2008-2009

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be moved on behalf of the Government

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

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Glossary

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

Abbreviation	***Definition***
ITAA 1997	*Income Tax Assessment Act 1997*
Tax Break	Small Business and General Business Tax Break

General outline and financial impact

Small Business and General Business Tax Break

The amendments apply to the Tax Laws Amendment (Small Business and General Business Tax Break) Bill 2009.

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

Proposal announced: Aspects of these amendments were announced as part of the 2009-10 Budget on 12 May 2009.

Financial impact: The amendments increase the cost of the measure by $141 million over four years.

2008-09	*2009-10*	*2010-11*	*2011-12*	*2012-13*
Nil	–$30m	–$63m	–$47m	–$2m

Compliance cost impact: Low.

Chapter 1
Small Business and General Business Tax Break — amendments

Outline of chapter

1.1 These amendments implement the Government's recent expansion of the Small Business and General Business Tax Break (Tax Break) and resolve a number of technical issues in the Tax Laws Amendment (Small Business and General Business Tax Break) Bill 2009.

1.2 All references to legislative provisions in this chapter are references to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise stated. The amendments impact on the Tax Laws Amendment (Small Business and General Business Tax Break) Bill 2009, which inserts a new Division 41 into the ITAA 1997.

Detailed explanation of new law

Amendment 1

1.3 Where the cost of an asset is reduced under Division 40 due to the involuntary disposal of an asset or the forgiveness of debt, it is the unreduced cost that applies for the purposes of the Tax Break.

1.4 When working out if an asset would be eligible for deductions under section 40-25, for the purpose of the Tax Break a taxpayer can disregard any reduction in the cost/adjustable value of the asset that has arisen due to a forgiven debt or involuntary disposal of an asset. ***[Amendment 1]***

Amendment 2

1.5 Section 41-15 determines the amount of the deduction that a taxpayer is able to claim in relation to an eligible asset. Working out the amount of a taxpayer's deduction involves multiplying the applicable rate by the recognised new investment amounts for the income year in relation to the asset. ***[Amendment 2]***

Which rate applies?

Small business entities

1.6 If a taxpayer is a small business entity, then only the 50 per cent rate is relevant.

1.7 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 carry on a business in that year and:

- they carried on a business during the previous income year and their aggregated turnover for that year was less than $2 million; and/or
- it is likely that their aggregated turnover is to be less than $2 million for the current income year.

1.8 To qualify for the lower 'new investment threshold' ($1,000 rather than $10,000), 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 asset to use, or claim the Tax Break.

1.9 If a taxpayer is eligible for the lower threshold for an income year, they will be able to deduct 50 per cent of their 'recognised new investment amounts' in relation to an asset for that income year.

Example 1.1

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

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

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

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

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

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

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

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

Other taxpayers

1.10 If a taxpayer is not a small business, then there are two rates which could apply: 30 per cent or 10 per cent.

Summary

1.11 Tables 1.1 and 1.2 summarise the new 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: Small business entities

Installed by:	***New investment by:***
	31 December 2009
30 June 2009	50% in 2008-09
30 June 2010	50% in 2009-10
31 December 2010	50% in 2010-11

Table 1.2: All other taxpayers

Installed by:	***New investment 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

Which rate applies to batches and sets?

1.12 A taxpayer who is not a small business entity is eligible to claim a 30 per cent bonus deduction if they incur expenditure on multiple assets that form a batch of identical or substantially identical assets or assets that are part of a set of assets, and this expenditure meets the requirements for the 30 per cent bonus deduction. ***[Amendment 2]***

1.13 To be eligible for the Tax Break at the 30 per cent rate, an asset that is part of a batch or set must (among other things) have an 'investment commitment time' between 13 December 2008 and 30 June 2009 and a first use time on or before 30 June 2010.

1.14 In addition, the sum of the recognised new investment amounts in relation to the asset plus the recognised new investment amounts in relation to other assets in the batch or set (that also have an investment commitment time between 13 December 2008 and 30 June 2009 and a first use time on or before 30 June 2010) must meet the relevant new investment threshold.

1.15 A taxpayer's investments in a batch or set of eligible assets can also be rolled over into future income years.

Example 1.2

Otto operates a commercial laundry that is not a small business. On 1 May 2009, he purchases eight dryers and installs them in two of his stores. Each dryer has a recognised new investment amount of $1,000.

The assets are substantially identical. Therefore, Otto can aggregate his expenditure on the dryers for the purpose of meeting his new investment threshold.

This approach gives Otto an aggregated total recognised new investment amount for 2008-09 of $8,000. However, Otto has not satisfied the relevant new investment threshold of $10,000 and cannot claim the Tax Break in his 2008-09 tax return.

On 1 August 2009, Otto purchases another four dryers and installs these in another store. These dryers are substantially identical to those he purchased and installed in 2008-09. Each dryer has a recognised new investment amount of $1,000.

As Otto has not previously claimed the Tax Break for his $8,000 of expenditure in 2008-09, he can carry the $8,000 forward into 2009-10.

Otto's aggregated total recognised new investment amount in relation to the dryers for 2009-10 is $12,000 which satisfies the relevant new investment threshold.

Otto can claim the Tax Break on this amount at the rate of 10 per cent in his 2009-10 tax return. He is not eligible to claim the Tax Break at the rate of 30 per cent as the total of the recognised new investment amounts in relation to the dryers with an investment commitment time between 13 December 2008 and 30 June 2009 and a first use time on or before 30 June 2010 did not satisfy the relevant new investment threshold.

Amendments 3 and 4

1.16 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 first incur expenditure in respect of the construction of the asset or the modifications to an existing asset. ***[Amendments 3 and 4]***

1.17 This approach ensures that the test for self-constructed assets is broadly analogous to the case where a taxpayer enters into a binding contract, while providing taxpayers with the certainty of an objective and verifiable test.

Example 1.3

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

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

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

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

Example 1.4

Donaldson's Dairy manufactures a range of milk and cheese products. In early 2009 the company starts to formulate plans to renovate one of its manufacturing plants. The project includes modifications to an existing tank and the construction of a new conveyer belt.

On 30 March 2009, the company engages an electrical firm to undertake the modifications to the tank at a cost of $15,000, rather than construct the modifications itself.

Also on 30 March 2009, the company starts to order some of the materials it will need to construct the new conveyor belt and incurs expenditure in relation to the materials.

On 20 April 2009, the company engages two contractors who will undertake the work under the direction of the company's chief engineer.

The contractors do not physically commence work on the conveyor belt straight away. They spend a number of weeks undertaking further preparatory work and checking the company's exact specifications for the asset to be constructed.

The modifications to the tank are completed on 30 September 2009. Construction is completed and the conveyor belt installed ready for use on 10 October 2009 at a total cost of $50,000.

The company's investment commitment time in relation to the tank is 30 March 2009 as this is when it entered into a contract in relation to modifications.

The investment commitment time in relation to the conveyor belt is also 30 March 2009 as this is when the company first incurred expenditure in respect of the construction of the asset.

If the company had not ordered materials until the contractors were hired, then 20 April 2009 would be the investment commitment time for the conveyor belt as that is when the company would have first incurred expenditure in respect of the construction of the conveyor belt.