



THE TAX INSTITUTE

20 June 2011

Mr Richard Grant
Acting Secretary
Senate Standing Committee on Economics
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Parliament House
CANBERRA ACT 2600

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Dear Mr Grant

**INQUIRY INTO SCHEDULE 5 OF THE TAX LAWS AMENDMENT (2011 MEASURES NO. 5)
BILL 2011: REFORM OF THE CAR FRINGE BENEFITS RULES**

The Tax Institute refers to Schedule 5 of the Tax Laws Amendment (2011 Measures No. 5) Bill 2011 (the Bill), and the terms of reference for the inquiry of the Senate Economics Committee (the Committee).

The Tax Institute welcomes the opportunity to make this submission to the Committee. In accordance with the terms of reference for this inquiry, we have set out below our comments in relation to Schedule 5 of the Bill.

Due to the other measures contained within the Bill, The Tax Institute is firmly of the view that in order to provide certainty to taxpayers that use a trust structure in relation to the lodgment of 2010 income tax returns, it is essential that Schedules 1 and 2 of the Bill are enacted by 30 June 2011. As such, The Tax Institute does not support any amendments to Schedule 5 of the Bill or the accompanying Explanatory Memorandum if such amendments would delay the passage of this Bill through the Parliament such that Royal Assent cannot be provided by 30 June 2011.

The Tax Institute broadly supports the Government's implementation via Schedule 5 of the Bill of Recommendation 9(b) of the Henry Tax Review (also known as Australia's Future Tax System Review) that "[t]he current formula for valuing car fringe benefits should be replaced with a single statutory rate of 20 per cent, regardless of the kilometres travelled".

As The Tax Institute has publically expressed, this measure represents a sensible reform that removes any incentives that may exist for people to drive further for the sole purpose of lowering the fringe benefits tax (FBT) liability resulting from the associated car fringe benefit. The replacement of a sliding scale with a flat statutory rate is also welcomed as a step towards a simpler FBT system.

Once the transitional arrangements contained in Schedule 5 of the Bill cease to apply, the flat statutory rate will result in simpler FBT laws and therefore a lower compliance burden for employers that provide car fringe benefits.

Nevertheless, a number of transitional and implementation issues remain outstanding in respect of the implementation of this measure as currently proposed in the Bill, as set out below. In our view, these issues should be resolved prior to the enactment of the Bill. **However, we reiterate that in order to provide certainty to taxpayers that use a trust structure in relation to the lodgment of 2010 income tax returns, it is essential that Schedules 1 and 2 of the Bill are enacted by 30 June 2011.**

- The phrase “committed to the application or availability of the car” contained in subsection (2)(b) of the Application provision (which is relevant to determining whether the new laws apply to a particular acquisition) is unclear and difficult to apply. This phrase should be further clarified, either via additional guidance or examples in the Explanatory Memorandum to the Bill or by publication of related ATO guidance. Without additional guidance, the application of this requirement may cause confusion or create scope for abuse.
- According to our reading of the Bill and accompanying Explanatory Memorandum, the new laws will apply to both new and used vehicles the acquisition of which was committed to after 7:30 pm Australian Eastern Standard Time on 10 May 2011. If this interpretation is correct, an additional example should be included in the Explanatory Memorandum in relation to the new acquisition of a ‘used’ car.
- The phrase “worse off” contained in subsection (2)(b) of the Transitional provision is unclear and difficult to apply. This phrase should be further clarified, either via additional guidance or examples in the Explanatory Memorandum to the Bill or by publication of related ATO guidance. Without further clarification, this broad test will result in confusion and may render the option to by-pass the transitional provision unworkable. Specifically, clarification is needed in respect of the term “financial disadvantage” used in the Explanatory Memorandum, as it remains unclear whether ‘financial’ refers only to income, or also includes access to tax rebates or offsets, Centrelink benefits etc.
- It is not clear, in our view, whether the addition of a capital item to a lease entered into before 7:30 pm Australian Eastern Standard Time on 10 May 2011 (which will result in a change to the lease agreement) will result in a new commitment that triggers the application of the new laws. We recommend that Example 5.7 in the Explanatory Memorandum be expanded to cover the tax consequences of this scenario.
- According to our reading of the Bill and accompanying Explanatory Memorandum, where an employee that has entered into a lease agreement with his/her employer prior to 7:30 pm Australian Eastern Standard Time on 10 May 2011 subsequently changes employers, and the new employer takes over the lease agreement and continues to provide the employee with car fringe benefits, the new statutory rate will apply immediately, not from

the start of the following FBT year. If this reading is correct, paragraphs 5.36 and 5.37 of the Explanatory Memorandum should be changed accordingly, as these paragraphs may be misleading in this regard as current drafted. We recommend either that the reference to “changing employers” be removed from paragraph 5.36, or that paragraph 5.37 be amended by adding “in respect of the same employer” at the conclusion of the sentence.

Yours sincerely

Robert Jeremenko
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