset or had it installed ready for use.

Example 1.20

From Example 1.4, several months after acquiring a car for his mobile computer repair business, Bernard suffers some unexpected, serious health problems. He reduces the amount of travelling he undertakes for work and his non-business use of the car increases with trips to hospital.

However, this will not prevent Bernard from being able to claim the Tax Break in relation to the car since at the point he started to use the car it was reasonable to conclude that the car would be used in Australia for the principal purpose of carrying on a business.

Have you already claimed the Tax Break on this amount?

1.117 A taxpayer cannot claim the Tax Break for more than one income year, nor at both the 30 per cent and 10 per cent rates, in respect of the same investment amount in an asset. Once a recognised investment amount has been used to work out the amount of taxpayer's Tax Break for an income year, it cannot be claimed again. ***[Schedule 1, item 4, paragraph 41-20(f)]***

Example 1.21

From Example 1.14, Frank and Gail can satisfy the purpose test since they use their ovens in Australia for the principal purpose of carrying on a business. Neither Frank nor Gail has claimed the Tax Break in relation to their ovens before.

So, Frank's $5,000 and Gail's $4,500 and $500 amounts can now be considered to be recognised new investment amounts. Since both ovens were installed in the 2009-10 income year, Frank and Gail's recognised new investment amounts apply to that year.

Has the relevant new investment threshold been satisfied?

1.118 Working out if the relevant new investment threshold has been satisfied requires a taxpayer to compare the amount of their recognised new investment amounts for the asset for that income year against the threshold. ***[Schedule 1, item 4, paragraph 41-5(1)(d)]***

Example 1.22

From Example 1.14, Frank has a recognised new investment amount of $5,000 for the 2009-10 income year. This clearly exceeds the $1,000 threshold that applies to small business entities so he will be entitled to the Tax Break in 2009-10.

For the 2009-10 income year, Gail has two recognised new investment amounts: $4,500 and $500. She can add these together for the purpose of meeting the threshold and she will also be entitled to the Tax Break in 2009-10. Note that Gail needed to install the oven for the $4,500 to become a recognised new investment amount.

1.119 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 1.23

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 per cent for 2009-10.

1.120 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 1.24

From Example 1.23, 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 per cent 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 per cent rate.

Example 1.25

Ilsa operates a tourism business in Sydney. 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 per cent rate in 2008-09.

1.121 Amounts relating to different types of assets cannot be aggregated in order to meet the threshold. The usual Division 40 rules will apply to determine whether amounts relate to one asset or more than one asset.

1.122 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 1.26

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 per cent 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

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

1.124 To the extent that that taxpayer is in a tax loss situation for the income year in which they claim the Tax Break, the bonus deduction will form part of that loss.

1.125 For the 2008-09 income year, the only bonus deductions able to be claimed will be at the 30 per cent rate. ***[Schedule 1, item 4, subsection 41-15(1)]***

1.126 Only the investment commitment time is relevant to working out if the taxpayer is entitled to the 30 per cent rate in 2009-10, as the asset 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). ***[Schedule 1, item 4, subsection 41-15(2)]***

1.127 It is possible for a taxpayer to have multiple claims in relation to an asset at two different rates in the 2009-10 income year. A taxpayer that:

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

would be able to claim the Tax Break on those amounts at the 30 per cent rate as part of their 2009-10 income tax return. If the taxpayer then also:

- undertakes 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 they would also be able to claim the Tax Break on those amounts at the 10 per cent rate as part of its 2009-10 income tax return.

1.128 For the 2010-11 and 2011-12 income years, only bonus deductions at the 10 per cent rate will be able to be claimed. Taxpayers claiming the Tax Break in the 2010-11 year will not have installed eligible assets or have modified assets in time to access a deduction at the 30 per cent rate. ***[Schedule 1, item 4, subsections 41-15(3) and (4)]***

1.129 A taxpayer with an investment commitment time between 13 December 2009 and 30 June 2009 and first use time after 30 June 2010 does not meet the criteria to claim the Tax Break at the 30 per cent rate. However, provided the first use time is on or before 31 December 2010, the taxpayer will be able to claim the Tax Break at the 10 per cent rate.

1.130 The provisions of the Bill are intended to ensure that taxpayers using substituted accounting periods that meet the deadlines for investing in and installing new assets or improvements to existing assets are equivalently eligible for the Tax Break.

Example 1.27

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 = $5,000

For 2009-10, Frank can claim the Tax Break at the 30 per cent rate. His bonus deduction is $1,500 for the 2009-10 income year.

Gail will not be eligible for the 30 per cent 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 = $5,000 ($4,500 + $500)

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

Index

Schedule 1: Additional deduction for certain new business investment