



NEWSLETTER MARCH 2009

INVESTMENT ALLOWANCE TAX DEDUCTION EXPOSURE DRAFT LEGISLATION



On 25 February 2009, Treasury released exposure draft legislation giving effect to the Federal Government's Investment Allowance incentive. This is another plank in the Federal Government's Economic Stimulus Package. It is aimed to encourage business to re-engage in capital expenditure as soon as possible.

Taxpayers can obtain a once only 30% deduction for the cost of a depreciating asset that is ordered between 13 December 2008 and 30 June 2009 provided the asset was installed ready for use by 30 June 2010.

What are the Timing Considerations for the Additional Tax Deduction?

To be eligible the asset must be a tangible asset costing \$10,000 (exclusive of GST) or more. If you are a Small Business Taxpayer, the threshold is reduced to expenditure of \$1,000 (exclusive of GST) or more. Motor Vehicles were expressly included in the Investment Allowance but only up to the Depreciation Cost Limit (currently \$57,180 for the 2007/2008 year but will be indexed in 2008/2009).

For assets acquired and ordered between 1 July 2009 and 31 December 2009 and where they are installed ready for use before 31 December 2010, the deduction is reduced to 10 per cent of the asset's cost. Where the contract date to acquire the asset, or construction of the asset is commenced, or otherwise holding the asset commenced after 12 December 2008 but the asset is only installed ready for use between 30 June 2010 and 31 December 2010, only the 10% investment allowance deduction applies.

Other Conditions

1. The asset must be a new asset that was first used in Australia for the principal purpose of carrying on a business or an improvement to an existing asset that was installed ready for use in Australia for the principal purpose of carrying on a business.

However, where there was a bona fide intention to use the asset for the principal purpose of carrying on a business and subsequently the asset is used for a non business purpose, there is no claw back of the Allowance.

This will be especially relevant to motor vehicles that have a private use component. No further commentary has been given concerning to what extent the asset must be used in a business to satisfy the "principal purpose" test. If the test is applied in the same way as the test is applied in the Fringe Benefits Tax legislation, assets that have been acquired with the intention that they be used more than 50% of the time for business are likely to qualify.

We expect that the principal purpose test will be clarified further by the time the legislation is introduced into Parliament.

2. The first use of the asset will exclude any reasonable test or trial of the asset prior to the asset being installed ready for use.
3. The allowance will also apply to the new expenditure incurred after 12 December 2008 on assets acquired prior to 13 December 2008, provided that the expenditure is of a capital nature. However, if the new expenditure on existing assets results in a new asset being created (for example, it is split into 2 or more assets), an amount included in the first element of cost for the new asset will not be eligible for the allowance where the amount was for an investment made before 13 December 2008 or where the bonus deduction had already been claimed on that amount.
4. A depreciating asset will include motor vehicles that do not qualify for depreciation because of the deduction being claimed under the 12% of cost method. It will NOT cover motor vehicles that are deducted under the cents per kilometre method.

Cars deducted under the log book method and the one third of actual expenses method are included in the investment allowance as both methods allow a claim for depreciation of the motor vehicle.

5. There are integrity measures that prevent manipulation of the acquisition or installation date to bring assets within the investment allowance.

Hence a cancellation of a contract entered into prior to 13 December 2008 and subsequent re purchase of the same or similar asset after 13 December 2008 would be excluded from the Investment Allowance if the cancellation and re acquisition occurred for the purpose of claiming the Investment Allowance.

MATTERS TO THINK ABOUT

Cars

We consider that the Investment Allowance applies to purchases of new motor vehicles that are provided to employees as part of a salary package. If the legislation remains unchanged, that will mean that an employer will effectively be able claim the 30% Investment allowance on the cost of the new car up to the Depreciation Cost limit plus 25% depreciation using the Diminishing Value method.

Effectively it means a write off of more than half of the cost of the car in the first year the car is acquired. The Employer entity must be eligible to claim tax depreciation for the car. That means the finance to acquire the motor vehicle must be under a Hire Purchase and not under a finance lease or operating lease.

Documentation

It is essential that the documentary evidence supports that the asset is a new asset and was acquired for a principal business purpose. This documentary support will not only be important for the Investment Allowance but for any GST Input Tax Credit claim that you undertake.

Computers

The software component of a computer is excluded from the Investment Allowance. As such, we consider that it is prudent to specify in any contract for the purchase of the computer that where the software is bundled with the computer that it is specified that the software is supplied at no charge, or alternatively a separate charge for the software is specified on the tax invoice.

Multiple Assets Purchased

The Allowance applies on an asset by asset basis. As such it is important to identify whether each asset is taken together or to be separated for the purpose of whether its cost exceeds the threshold.

Improvements

The Investment Allowance applies to improvements. Often it is difficult to distinguish between a repair and an improvement. It is important to identify that an improvement increases the functionality of the asset rather than restore the asset to its original specifications.

We will advise you of further developments as they arise.

If you have any queries, or would like advice in relation to any matters relating to any of the above, please contact either Michelle Saunders or Marissa Bechta on (08) 6311 6900.

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