



TECHNICAL UPDATE

THE TAX BREAK AND FINANCING - HOW IT AFFECTS THE MOTOR INDUSTRY

► **THE OPPORTUNITY TO TAKE ADVANTAGE OF THE GOVERNMENT'S TAX BREAK ENDS 31 DECEMBER 2009. IF YOU HAVEN'T ACQUIRED OR ENTERED INTO A CONTRACT TO ACQUIRE AN ASSET BY THIS DATE YOU WILL MISS OUT ON THIS GOVERNMENT INCENTIVE.**

Many assets acquired now may not be delivered prior to 31 December 2009. As businesses look to invest in new assets before this deadline they will want to ensure the tax break will still be available to them even though the delivery of the goods may not occur until 2010. This was not previously thought to be a problem as the rules generally required the goods to be installed by 31 December 2010. However, a recently released Australian Taxation Office (ATO) fact sheet has cast some doubt on this, and as many new orders are now unlikely to be delivered before next year this issue is a critical one for the motor industry.

Does the date of entering into a finance contract for the acquisition of an asset (e.g. a car) impact on eligibility for the Tax Break?

According to the ATO the answer is **yes** and every motor dealer needs to be aware of the contents of this fact sheet.

The ATO's position is that where you finance the acquisition of a car (or other depreciable assets) via a hire purchase agreement or a luxury car lease, the date you enter into the financing arrangement and **not** the date you enter into the contract to buy the car is the "commitment time" for determining eligibility for the Tax Break.

For example, Sally has a small business and enters into a contract to buy a new \$60,000 car on 1 December 2009 for which she expects to be eligible for the 50% Tax Break. Sally does not have the cash to pay for the car and would like to finance the acquisition through the dealership. The dealership wants to ensure Sally retains her eligibility to the Tax Break and can therefore offer her the choice of a lease (i.e. a luxury car lease), a hire purchase agreement or a chattel mortgage. Ordinarily, if the car was delivered prior to 31 December 2009 Sally would be eligible for the Tax Break using any of these financing options. However, if the car **cannot** be delivered prior to 31 December 2009 the ATO's position is that if Sally enters into either a luxury car lease or hire purchase agreement to finance the car on delivery (i.e. post 31 December 2009) she will **not** be entitled to the Tax Break.

SECTOR

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What has changed?

Well, nothing really. The ATO has simply expressed its opinion on a section of the law. Basically, the law says that in order to receive the tax break, you need to have made your investment by no later than 31 December 2009. One of the ways of evidencing that you have made your investment prior to this date is from reviewing the original contract entered into to acquire the asset.

This all seems fairly straightforward. However, when you acquire a car which is subject to finance you effectively hold two contracts - one for the acquisition of the car and the other for the finance agreement.

Which contract is relevant?

Where you finance the acquisition using either a hire purchase agreement or a luxury car lease, the final ownership of the vehicle upon delivery will be with the finance company. The purchaser can only receive ownership once the finance contract has been paid out. Accordingly, the finance agreement gives you the right to use and **hold** the asset only until the contract has been paid out. As the legislation provides that you are not able to claim the Tax Break until you either hold the asset or are committed to holding the asset, the ATO's position is that only once you have signed the **finance** contract are you committed to holding the asset.

A chattel mortgage works differently to a lease or hire purchase agreement in that ownership is transferred to the purchaser at the commencement of the agreement and not at the end. Therefore if Sally instead signed a contract to buy a vehicle prior to 31 December 2009 and financing is arranged through a chattel mortgage then the ATO accepts she will still be eligible for the tax break, notwithstanding that the car is delivered and the finance agreement is signed after 31 December 2009.

What are the options for people acquiring cars prior to 31 December 2009 with expected delivery in 2010?

The ATO fact sheet only sets out the Tax Office's view on the law and may be challenged. However, if you want certainty that you will receive the Tax Break on a vehicle likely to be delivered after 31 December 2009 then you should look to pay for the acquisition of the car using one of the following options:-

1. Finance the vehicle using a chattel mortgage
2. Pay cash
3. Take a bank, personal or other loan to fund the acquisition
4. Sign your (luxury) lease or hire purchase agreement **prior to 31 December**.

If you have specific questions relation to this or other matters relating to the Tax Break please contact BDO's Motor Dealer Services team.

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MORE INFORMATION

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