

Dr Anna Mortimore addressing Senator O'Neill's 'questions on notice'

31 August 2022

Senate Economics Legislation Committee
Public Hearing 25 August 2022
Parliament of Australia

Senator O'Neill referred to the following 'questions on notice' concerning Submission 12 by National Automotive Leasing and Salary Packaging Association.

(Refer to page 18 of the Proof Hansard 25 August 2022)

Question on notice

"... asking you for a response to the NALSPA's submission, particularly around ATO guidance and uncertainty about what's in and what's out, as well as older definitions around FBT eligibility with regard to cars and the question of what a car expense is. So perhaps you could look at that particularly in their submission, page 4.

NALSPA Submission 12 states:

Bill has raised queries in relation to the 'breadth of the proposed concession', and whether by potentially expanding its 'coverage, this will ensure better alignment with the initial policy intent of incentivizing the use of ZLEVs by Australian consumers."

Dr Anna Mortimore (Griffith University) response to 'questions on notice' (from page 4 onwards)

Proposal II. Consider extending the application of the Bill to include costs associated with ZLEVs

Page	Law under FBTA 1986 and ITAA 1997	Submission 12
4	<p>EM para 1.13</p> <p>The benefit exempted from FBT for eligible EVs will include any <u>associated benefit in running the car for the period the car fringe</u> benefit was provided. Schedule 1, item 2, section 53, of the FBTA 1986</p> <p>Exemption under Sec 53 FBTA 1986, includes:</p> <ul style="list-style-type: none">a. car expense payment benefitb. car property benefitc. car residual benefit	<p>The submission is extending the definition of "car expense payment and the following expenses listed in the submission are not car expense benefits under Sec 136 FBTA</p> <p>Car expense benefit under Sec 136 of FBTA, includes (a) registration of or insurance in respect of the car (b) repairs or maintenance of the car or (c) fuel.</p> <p>Submission that the following costs could fall under "car expense" benefits under Sec 136 FBTA is not supported:</p>

	<p>Car expense benefit under Sec 136 of FBTA, includes (a) registration of or insurance in respect of the car (b) repairs or maintenance of the car or (c) fuel.</p> <p>Car property benefit under Sec 136 of FTAA 1986 is if the recipient had incurred the expenditure and have been a Division 28 car expense. Meaning of car expense under Division 28 ITAA 97, (a) is a loss or outgoing to do with operating the car; (b) decline in value</p> <p>Car residual benefit Sec 47 exempt residual benefits under Sec 136 FBTA 1986, refer refers to the ‘provision or use of a motor vehicle provided in the year of tax in respect of employment.’</p>	<ul style="list-style-type: none"> • Home charging infrastructure and support services; • Road user chargers • Vehicle battery replacements • Vehicle subscription costs <p>Installation of home charging and smart chargers by the employer, are of a capital nature and subject to fringe benefits tax.</p> <p>RACE for 2030 Report, recommended tax changes to:</p> <ul style="list-style-type: none"> • Apply instant asset write off for <i>fleet BEV’s</i> home charging capital costs (Recommendation 10)¹ <p>For “road user chargers” which replaces fuel taxes, and is a car expense, should be confirmed by the ATO;</p>
5	<p>ZLEV costs for the installation of a home charger and smart charger subject to FBT and not exempt under the Bill “.... Will in all likelihood impeded the take-up of ZLEVs.....”</p> <p>“It is highly recommended that consideration be given to extending the application of the FBT exemption to associated costs, through a difference definition of ‘car expenses’ for ZLEVs with is broader and includes all costs noted.”</p>	<p>The recommendation by NALSPA on page 5, were short term tax changes recommended in RACE for 2030 Report only for <u>“work fleet employees”</u>:</p> <ul style="list-style-type: none"> • Installation costs and smart charger be exempt from FBT (Recommendation 4) and • Instant assets write off apply to the Installation costs and smart charger under the Income Tax Assessment Act 1997. (Recommendation 10) <p>Rebates and subsidies were recommended to employers and employees for the installation and home chargers in the long-term tax changes. (Recommendation 16, and 17)</p>

¹ RACE for 2030 Report, Business Fleets and EVs: Taxation changes to support home charging from the grid, and affordability, 1-164, recommendations are set out in the Report. <https://www.racefor2030.com.au/fast-track-reports/#2>

Proposal III: Consider easing the limitations imposed on second-hand acquisitions

5, 6	<p>Bill presents the following limitations with respect to second hand acquisitions:</p> <ul style="list-style-type: none"> . exemption only applies when the original retail price was below the relevant luxury car tax threshold (being \$84,916 for 2022-23) and . exemption does not apply to a car which was previously acquired and used prior to 1 July 2022 (i.e. when acquired first hand) 	<p>The practical considerations referred to by NALSPA submission on page 5 and 6 as follows:</p> <ul style="list-style-type: none"> - Exemption only applies where the original retail price was below the relevant luxury car tax threshold (being \$84,916) and - The exemption does not apply to a car which was previously acquired and used prior to 1 July 2022. <p>The above Bill limitations are accepted. The purpose of the application date protects the buyer. Additional protective measures could include:</p> <ul style="list-style-type: none"> - What warranty is left on the battery - Independent assessment on battery degradation. - Confirming vehicle ownership; and - Resale value. <p>All the above are areas of concern for buyers of second hand EVs.</p>
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Proposal IV: Consider harmonisation of the Luxury car tax threshold and Car Cost Limit

6	<p>The limitation that the LCT threshold for FBT exemption purposes (\$84,916 for fuel efficient vehicles for 2022-23) does not align to the car cost limit which is utilised for income tax and Goods and Services Tax (GST) purposes (\$64,741 for 2022-23)</p> <p>These issues may be addressed by harmonising the car cost limit, and subsequent GST credit limit, with the LCT threshold.</p>	<p>This was addressed in the RACE for 2030 Report (Recommended 8 in increasing the depreciation cost limit of the Income Tax Assessment Act 1997, and Recommendation 9 in increasing the GST credit limit of the Goods and Services Tax Assessment ACT, to the luxury car tax threshold for fuel efficient vehicles.)</p>
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Proposal V: Consider whether the definition of ZLEV needs to be expanded.

7	<p>Current definition of a ZLEV includes 'battery electric vehicles.' In relation to PHEVs, whether there is a minimum battery size range or specification to qualify.</p>	<p>I agree</p> <p>This issue was addressed in Senator Pococks "question on notice" as to whether there ought to be a 'sunset clause' for PHEVs. The FBT exemption for PHEVs was made subject to a minimum battery size. Otherwise, FBT at lower rates of tax applied.</p>
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Proposal VI: categorising exempt car benefits for ZLEVs as 'excluded' fringe benefits

7	<p>How do you record a reportable fringe benefit amount if the total taxation value of certain fringe benefits provided to the employee is greater than \$2,000?</p> <p>The Bill requires an employer to disregard the FBT exemption for ZLEV benefits, but to record the 'taxable value' as a reportable fringe benefit amount, (RFBA).</p> <p>With a high-cost gap between the BEV and ICEV, the increase in the reportable fringe benefit amount will be significant, impacting on the employee's entitlement to various benefits.</p> <p>The Federal Government needs to consider whether to reduce/offset the cost gap between a BEV and its equivalent ICEV.</p>	<p>Agreed</p> <p>This issue needs to be addressed and resolved to give certainty to employees.</p>
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