

June 2009

30 June 2009 cut off for 30% investment allowance

The investment allowance rate for businesses, that are **not** small businesses, will drop from 30% to 10% for items they have committed to acquire or construct after 30 June 2009. If you have a commitment time for an item by 30 June 2009 and the item is installed ready for use between 1 July 2009 and 30 June 2010, you may be eligible for the 30% investment allowance in the 2009/2010 tax year. Below are some of the issues that you may wish to consider in this regard.

Note that businesses that have an aggregate turnover of less than \$2 million will generally not be affected by these issues as they will usually qualify as small business entities and are entitled to the 50% rate for commitment times on both sides of 30 June 2009.

H P agreement must be by 30 June

For items acquired under a hire purchase (H P) agreement, the commitment date for the investment allowance is the date of entering into the H P agreement and not the date of making the order to the supplier.

The Australian Taxation Office (ATO) recently issued a fact sheet that confirmed this is their view. The ATO's rationale is that the commitment time requires that you "hold or will hold the asset at a later time" as defined in the capital allowance (depreciation) provisions. If you acquire an asset under a H P agreement, the depreciation provisions say you will not be taken to hold (or will hold the asset at a later time) until you enter into the H P agreement.

If you have ordered an item by 30 June 2009, and it is to be acquired under a H P agreement, make sure you have also made the H P agreement by 30 June 2009 to get the 30% rate.

If the H P agreement cannot be made until after 30 June 2009, you could consider another financing arrangement such as a chattel mortgage, as discussed below.

Chattel mortgage

If you make a unconditional order to acquire an item by 30 June 2009 and finance it by a chattel mortgage, your commitment time will generally be the date of making the contract (usually the date of making the order).

However, care needs to be taken if the contract for acquisition is "subject to finance", as discussed below.

Contracts subject to finance

If an order of an item is subject to finance, the contract may be a conditional contract. Where the contract provides that the purchaser is not bound by the contract if finance is not obtained, this may be a condition precedent to the formation of the contract and the commitment time may not be until the finance is approved.

However, where the contract has been made but will not be completed until finance is obtained; the commitment time would generally be the date of signing the contract or order form. In these cases the purchaser is committed to acquire the item but will generally not take delivery and pay for the item until finance is obtained. This is generally known as a condition precedent to the performance of the contract.

Whether a particular contract is conditional, needs to be considered on a case by case basis and legal advice may be required in some cases.

Constructing assets

The commitment time for assets you construct is the time you first incur expenditure in respect of the construction. Generally this means you need to have a presently existing obligation to pay for something in relation to the construction of the asset.

For example, if the first expenditure in relation to the construction of the item is the acquisition of the raw materials, the time of incurring that expenditure will be the commitment time.

Alternatively, if you have incurred preliminary costs such as engineering plans or architectural drawings for the construction of the asset before you acquire the raw materials, the date of incurring the cost of engineering plans or architectural drawings may be the commitment time.

However, where you have incurred preliminary expenditure before making a commitment to construct the asset, the time of that expenditure will not be the commitment time. For example, feasibility studies or tender costs may be one step removed from the commitment to construct the item.

The question of when the first construction cost is incurred will need to be considered on a case by case basis and you should consult with you PKF tax adviser in this regard.

Should you require assistance or additional information, **please contact your PKF Tax Adviser** or:

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