

17 August 2022

Alan Raine
Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By electronic upload: [here](#)

Dear Mr Laine

Treasury Laws Amendment (Electric Car Discount) Bill 2022

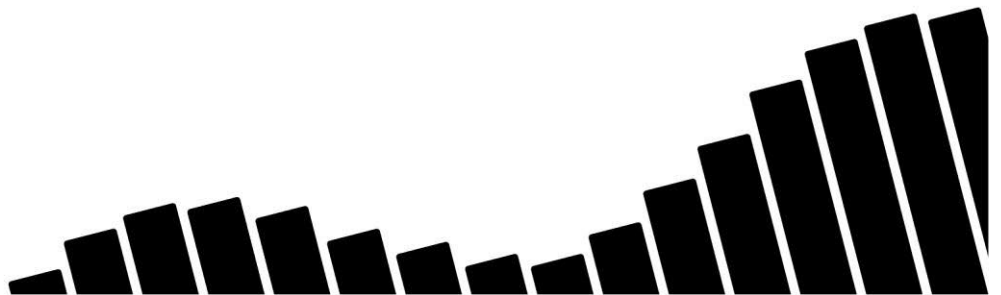
The Tax Institute welcomes the opportunity to make a submission to the Senate Economics Legislation Committee (**Committee**) in relation to the inquiry into the *Treasury Laws Amendment (Electric Car Discount) Bill 2022* (the **Bill**).

In the development of this submission, we have closely consulted with our National Fringe Benefits Tax & Employment Taxes Technical Committee to prepare a considered response that represents the views of the broader membership of The Tax Institute.

The Tax Institute broadly supports the policy intention of the Bill. Fringe Benefits Tax (**FBT**) imposes significant compliance costs on employers. These costs disincentivise employers from providing employees zero or low emission vehicles (**ZEVs**) as part of their remuneration package. The Bill seeks to remove this disincentive and encourage a greater uptake and adoption of ZEVs. Incentives that promote the uptake of ZEVs are consistent with the approach taken in other jurisdictions.

However, there are aspects of the Bill that may require further consideration or clarification. We note that Australia's FBT regime contains considerable complexities, and that public consultation was not undertaken during the development of the Bill. As a result, certain amendments to the Bill may be required to ensure that the policy intent is effectively delivered without giving rise to inconsistent or unintended outcomes. The Bill may also require clarifying amendments to ensure that the proposed exemption is readily understood and applied by taxpayers and tax professionals. The Committee should also consider whether further steps should be taken to promote the uptake of ZEVs, and whether these incentives should be driven through tax concessions or other avenues, such as greater investment into the supporting infrastructure.

Our detailed response is contained in **Appendix A**.



The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all. Please refer to **Appendix B** for more about The Tax Institute.

We would be pleased to work with the Committee to resolve the issues outlined in our submission and ensure that the proposed exemption is successful in promoting the use and sale of ZEVs. If you would like to discuss our submission or any other aspects of Australia's approach to promoting the use of ZEVs through the taxation system, please contact Tax Counsel, Julie Abdalla, on [REDACTED].

Yours faithfully,

[REDACTED]

Jerome Tse

President

APPENDIX A

We have set out below our detailed comments and observations for your consideration to ensure that the Bill is effective in meeting its intended policy intent, providing the most effective and practical advice for taxpayers and their advisers.

Applying the proposed exemption to all Zero or Low Emission Vehicles

We understand that the primary objective of the Bill is to:¹

'...encourage a greater take up of electric cars by Australian road users by making electric cars more affordable, and to reduce Australia's carbon emissions from the transport sector.'

The Tax Institute is of the view that the proposed exemption should apply to all vehicles that meet the definition of ZEVs in the Bill. However, as currently drafted, it may not apply to certain categories of ZEVs. Australia's FBT regime in relation to vehicles has numerous complexities and inconsistencies arising from competing policy objectives. The Bill may therefore require certain amendments to manage the interaction with the existing FBT regime and better achieve the stated objectives.

Subsection 8A(1) of the Bill proposes to provide an FBT exemption for ZEVs when a car benefit is provided in respect of the employment of a current employee. A 'car', for FBT purposes, is defined to mean 'a motor vehicle (except a motor cycle or similar vehicle) designed to carry a load of less than 1 tonne and fewer than 9 passengers.'² A 'motor vehicle' is further defined to include 'any motor-powered road vehicle (including a 4 wheel drive).'³

The result of the definitions used in the FBT provisions is that certain types of ZEVs may not benefit from the proposed exemption. This includes:

- vehicles designed to carry 1 tonne or more (these will most commonly be utility vehicles, including but not limited to 'utes' and dual cab utes); and
- some motorcycles and bikes powered by electric engines.

It is also arguable that the existing definition of car may include certain types of vehicles that may not be intended to be included within the scope of the proposed exemption (e.g. e-scooters⁴), as they may fall within the definition of ZEVs in the Bill.

¹ Explanatory Memorandum, Treasury Laws Amendment (Electric Car Discount) Bill 2022, paragraph 1.2.

² *Income Tax Assessment Act 1997 (ITAA 1997)* subsection 995(1).

³ ITAA 1997 subsection 995(1).

⁴ When using the term 'e-scooter' we are specifically referring to an electronic stand-up scooter. This is not to be confused with a Vespa scooter which would be classified as a motorcycle or similar vehicle, and subject to similar treatment to a motorcycle.

The current exclusions of some ZEVs that arise from the current drafting of the Bill could continue to act as a disincentive and are not conducive to the objective stated above. For example, vehicles designed to carry more than 1 tonne may still be subject to the residual exemptions rules⁵ and not benefit from the proposed exemption. Although these vehicles may not be as readily available at this stage as ZEVs which are treated as cars for FBT purposes, they could become available as technology and customer demands change over time. It is important that legislation introduced in this area is future-proof and contemplates a highly adaptive environment.

The Tax Institute is of the view that the Bill should be amended so the proposed exemption applies to all ZEVs. Consideration should also be given to whether the policy scope of the measure should be extended to include other categories of low emission transportation that do not fit within the ordinary meaning of a 'car' or 'motor vehicle'. While further policy consideration and public debate is required some examples include:

- transportation options that are not covered by the categories above but are propelled by electric motors (such as e-bikes); and
- transportation options that do not produce emissions but are not propelled by electric motors (such as push bikes).

Further amendments

Expanding the scope of eligible employees

The proposed exemption is limited to car benefits provided to 'current employees.' A current employee is defined as 'a person who receives, or is entitled to receive, salary and wages.'⁶ The provision of car benefits generally applies to future, current and former employees.⁷ We consider that the proposed exemption should be extended and made available for all 'employees', as defined, which would also encompass future and former employees. This will ensure consistency with the existing FBT regime and remove potential barriers to the uptake of ZEVs. Further, the benefit could be used for example, to entice prospective employees or as compensation on retirement from employment.

Running costs exemption

We consider that the Bill provides an opportunity to expand the proposed exemption to include other car related benefits that are currently subject to FBT and would support the uptake of ZEVs. Section 53 of the FBTAA provides an exemption from FBT on running costs paid by employers where a car fringe benefit is provided, or a car fringe benefit would have been taken to be provided but for a specific exemption. We note that ZEVs may incur running costs that do not, or would not, be classified as car fringe benefits. As a result, these costs would not be subject to this exemption under section 53. We consider that the uptake of ZEVs may be encouraged by expanding the scope of section 53 of the FBTAA to include these other related benefits.

⁵ See for example, FBTAA section 47(6).

⁶ FBTAA section 136(1).

⁷ FBTAA section 136(1).

For example, the provision of electricity at employer supplied charging stations, where the car is owned or leased by the employee rather than the employer, may incentivise employees to personally fund a ZEV. A blanket FBT exemption for electricity used for charging electric ZEVs would enable employers to easily understand the benefit of investing in ZEVs and ancillary infrastructure. This could remove potential barriers by allowing users of ZEVs to readily re-charge in more locations without concerns of unintended tax implications.

Further, employers would not be required to consider whether the provision of electricity is minor, infrequent or irregular, and available for exemption under section 58P of the FBTA. This can be challenging for employers to determine as there is no legislative definition regarding what is considered to be minor, infrequent and irregular. Expanding the scope of the proposed exemption to these types of running costs would provide certainty for employers and better promote the use of ZEVs.

We also recommend including an express statement in the Bill that enables State Government road user charges to be classified as running costs for ZEVs. Feedback from our members indicates that there is uncertainty regarding whether road user charges are connected and necessary for the running of a ZEV, and whether they fall within the current definition of a 'car expense' in section 53 of the FBTA. Expressly addressing the classification of these costs in the Bill will provide clarity to users and ensure a consistent approach is applied by the community.

Charging stations

We consider that the Bill should extend the proposed exemption to certain capital costs necessary for the operation of ZEVs. As noted above, charging stations provided for employee use may not be subject to the FBT exemption under section 53 of the FBTA, despite serving the purpose of providing energy for an FBT exempt car. We consider that charging stations provided, or reimbursed, by the employer should be exempt from FBT, similar to the proposed FBT treatment for ZEVs. This will reduce any incongruous outcomes between the treatment of a ZEV and the infrastructure required to operate the ZEV, and further incentivise employers to invest in fuel efficient infrastructure.

Applicability to second-hand Zero or Low Emission Vehicles

The proposed exemption requires a car to be first purchased new, on or after 1 July 2022 at a value below the luxury car tax (LCT) threshold for fuel efficient vehicles. If an eligible ZEV is sold in future years, the FBT exemption would be available for the secondary owner, provided the other conditions were met, namely, that the value of the car was below the relevant threshold when it was first sold after 1 July 2022.⁸ However, the current provisions pose potential provenance issues for secondary and later owners. This will be particularly evident where a ZEV has been traded multiple times over several years. As a consequence, the historical value of the ZEV at the original purchase date may be difficult to ascertain.

⁸ Explanatory Memorandum, *Treasury Laws Amendment (Electric Car Discount) Bill 2022*, paragraph 1.14.

We consider that the threshold test should be the value of the ZEV at the most recent purchase or transfer, subject to the transaction being at market value, rather than the value of the car at the first retail price. This would reduce the complexity for taxpayers of having to ascertain the value at the first retail price, potentially, several years prior.

Reportable Fringe Benefits Amounts

Although the Bill exempts an employer from paying FBT on ZEVs, the employer is still required to calculate the taxable value of the benefit provided, and report the relevant amounts in the employee's reportable fringe benefit amount (**RFBA**). The calculation of the taxable value can often be one of the more difficult aspects for employers in meeting their reporting obligations. The RFBA must be reported to both the employee and the ATO.

Although employers may use software to facilitate the reporting of FBT returns, not all software is appropriately configured to calculate and report the RFBA for a benefit that is otherwise exempt. Even where the software is capable of reporting the RFBA, the employer will still be required to incur the compliance costs associated with gathering the relevant data and entering this data into the software. This reporting burden is disproportionate and may disincentivise some employers. We recommend a simplified approach or short cut method for calculating the RFBA for ZEVs be introduced to mitigate the reporting burden for employers.

References to Luxury Car Tax

Requiring the value of the ZEV at the first retail sale to be below the LCT threshold for fuel efficient vehicles may significantly disincentivise the uptake of ZEVs. The costs to acquire a ZEV continues to be higher than the cost of their internal combustion engine counterparts. Consequently, employers seeking to acquire ZEVs that are FBT exempt may be limited to a small range of ZEVs, a challenge that is exacerbated by current supply chain issues. We recommend that the LCT limit imposed in paragraph 8A(1)(c) of the Bill be replaced with a higher value, albeit for a potentially fixed period of time, which reflects the current higher cost of acquiring a ZEV. This may encourage more employers and industries to invest in ZEVs.

Minor amendment to subsection 47(6) of the *Fringe Benefits Tax Assessment Act 1986*

We consider that consequential amendments to subsection 47(6) of the FBTAA should be made to improve legibility. The current drafting, which utilises multiple negatives, is likely to cause confusion for taxpayers and tax professionals, resulting in the incorrect application of the legislation. Subparagraph 47(6)(aa)(ii) of the FBTAA refers to instances 'where a motor vehicle is not a car, not being a road vehicle designed to carry a load of less than 1 tonne.' We recommend the multiple negatives be removed to reduce complexity and potential errors from the inadvertent misapplication of the provision.

Future considerations

Review of proposed exemption

We note that the Explanatory Memorandum to the Bill indicates that the proposed exemption will be reviewed after three years.⁹ The Tax Institute supports the post-implementation review of measures to ensure that they do in fact achieve their policy objectives. However, there are concerns that adverse impacts may result for taxpayers who invest in ZEVs on the basis of the concessions provided by the Bill, where the proposed exemption is not extended. The Tax Institute is of the view that this Bill should clearly state that arrangements made under it will not be adversely impacted by any future changes. If changes to the proposed exemption are made in three years' time, suitable grandfathering provisions should be included.

Without such provisions, employers and benefit providers are likely to encounter difficulties with managing the ongoing implications of benefits that are provided on an ongoing basis but have fixed terms and conditions, such as those provided through novated leases. Such challenges would be expected to arise and continue until the relevant arrangement expires. The overarching risk here is that the challenges that would be expected to arise and the uncertain ongoing treatment of arrangements entered into in accordance with the Bill should the proposed exemption cease, may deter uptake in the first place.

Supporting initiatives

We consider that the introduction of the Bill provides an opportunity for the Government to contemplate other initiatives or concessions aimed at encouraging the uptake of ZEVs. Some potential ideas include:

- exempting all ZEVs from LCT;
- rebates for ZEV fleets;
- targeted investment in infrastructure to support ZEVs; and
- aligning the maximum GST credit with the LCT threshold rather than the car limit for depreciation.

Calculation of costs

There are certain formulas within the FBTAA where specific valuation methodologies are applicable depending on the category of vehicle they apply to. This may result in the following circumstances and FBT outcomes arising for employers:

- 'Cars' that are ZEVs and not exempt from FBT — the employer will be required to calculate and report the FBT and RFBA for the vehicle using either the statutory formula or operating cost method;
- 'Cars' that are ZEVs under this measure — the 'car' will be exempt from FBT however the employer will be required to calculate the RFBA using either the statutory formula or operating cost method; and

⁹ Explanatory Memorandum, *Treasury Laws Amendment (Electric Car Discount) Bill 2022*, paragraphs 1.2 and 1.8.

- Vehicles that are not 'cars' but are ZEVs — the employer may choose to value the vehicle under the cents per kilometre basis.

The statutory formula is based on a percentage rate which acts as a proxy for the average operating cost of a car and is relevant to the calculation of the RFBA of all ZEVs. The cents per kilometre rate, available for vehicles which are not 'cars', also acts as a proxy for the average operating cost of a car. Both rates are available for internal combustion engine vehicles and ZEVs, however the cost of operating a ZEV are driven by factors that are not applicable for internal combustion engine vehicles. We recommend that the cents per kilometre rate and statutory formula percentage be updated to include specific rates for ZEVs.

Furthermore, we consider that there are broader implications for valuation methodologies contained within other Tax Laws, particularly those methodologies in the ITAA and *Fuel Tax Act 2006*, where one rate is utilised for both internal combustion engine vehicles and ZEVs. We recommend that these rates are also updated to account for ZEVs.

APPENDIX B

About The Tax Institute

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of more than 11,000 includes tax professionals from commerce and industry, academia, government and public practice throughout Australia. Our tax community reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the internationally recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved, and The Tax Institute has become increasingly respected, dynamic and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals.