



GE Capital

Level 13, 255 George Street
SYDNEY NSW 2000
Australia

T +61 2 8249 3589
F +61 2 9324 7905

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Senate Economics Committee
Parliament House
Canberra ACT
economics.sen@aph.gov.au

Dear Members,

TAX LAWS AMENDMENT (2011 MEASURES NO 5) BILL 2011, SCHEDULE 5: REFORM OF THE CAR FRINGE BENEFITS RULES

GE Capital welcomes the reforms proposed by the *Tax Laws Amendment (2011 Measures No.5) Bill 2011* in relation to the changes proposed to motor vehicle fringe benefits.

GE Capital ANZ through its business Custom Fleet is one of the largest motor vehicle fleet leasing and management organisations in Australia. We provide novated leasing as a service to our customers (which they in turn make available to their employees) and we proactively assist our customers to manage their FBT liability through reporting and fleet management.

GE Capital ANZ supports the changes proposed to motor vehicle fringe benefits and the simplified flat rate approach (irrespective of kilometres travelled) but we have a number of concerns with the draft Bill in relation to the transitional arrangements.

EXECUTIVE SUMMARY

GE Capital submits that the proposed changes should only apply to commitments entered into after the effective date of 7.30pm, 10 May 2011.

The Explanatory Memorandum states (at paragraph 5.34) that the general intent of the transitional arrangements is to leave employees/employers who have pre-existing commitments (those who have made financial binding decisions in relation to a particular car, based on the old rules), in the same position. We fully support and endorse this position.

However, the Bill provides for a number of situations where this will not be the outcome and we are concerned that parties who have made financial decisions based on the current laws will be detrimentally affected by something they may have little to no control over.

We also expect that the reforms will have a negligible influence on decision making in relation to their existing arrangements given the useful life of motor vehicles generally and therefore should not have a material impact on Budget estimates.

Proposed Changes

We propose Item 8(2)(b) of Schedule 5 of the Bill be amended by deleting the word "last" as follows:

(b) the ~~last~~ time at which:

- (i) the employee, or an associate of the employee; or
- (ii) the employer, or an associate of the employer,

committed to the application or availability of the car for that period occurred before 7.30pm Australian Eastern Standard Time on 10 May 2011.

To support this change, the following sections should be deleted from the Explanatory Memorandum and the document renumbered:

- Paragraph 5.36
- Paragraph 5.37
- Paragraph 5.52
- Paragraph 5.53
- Example 5.4
- Example 5.7
- Example 5.8

The effect of these changes ensures that employees or employers that entered into commitments before the effective date of 7.30pm, 10 May 2011 remain subject to the existing rates (on the basis that financial decisions were made with those rates in mind).

Changes to Commitments

If the Bill is passed in its current form, we envisage the following circumstances arising by way of example:

- An Employee that is made redundant and moves to a new Employer and re-novates a novated lease to the new Employer will become subject to the new rates. The Employee may have had no control over their situation but could be adversely impacted by the motor vehicle fringe benefit becoming subject to the new rates despite the benefit being the same and the Employee having made a committed financial decision in relation to the tax period before the effective date of the legislation.
- An Employer undergoes a corporate restructure and transfers all its Employees to a new Employer. This would necessitate the transfer of any existing novated lease to the new Employer which will trigger application of the new rates. Again, an Employee is unlikely to have any control over the changes but may be adversely impacted by the new rates applying despite the benefit not changing. In fact, this situation is reflected to some extent by Example 5.8 of the Explanatory Memorandum (albeit in an insolvency context).

We accept that changes to commitments may in fact place some Employees in a better financial position (that is, Employees travelling less than 15,000 kilometres per year), but we believe on balance that this creates the wrong outcome. Employees that have made financially binding decisions based on prevalent rates are detrimentally impacted by a change in commitment over which they may have little to no control (and the unnecessary financial strain this may have).

We accept (in accordance with Example 5.6 of the Explanatory Memorandum), that a new commitment such as entering into a formal extension of a lease would trigger application of the new rates but believe this is adequately captured by the existing language (amended in accordance with the suggestions above).

We would be please to discuss the issues in more detail and make further written submissions as needed to clarify any points in this letter.

Yours sincerely

Ardele Blignault
Vice President, Government Relations
GE Capital ANZ

Adam Hopkins
Deputy General Counsel
Fleet and Equipment Finance
GE Capital ANZ