

2009

EXPOSURE DRAFT

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)

Glossary

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

<i>Abbreviation</i>	<i>Definition</i>
GST	Goods and Services Tax
ITAA36	<i>Income Tax Assessment Act 1936</i>
ITAA97	<i>Income Tax Assessment Act 1997</i>
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 12 December 2008 and the end of December 2009.

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

Proposal announced: This measure was announced in the Treasurer's Press Release No. 12 of 3 February 2009.

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

Revenue

<i>2007-08</i>	<i>2008-09</i>	<i>2009-10</i>	<i>2010-11</i>	<i>2011-12</i>
-	-	-1,440.0	-1,800.0	-515.0

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 a temporary bonus income tax deduction for new, tangible depreciating assets and new expenditure on existing assets.

1.2 All references to legislative provisions in this chapter are references to the *Income Tax Assessment Act 1997* (ITAA97) unless otherwise stated.

- This Bill inserts a new Division 41 into the ITAA97 to provide a legislative framework for the Tax Break.

Context of amendments

1.3 The Small Business and General Business Tax Break is one of the measures being implemented by the Government to support economic growth and employment in Australia in the face of a deteriorating global economic environment.

- The role of the Tax Break is to stimulate new capital investment by Australian businesses.
- The temporary nature of the measure provides an incentive for businesses to bring forward and/or not postpone new capital investment in the current economic climate.

1.4 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 Press Release No. 12 of 3 February 2009.

- The Tax Break subsumes the 10 per cent temporary investment allowance announced in the Treasurer's Press Release No. 141 of 12 December 2008. Legislation to implement the December 2008 announcement was not introduced into the Parliament.

Summary of new law

New investment in eligible assets

1.5 The Tax Break is available for new investment in tangible, depreciating assets for which a deduction is available under Subdivision 40-B of the ITAA97.

New investment

1.6 New investment in this context means that the taxpayer made an investment decision after 12 December 2008.

- Assets that a taxpayer held or entered into a contract to hold on or before 12 December 2008 will not qualify.
- Similarly, assets that had been used or installed ready for use (by any entity) on or before 12 December 2008 will not be eligible.
- However, additional investment in such assets undertaken after 12 December 2008 may be eligible for the Tax Break.

Eligible assets

1.7 Tangible, depreciating assets has the meaning given by Division 40 of the ITAA97 — it includes business machinery and equipment and excludes intangible assets, land and trading stock.

1.8 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. There are several exceptions to this rule – that is, assets which are ‘added in’ to 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 are eligible assets.
- Assets for which a small business entity would usually claim 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

1.9 New investment in relation to an asset 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 types of businesses.

1.10 While the threshold applies per asset, multiple investments – or recognised new investment amounts – that relate to the same asset may be amalgamated in meeting the new investment threshold.

Use in Australia for the principal purpose of carrying on a business

1.11 Unlike deductions under Subdivision 40-B, the Tax Break will not be apportioned for any non-business use of the asset. However, a taxpayer must be able to demonstrate that at the time they started to use the asset or had it installed ready for use, the asset was to be used in Australia and for the principal purpose of carrying on a business.

1.12 The Tax Break will not be clawed back for any subsequent non-business use or disposal of the asset 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.

Claiming the Tax Break

1.13 The taxpayer who is entitled to the capital allowance deduction (under Subdivision 40-B of the ITAA97) in relation to the asset’s decline in value is entitled to claim the Tax Break.

1.14 The income year that the Tax Break can be claimed and the rate to be used in calculating a taxpayer’s bonus deduction depends primarily on when the new investment is undertaken and when the new or modified asset is put to use.

10 per cent

1.15 In order to qualify for the 10 per cent bonus deduction in relation to an asset:

- the time of the taxpayer’s investment in the asset needs to be after 12 December 2008 and on or before 31 December 2009;
- the sum of all of the recognised investment amounts in relation to the asset must exceed the new investment threshold that applies to the taxpayer; and

- the time at which the asset starts to be used and/or the economic benefit of the improvement to the asset is realised is before 31 December 2010.

30 per cent

1.16 By acting sooner, a taxpayer may be able to qualify for the 30 per cent bonus deduction – that is, the deadlines for investing and installing are 30 June 2009 and 30 June 2010 respectively.

Income year

1.17 For the 2008-09 income year, the only bonus deductions able to be claimed will be at the 30 per cent rate. This is because a taxpayer would need to have acquired an eligible asset, have it installed ready for use and met the relevant new investment threshold prior to 30 June 2009.

1.18 For the 2010-11 income year, only bonus deductions at the 10 per cent rate are able to be claimed. Taxpayers claiming the Tax Break in the 2010-11 year will not have installed an eligible asset or realised the benefit of a modification to the asset in time to access a deduction at the 30 per cent rate.

1.19 However, in the 2009-10 income year a taxpayer may be able to claim some amounts at the 30 per cent rate and others at the 10 per cent rate depending on when the investment decision was made, when the asset was installed ready for use and when the new investment threshold was satisfied.

1.20 The table below summarises the key dates relating to the different rates at which the Tax Break could be claimed (subject to all other conditions being met).

Diagram 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

1.21 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.

Is the asset eligible?

1.22 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 ITAA97. [*Schedule 1, part 2, paragraphs 41-105(1)(a) and 41-105(1)(b)*]

Is it a tangible depreciating asset?

1.23 Section 40-30 of the ITAA97 defines a depreciating asset as an asset with a limited effective life and that can be reasonably expected to decline in value over time. However, there are some exceptions.

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

1.24 In general terms, section 40-25 entitles a taxpayer to income tax deductions, called capital allowance deductions, in respect of a depreciating asset's decline in value over its effective life.

1.25 Assets that receive capital allowance deductions under the following subdivisions of Division 40 are excluded by subsection 40-50(1) from claiming deductions under Subdivision 40-B and not eligible for the Tax Break:

- subdivision 40-F (depreciating assets involved in primary production – including water conservation facilities and horticultural plants);
- subdivision 40-G (capital expenditure of primary producers and other landholders); and
- subdivision 40-J (capital expenditure for the establishment of trees in carbon sink forests).

1.26 Assets under these subdivisions generally already receive concessional capital allowance deductions through being able to claim deductions over a shorter period of time than an asset's effective life.

1.27 Similarly, capital works, for which deductions are available under Division 43 of the ITAA97, are not eligible for the Tax Break.

Example 1.2

Annie also decides to build an extension on to her bakery to provide more space for customers to sit and eat. Annie may be able to claim a deduction under Division 43 for the expense of constructing the extension, but this expenditure would not be eligible for the Tax Break.

1.28 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 ITAA36. This would mean that an asset used exclusively for R&D would be precluded from the Tax Break. To avoid this situation, the Bill provides that tangible, depreciating assets that receive a deduction under the R&D provisions may still be eligible for the Tax Break. [*Schedule 1, part 2, paragraph 41-105(2)(c)*]

Working out if a car is eligible

1.29 Division 28 of the ITAA97 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.

1.30 Taxpayers using 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 over 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.

1.31 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.

1.32 However, taxpayers will not be excluded from the Tax Break merely because they use the ‘12 per cent of original value’ method. *[Schedule 1, part 2, paragraph 41-105(2)(a)]*

- Note that these taxpayers will still be ineligible for capital allowance deductions under Division 40 but may be entitled to the Tax Break.

1.33 Those using the ‘cents per kilometre’ method will be excluded from the Tax Break. However, this method can only be used for up to 5,000 business kilometres, implying limited business use.

1.34 Although the ‘one-third of actual expenses’ and ‘12 per cent of original value’ methods are only available where there is substantial business use (that is, 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 1.3

On 20 March 2009, Bernard acquires a car 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% of original cost’ method to work out his car expense deductions for the 2008-09 income year.

While Bernard cannot claim a deduction under section 40-25 for the car’s decline in value over the 2008-09 income year, he may still be able to claim the Tax Break.

Assets held by small business entities

1.35 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 ITAA97.

1.36 However, a small business entity that chooses to deduct amounts for depreciating assets under Subdivision 328-D will not be ineligible for the Tax Break merely because they make such a choice. *[Schedule 1, part 2, paragraph 41-105(2)(b)]*

Summary

1.37 The following table summarises 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 1.1

<i>Eligible</i>	<i>Not eligible</i>
<ul style="list-style-type: none"> • Tangible, depreciating assets for which a deduction is available under section 40-25 of the ITAA97 such as: <ul style="list-style-type: none"> – machinery – equipment – cars – except those using the ‘cents per kilometre’ method • Tangible, depreciating assets used by small business entities • Tangible, depreciating assets used in R&D 	<ul style="list-style-type: none"> • Intangible assets, such as: <ul style="list-style-type: none"> – computer software – intellectual property rights • Cars using the ‘cents per kilometre’ method • Land • Trading stock • Horticultural plants, establishment costs of carbon sinks • Capital works – buildings, construction expenditure

Is the asset new?

1.38 Division 40 of ITAA97 does not include the concept of ‘new’ or ‘second hand’ assets. However, this is an important feature of the eligibility criteria for the Tax Break.

1.39 The Tax Break aims to provide a stimulatory effect to the economy by encouraging the acquisition of assets which have not been used in the economy previously.

1.40 An asset is ‘new’ for the purposes of the Tax Break if it has never been installed ready for use before either by the taxpayer or another entity for any purpose, anywhere prior to 12 December 2008. This means that second-hand assets are not eligible for the Tax Break. *[Schedule 1, part 2, paragraph 41-120(1)(e) and section 41-130]*

1.41 However, 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, part 2, subsection 41-120(2)]*

Example 1.4

In Example 1.2, the car Bernard acquired was actually a ‘demonstrator’ vehicle. Providing this prior use only amounts to reasonable testing and trialling, the car will still be considered to be ‘new’ for the purpose of the Tax Break.

Example 1.5

Collie Mining Company arranges to lease a new dragline from Big Machine Leasing Pty Ltd. 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.

Who is entitled to the bonus deduction?

1.42 The Tax Break is to be claimed by the taxpayer that is entitled to deductions in respect of the asset’s decline in value under Subdivision 40-B. [*Schedule 1, part 2, paragraph 41-105(1)(b)*]

1.43 This means that eligible assets held under a lease will still qualify for the Tax Break. However, the bonus deduction it 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.

- 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.

1.44 Section 40-40 contains a table that is used to work out which entity holds an asset for Division 40 purposes; this is replicated below.

Table 1.2

<i>Item</i>	<i>This kind of depreciating asset:</i>	<i>Is held by this entity:</i>
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 <i>not</i> 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)

<i>Item</i>	<i>This kind of depreciating asset:</i>	<i>Is held by this entity:</i>
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	<p>A right that an entity legally owns but which another entity (the <i>economic owner</i>) 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:</p> <p>(a) the economic owner will become its legal owner; or</p> <p>(b) it will be disposed of at the direction and for the benefit of the economic owner</p>	The economic owner and <i>not</i> the legal owner
6	<p>A *depreciating asset that an entity (the <i>former holder</i>) would, apart from this item, hold under this table (including by another application of this item) where a second entity (also the <i>economic owner</i>):</p> <p>(a) possesses the asset, or has a right as against the former holder to possess the asset immediately; and</p> <p>(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;</p> <p>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</p>	The economic owner and <i>not</i> the former holder
7	A *depreciating asset that is a partnership asset	The partnership and <i>not</i> any particular partner

<i>Item</i>	<i>This kind of depreciating asset:</i>	<i>Is held by this entity:</i>
8	<p>*Mining, quarrying or prospecting information that an entity has and that is relevant to:</p> <p>(a) * mining operations carried on, or proposed to be carried on by the entity; or</p> <p>(b) a *business carried on by the entity that includes *exploration or prospecting for *minerals or quarry materials obtainable by such operations;</p> <p>whether or not it is generally available</p>	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.

Which new investment threshold applies?

1.45 The new investment threshold is \$1,000 for small business entities and \$10,000 for all other taxpayers. [*Schedule 1, part 2, section 41-135*]

1.46 A taxpayer is 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.

1.47 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, part 2, subsection 41-135(a)*]

Example 1.6

Delilah runs a profitable day spa. Her aggregated turnover for 2007-08 was just under \$2 million. Delilah expects her aggregated turnover in 2008-09 to be less than it was in 2007-08 due to a slackening of demand. Therefore, Delilah meets the definition of a small business entity for 2008-09.

Delilah decides to invest in a new, state of the art spa bath. She starts to hold the asset under a contract entered into on 2 June 2009 and has the asset installed ready for use on 10 July 2009.

If in 2009-10, Delilah finds that she no longer meets the definition of a small business entity because her turnover for 2008-09 is greater than \$2 million, she still only has to meet the lower investment threshold.

What can be counted towards the threshold?

1.48 A taxpayer needs to satisfy the relevant new investment threshold on a per asset basis. That is, investments in multiple, different assets will not be able to be amalgamated for the purpose of meeting the new investment threshold. *[Schedule 1, part 2, section 41-120]*

Example 1.7

Edward operates a landscaping business. To better manage his business accounts he acquires a computer, a new multifunction photocopier and some new book keeping software.

The software is an intangible asset and is therefore not eligible for the Tax Break. However, the computer and photocopier are tangible, depreciating assets.

The new investment threshold needs to be satisfied in relation to each asset. This means that Edward cannot group his expenditure on the computer and the photocopier – even though they will be used in a similar setting – for the purposes of meeting the new investment threshold.

1.49 Multiple amounts – called recognised new investment amounts – in relation to the same asset can be amalgamated for the purposes of the meeting the threshold. *[Schedule 1, part 2, paragraph 41-105(1)(d)]*

- This means that a taxpayer can make multiple investments in the same asset that are individually less than either \$1,000 or \$10,000 but may still be able to satisfy the new investment threshold.

What is a recognised new investment amount?

When was the new investment undertaken?

1.50 To be a recognised new investment amount for an asset in any income year, the amount needs to be included in the asset's cost between 13 December 2008 and the end of 31 December 2009. That is, a taxpayer needs to have invested in the asset between these times. [*Schedule 1, part 2, paragraph 41-120(1)(b) and section 41-125*]

What is the asset's cost?

1.51 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.

1.52 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. Section 40-180 contains a table to be used in working out an asset's first element of cost in different circumstances.

1.53 Second elements of cost are amounts that the taxpayer has paid in order to bring the asset to its present condition. Section 40-190 contains a table for taxpayers to use in working out when an amount has become a second element of cost.

1.54 Subdivision 27-B of the ITAA97 deals with the interaction between the GST and capital allowance deductions. Generally the cost of an asset for capital allowance purposes, and therefore the Tax Break, is GST-exclusive.

Example 1.8

Edward (from Example 1.7) 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 deductible under the repair provisions.

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 1.9

Frank and Gail are both small business entities that operate cafes in Canberra. Frank and Gail 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. Once installed, Gail's oven also has a total cost of \$5,000.

When is an investment considered to occur?

1.55 The framework for the Tax Break also includes the concept of an 'investment time', which is when the investment is considered to have been made. [*Schedule 1, part 2, subsection 41-125(1)*]

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

- entered into a contract to start to hold the asset; or
- started to construct the asset; or
- started to hold the asset in some other way.

1.57 Where an amount becomes included in an asset's second element of cost (because the amount relates to an economic benefit that contributes to bringing the asset to its new condition and/or location) the investment time will be the point in time the taxpayer has entered into a contract for that economic benefit or commenced construction of that economic benefit.

1.58 A taxpayer needs to have invested in an eligible asset after 12 December 2008 and on or before 31 December 2009. This requirement cannot be circumvented by 'refreshing' a contract entered into on or before 12 December 2008. [*Schedule 1, part 2, subsection 41-125(2)*]

Example 1.10

From Example 1.9, both Frank and Gail entered into contracts to start to hold their respective ovens after 12 December 2008 and before 31 December 2009.

So far, both Frank's \$5,000 investment and Gail's \$4,500 and \$500 investments are looking like they could be recognised new investment amounts.

Working out the cost of a car

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

- Under section 40-230, luxury cars that are mainly designed for carrying passengers have their first element of cost reduced to the car limit.
- The car limit for 2008-09 is \$57,180 and is indexed annually in line with the Consumer Price Index (Motor Vehicles).

1.60 As the Tax Break uses the same asset cost as the capital allowance regime, the Tax Break is only available up to the car limit.

When was the new investment put to use?

1.61 To assist with this inquiry, the Bill defines a first use time for an amount (that is, a new investment in an eligible asset).

- For new assets, this 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 included in the asset's second element of cost). [*Schedule 1, part 2, paragraph 41-120(1)(d) and subsection 41-125(1)*]

1.62 For each new investment in an eligible asset, this first use time needs to occur before 31 December 2010 for the amount to be a recognised new investment amount (for any income year). [*Schedule 1, part 2, paragraph 41-120(c)*]

- The deadline is earlier — 30 June 2010 — for amounts that attract the Tax Break at its higher 30 per cent rate.

1.63 Note that where the investment time is prior to 30 June 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 before 31 December 2010, the taxpayer will still be able to claim the Tax Break at the 10 per cent rate (subject to all of the other requirements being met).

Example 1.11

From Example 1.9, 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?

1.64 Unlike deductions under Division 40, the Tax Break will not be reduced for any non-business use of the asset or apportioned based on the actual business use of the asset over a particular income year.

1.65 However, a taxpayer must be able to demonstrate that at the time the asset was installed ready for use, the asset was to be used in Australia and genuinely for the principal purpose of carrying on a business.
[Schedule 1, part 2, paragraph 41- 120(1)(d)]

1.66 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 1.12

From Example 1.9, Frank and Gail can satisfy their purpose test since:

- they started to use their ovens in Canberra, Australia; and
- the ovens are used for the principal purpose of carrying on a business (that is, a café).

Example 1.13

From Example 1.2, several months after acquiring a car for his mobile computer repair business, Bernard suffers some 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 he did so in Australia for the principal purpose of carrying on a business.

Example 1.14

Edward (from Examples 1.7 and 1.8) acquires a V8 ute for recreational use in May 2009. He uses it instead of his normal work vehicle for the remainder of the 2008-09 income year and then reverts to using his normal work vehicle in his business (to make deliveries and site visits).

The V8 ute does not qualify for the Tax Break, as Edward did not start to use it for the principal purpose of carrying on a business. Although it was used in his business, this was principally in order to obtain an unintended Tax Break on a private vehicle.

Have you already claimed the Tax Break on this amount?

1.67 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. That is, once a recognised investment amount has been used to meet the relevant new investment threshold and a claim has been made, it loses its status. [*Schedule 1, part 2, section 41-120(f)*]

Example 1.15

Neither Frank nor Gail (from Example 1.9) has claimed the Tax Break before. So Evelyn's \$5,000 investment and Frank's \$4,500 and \$500 investments can now be considered to be recognised new investment amounts. Because both ovens were installed in the 2009-10 income year, Frank and Gail's recognised new investment amounts apply to that year.

New expenditure on existing assets

1.68 The Tax Break also applies to new expenditure on assets that existed prior to 13 December 2008, where that expenditure is of a capital nature. Such amounts would be included in the asset's cost and subject to capital allowance deductions under Subdivision 40-B.

1.69 Amounts relating to such assets are treated in the same manner as amounts relating to new assets — although amounts relating to existing assets will usually be included in the asset's second element of costs.

Example 1.16

Hugo owned a launch prior to 13 December 2008. He decides to convert it to use for dinner cruises on Sydney Harbour, by reconfiguring the decks, at a cost of \$12,000.

Hugo does not meet the definition of a small business entity so his new investment threshold is \$10,000.

He 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.

Hugo's \$12,000 meets all of the requirements for a recognised new investment amount. Further, this amount clearly exceeds his new investment threshold of \$10,000.

Since he started to use the modified asset prior to 30 June 2009, Hugo will be able to claim the Tax Break at the 30 per cent rate in 2008-09.

1.70 Where additional spending on an existing asset results in a new asset being created (that is, where the old asset is split into two or more assets or merged into a new asset), an amount included in the first element of cost for the new asset(s) will not be eligible for the tax break where the amount was for an investment made before 13 December 2008 or where the Tax Break had already been claimed on that amount.

Has the relevant new investment threshold been satisfied?

1.71 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, part 2, paragraph 41-105(1)(d)*]

Example 1.17

From Example 1.16, both Frank and Gail are small business entities. Therefore the relevant new investment threshold is \$1,000 per asset.

For the 2009-10 income year, Frank has a recognised new investment amount of \$5,000. This clearly exceeds the threshold 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.

1.72 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 1.18

Hugo (from Example 1.15) also runs a water taxi service. He orders and takes delivery of a new \$9,000 boat 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 radio aerial at a cost of \$1,200. His recognised new investment amount for 2009-10 is \$10,200, as he had not previously been entitled to the Tax Break on the \$9,000 amount. Hugo receives the Tax Break at a rate of 10 per cent for 2009-10.

1.73 Once the Tax Break has been claimable for an amount, it cannot count toward meeting the threshold for subsequent years.

Example 1.19

From Example 1.18, had Hugo's new boat 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.

In the absence of further capital spending on the boat other than the aerial, his recognised new investment amount for 2009-10 would only be \$1,200, and no Tax Break would be claimable for that income year.

1.74 Amounts relating to different 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.

Example 1.20

Inez owns a café and is not a small business. She purchases a new coffee machine for \$2,400, a new refrigerator costing \$4,000 and pizza oven costing \$5,000. All of these amounts are below \$10,000 and, being separate assets, cannot be aggregated to reach the threshold.

Calculating the bonus deduction

1.75 For the 2008-09 income year, the only bonus deductions able to be claimed will be at the 30 per cent rate. [*Schedule 1, part 2, subsection 41-115(1)*]

- This is because a taxpayer would need to have acquired an eligible asset, have it installed ready for use and met the relevant new investment threshold prior to 30 June 2009.

1.76 For the 2010-11 income year, only bonus deductions at the 10 per cent will be able to be claimed. [*Schedule 1, part 2, subsection 41-115(3)*]

- Taxpayers claiming the Tax Break in the 2010-11 year will not have installed eligible assets in time to access a deduction at the 30 per cent rate.

1.77 However, in the 2009-10 income year a taxpayer may be able to claim some amounts at the 30 per cent rate and others at the 10 per cent rate depending on when the investment decision was made. Provided the investment time was on or before 30 June 2009, the Tax Break in respect of that amount can be claimed at the 30 per cent rate. [*Schedule 1, part 2, subsection 41-115(2)*]

- Only the investment time is relevant to working out if the taxpayer is entitled to the 30 per cent rate in 2009-10.
- The asset would need to have been installed ready for use prior to the end of the 2009-10 income year (30 June 2010) in order to be entitled to a deduction in relation to the asset under section 40-25 (and hence to the Tax Break).

1.78 It is possible for a taxpayer to have two 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 prior to 30 June 2009;
- has recognised new investment amounts with an investment time in 2008-09 that exceed the relevant threshold; and
- first uses the asset prior to 30 June 2010;

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

- undertakes new investment in the same asset after 30 June 2009; and

- first uses the asset in its modified state prior to 30 June 2010;

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.

1.79 The Tax Break will not impact on the taxpayer's capital allowance deductions in relation to the asset under Subdivision 40-B. That is, the Tax Break does not enter into any balancing adjustments in relation to the asset.

- Note that 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 its value.

Example 1.21

Here is what we know about Frank's investment in his oven:

- Investment time = 29 June 2009
- First use time = 17 August 2009
- Recognised new investment amount = \$5,000

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

However, Gail will not be eligible for the 30 per cent rate. Here is what we know about the investment in her oven:

- Investment time = 10 August 2009
- First use time = 17 August 2009
- Recognised new investment amounts = \$5,000 (\$4,500 + \$500)

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

