

17 August 2022

Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Secretariat

## Treasury Laws Amendment (Electric Car Discount) Bill 2022

Chartered Accountants Australia and New Zealand (CA ANZ) appreciates the opportunity to provide a submission regarding Treasury Laws Amendment (Electric Car Discount) Bill 2022.

The objective of this Bill “is to 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”<sup>1</sup>.

This transition could be assisted by:

- Including existing electric vehicles (EV) in the proposed exemption.
- Adding an equivalent exemption for Division 7A of the Income Tax Assessment Act 1936 (ITAA 1936) which would allow self-employed people to access a similar concession.
- Accompanying ATO guidance.

## Existing electric vehicles

The bill applies if the car is first held and used on or after 1 July 2022. This means that those people who already had an EV provided to them by their employer before 1 July 2022 will be unable to access the exemption. If those people sold their EV that was acquired before 1 July 2022 to acquire a new EV, the buyer of the older EV would also be unable to access the exemption.

The explanatory memorandum states that “the purpose of the policy is to increase the take up of electric cars, and electric cars in use prior to 1 July 2022 are therefore not eligible”<sup>2</sup> and that “a second-hand electric car may qualify for the exemption, provided that the car was first purchased new on or after 1 July 2022.”<sup>3</sup>

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<sup>1</sup>Paragraph 1.2 of the explanatory memorandum

<sup>2</sup> Paragraph 1.15 of the explanatory memorandum

<sup>3</sup> Paragraph 1.17 of the explanatory memorandum

Allowing second hand cars to also qualify for the exemption even if they were first used in Australia before 1 July 2022 would encourage:

- encourage owners of current EVs that are unable to access the exemption to upgrade their EVs that can access the exemption and
- increase the pool of EVs in the second hand market thus allowing more people to access EVs at a lower price than new EVs.

### Self-employed small business operators

“Small business employs over 4.7 million people and 41% of the business workforce, making it Australia’s biggest employer”<sup>4</sup> This definition of employment includes both traditional employees and self-employed people.

62.8% of small businesses are non-employing businesses<sup>5</sup> – that is sole traders that are self-employed and do not meet the traditional definition of employee.

[ATO Tax Statistics 2019-20](#), show that the number of companies with motor vehicle expenses is 465,612. 460,913 of these companies that are private companies. 433,547 of these private companies had a turnover of less than \$100,000 and motor vehicle expenses of more than \$9B in total (total motor vehicle expenses for all companies were \$15B of which \$2.5B related to public companies and \$3.5B to private companies whose turnover is greater than \$100K).

Cars provided by small privately owned companies are often provided to shareholders (as they do not have employees as traditionally defined which would be subject to FBT). Vehicles provided this way are subject to Division 7A which attributes the benefit as a dividend to the recipient<sup>6</sup>. To allow encourage both employees and the self-employed to take up EVs in Australia, consideration should be given to providing an equivalent exemption for EVs from Division 7A.

### Accompanying ATO guidance

CA ANZ also recommends that the ATO’s Public Advice and Guidance Unit be instructed to fast-track the development and publication of a Law Companion Ruling (LCR) to coincide with the assumed enactment of the Bill. In particular, the LCR should clarify the ATO’s view on the application of existing FBT legislative provisions relevant to car fringe benefits, such as the tax treatment of EV chargers at an employee’s home and the implications under the Reportable Fringe Benefit requirements.

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<sup>4</sup> Page 5 of [https://www.asbfeo.gov.au/sites/default/files/2021-11/ASBFEO%20Small%20Business%20Counts%20Dec%202020%20v2\\_0.pdf](https://www.asbfeo.gov.au/sites/default/files/2021-11/ASBFEO%20Small%20Business%20Counts%20Dec%202020%20v2_0.pdf)

<sup>5</sup> Page 7 of [https://www.asbfeo.gov.au/sites/default/files/2021-11/ASBFEO%20Small%20Business%20Counts%20Dec%202020%20v2\\_0.pdf](https://www.asbfeo.gov.au/sites/default/files/2021-11/ASBFEO%20Small%20Business%20Counts%20Dec%202020%20v2_0.pdf)

<sup>6</sup> <https://www.ato.gov.au/business/private-company-benefits---division-7a-dividends/>

### Likely behavioural responses and perceptions of unfairness

Senators should note the likely behavioural responses to the proposed FBT exemption and the unfairness that results in the eyes of the community.

Our members report that the proposed legislation has already resulted in a spike in employees approaching their employers to “salary package” a vehicle eligible for the FBT exemption. Obtaining an exempt car fringe benefit using pre-tax dollars has obvious attractions. This is no doubt an intended policy outcome which also has the effect of increasing consumer demand for eligible vehicles. This demand is likely to have some impact on supplier pricing decisions.

The longer the FBT exemption lasts, the more popular this tax planning strategy will become and CA ANZ notes there is no “sunset clause” in the proposed legislation.

The unfairness arises because not all employers – especially small to medium sized businesses – offer salary sacrifice arrangements to their employees. This is largely because they find the associated tax compliance and payroll administrative costs unattractive. The result is that the new FBT exemption will generally favour larger enterprises with more sophisticated payroll arrangements and their employees. CA ANZ notes however that employers can outsource salary packaging arrangements to third party providers.

If you would like to discuss any aspect of this submission, please contact me on [REDACTED] or [REDACTED]

Yours sincerely

[REDACTED]  
Michael Croker  
Australian Tax Leader  
Chartered Accountants Australia and New Zealand