

## Investment Allowance and Financing

December 2009

**With the fast approaching *final deadline* for the Federal Government's 50% Small Business Tax Break – the "Investment Allowance" (including the 10% Tax Break for large businesses with over \$2million turnover), dealers are being "swamped" with questions from customers regarding their eligibility to claim the tax break.**

Due to stock shortages and order backlogs many customers will not take delivery of their vehicles until after the 31 December 2009 concession deadline. It is now apparent via the ATO's website that the financing structures for vehicle payment post 31 December 2009 is a crucial determinant for eligibility.

The funding issue relates to the definition of the "Investment Commitment Time" – the time at which the customer begins to "hold the asset under a contract". Depending on how the customer finances their purchase will determine whether or not the business will be eligible to make the concessional claim in their tax returns. Under certain types of financing arrangements, the ATO has deemed the commitment time to be at the date the finance arrangement is contracted (which is normally immediately prior to delivery) notwithstanding a legally binding contract was entered into prior 31 December 2009 with the dealership.

We have outlined (opposite) exactly how the Australian Taxation Office views a number of different financing arrangements, including implications for the Investment Allowance:

Financing Arrangement	Vehicle Order Contract required to be signed by 31/12/2009	Finance Contract required to be signed by 31/12/2009
Cash	✓	✗
Personal Loan	✓	✗
Hire Purchase (HP) Arrangement*	✓	✓
Luxury Car Lease*	✓	✓
Legal Chattel Mortgage <sup>^</sup>	✓	✓
Equitable Chattel Mortgage <sup>^</sup>	✓	✗

\* The ATO is of the view that when using a HP or luxury car lease to finance a vehicle, the contract under which you begin to "hold" the asset is the HP or lease agreement, not the order contract. This is why, for these arrangements the finance contracts need to be in place before 31 December 2009.

<sup>^</sup> The ATO distinguishes between two types of chattel mortgages. If it is a "legal chattel mortgage", that is, where the mortgagee (financier) is the legal owner of the asset, the ATO has determined that the commitment time is when you enter into the chattel mortgage agreement. Therefore if you enter into the contract to buy the asset prior to 31 December 2009 and take delivery and enter into a legal chattel mortgage after 31 December 2009, the claim will be rejected. On the other hand if you enter into an "equitable chattel mortgage" which operates by way of a charge over the asset and the customer is deemed the legal owner (not the financier), the order contract with the dealership is the contract under which you hold the asset.

**Note** The ATO has advised that differing rules apply if you purchase a vehicle and become its legal owner prior to entering into the hire purchase arrangement or luxury car lease. In that case, the investment commitment time is the time at which you enter into the contract to purchase the vehicle. This may be when the order contract is made to the supplier.

**As always, you should ensure that your salespeople advise customers to seek their own tax advice in relation to eligibility.**

Should you wish to discuss this matter further, please contact one of our Fordham Motor Dealer Services team:

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