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Tax Insights

Government introduces legislation to encourage electric vehicle adoption

Snapshot

On 27 July the Government introduced legislation[1] to exempt from fringe benefits tax, the use, or availability for use of certain cars that are zero or low emissions vehicles.

On 18 July the Minister for Home Affairs made a *Notice of Intention to Propose Customs Tariff Alterations (No. 6) 2022* to advise that the Government would be reducing the rate of customs duty for certain types of imported passenger motor vehicles to zero, being battery electric cars, hydrogen fuel cell electric cars, and hybrid electric cars.

Both of these measures are key platforms that the Labor party took to the 2022 Federal Election to promote electric vehicle adoption.

[1] *Treasury Laws Amendment (Electric Car Discount) Bill 2022*

Broader ALP platform to encourage zero and low emissions vehicle (ZEV) adoption

The Electric Car Discount Policy was designed to encourage EV adoption by exempting certain electric cars from import tariffs and fringe benefits tax.

The exemptions will be limited to electric cars below the luxury car tax threshold for fuel efficient vehicles ($84,916 in 2022-23), and is to commence retrospectively from 1 July 2022. The policy is to be reviewed after three years, based on the national take-up of the vehicles at that time.

To support the Electric Car Discount, the Government has also promised to work with industry, unions, states and consumers to develop Australia's first National Electric Vehicle Strategy, including consideration of:

- Further measures to increase electric car sales and infrastructure;
- Policy settings to encourage Australian manufacturing of electric car components (especially batteries) and possibly cars themselves; and
- Ways to address the policy implications of declining fuel excise.

The Government has also indicated it will consider how the Commonwealth's existing investment in infrastructure can be leveraged to increase charging stations across the country and consider how other existing Commonwealth investments, including in its fleet, property and leases, can also be leveraged.

Fringe Benefits Tax Exemption

The Bill introduces an electric car discount in the form of an FBT exemption. This allows for car fringe benefits comprising the use or availability for use of an eligible car that is a zero or low emissions vehicle to be exempt from FBT.

Eligible cars

The Bill applies to fringe benefits provided on or after 1 July 2022 for cars that are eligible zero or low emissions vehicles that are first held and used on or after 1 July 2022. Electric cars in use prior to 1 July 2022 are therefore not eligible.

The Explanatory Memorandum states that an electric car that was ordered prior to 1 July 2022, but was not delivered until after 1 July 2022 would be eligible for the exemption (even if an employer acquired legal title to the car before 1 July 2022). This is because the car would not be both held and used until after 1 July 2022. A second-hand electric car may qualify for the exemption, provided that the car was first purchased new on or after 1 July 2022.

The FBT exemption relates to car fringe benefits and therefore will only apply to vehicles that are 'cars' for FBT purposes[2]; other types of electric vehicles are excluded.

To be eligible for the exemption the value of the car at the first retail sale must be below the luxury car tax threshold for fuel efficient cars ($84,916 in 2022-23).

[2] Section 136 of the Fringe Benefits Tax Assessment Act 1986

The definition of a zero or low emissions vehicle includes:

- A battery electric vehicle;
- A hydrogen fuel cell electric vehicle; and
- A plug-in hybrid electric vehicle.

An electric vehicle must use one or more electric motors for propulsion. A car that has an internal combustion engine will not be within the scope unless it is able to be fueled by a battery that can be recharged by an off-vehicle power source (i.e., plug-in hybrid car).

FBT reporting

Car fringe benefits that are exempt from FBT will continue to be included for the purposes of determining the employee's Reportable Fringe Benefits Amount (RFBA).

Customs duty concession

The Notice of Intention sets out how the Government proposes to amend the *Customs Tariff Act 1995* to provide duty-free treatment for eligible electric vehicles imported into Australia on or after 1 July 2022.

The measure will apply to imports of new passenger motor vehicles that are electric vehicles, plug-in hybrid vehicles or hydrogen fuel-cell vehicles (electric cars) with a customs value below the fuel-efficient car limit ($84,916 in 2022-23).

Currently, imported electric cars attract customs duty at the standard 5% rate, unless imported at a reduced duty rate under one of Australia's bilateral or multilateral free trade agreements (under most free trade agreements the customs duty rate is 0%).

Which electric cars will mainly benefit?

At this stage the duty concession will mainly benefit imports of less expensive electric cars manufactured in Europe.

In practical terms however, the new concession should also be beneficial for eligible electric cars that can otherwise make use of a free trade agreement. This is because the new concession will be easier to use, obviating the need to obtain a Certificate of Origin in order to claim a duty concession under a free trade agreement.

It is worth noting that this measure will **not** provide duty-free treatment to imports of:

- Electric cars with a customs value of $84,916 or more (in 2022/23);
- Electric cars that were imported before 1 July 2022 and for which an entry for home consumption was made before 1 July 2022;
- Electric cars that are used or second-hand;
- Electric passenger motor vehicles for the transport of 10 or more people; and
- Electric cars manufactured in Russia or Belarus, which will continue to attract duty of 35%.

Implementation of the concession

The Minister for Home Affairs is expected to propose the Customs Tariff alteration (in accordance with the details set out in the Notice of Intention) to the Parliament by no later than 4 August 2022, with a bill to amend the customs tariff law to follow.

Because of the retrospective nature of this measure, importers will need to apply for a refund of customs duty paid on eligible electric cars entered for home consumption between 1 July 2022 and when the new tariff classifications are incorporated into the ABF's imports reporting platform, the Integrated Cargo System.

Comments

FBT Treatment

RFBA Treatment of Exempt ZEVs

- The Fringe Benefits Tax exemption is generous and may provide incentive to induce more tentative early adopters to take-up ZEVs due to the reduced FBT cost. However, providing differing treatment to the reportability of ZEVs will reduce the benefit for employees and may be a barrier for some individuals in choosing ZEVs over standard internal combustion engine vehicles.
- The draft legislation requires employers to calculate RFBAs as if the exemption was not available. This means employees will receive an RFBA which will result in an adjusted taxable income that will be higher than it would have been without receiving the benefit unless contributions are made. This will be the first exemption to have been denied RFBA exclusion under such a legislative provision.
- Where cars are provided under a salary packaging arrangement, employees generally make post-tax contributions to reduce the FBT payable and in-turn the RFBA they receive. By not having the exemption apply for ZEVs, employees would need to continue to make contributions towards the cost of the vehicle in order reduce their RFBA. Arguably this is counterproductive to the federal governments intended outcome of increasing uptake of ZEVs.
- This may mean that salary packaging administrators will need to update their calculations in order to provide differing reports for internal combustion engine vehicles where the FBT cost aligns with the normal RFBA treatment and ZEVs which will require employers to record an RFBA despite the FBT exemption. Consequentially, some employees may elect to continue to make post-tax contributions towards ZEVs despite the FBT exemption. The incentive for ZEV uptake for such employees would therefore be limited.

Review Period

- The draft legislation notes that the policy is to be reviewed after three years based on the national take-up of ZEVs at that time. This review period may be problematic if the government considers that ZEV uptake is sustainable as such EVs would likely still have a lease period remaining. Without any 'grandfathering' of the arrangements under a pre-existing lease, it may be difficult to agree suitable terms under a novated lease or a commercial finance lease. There will be a question on how employers, financiers and employees enter into contracts where there is uncertainty beyond 30 June 2025

Other Issues: Ancillary Benefits

- While the draft legislation is a welcome change in reducing the FBT costs of providing ZEVs, clarification is still needed on the FBT treatment of the provision of ancillary benefits such as charging stations at employee residential premises and work premises. The installation of charging stations at an employee's residential premises for instance is unlikely to be taken as part of the exempt car fringe benefit and may be assessed as a separate fringe benefit. There is also no currently agreed methodology for calculating the amount of electricity to charge ZEVs at a residential premises.

Broader Considerations

- Other tax changes may be considered to further increase the uptake of ZEVs from a Fleet perspective, including instant asset write-offs or accelerated deprecation for ZEVs and home charging stations.
- Looking to other jurisdictions, other measures that could be considered to reduce the FBT costs of ZEVs may include

  1) Lowering the FBT rate for ZEVs based on the CO2 emissions

  2) Providing a lower statutory formula rate for ZEVs that non-ZEVs

  3) Providing a discounted car base value for ZEVs.

Subsidies and rebates may also be made available to encourage uptake. Such policies may be considered in the future where a full discount is no longer needed to encourage ZEV update.

- In the medium to long term, reduced fuel tax revenue arising due to reduced internal combustion engine vehicles would be expected to be required to be replaced. This is expected to be considered as part of the proposed National Electric Vehicle Strategy. Jurisdictions such as Victoria have already commenced adopting jurisdictional specific policies such as the road user charge. Such policies would expect to be continued as ZEV uptake continues rising.
- Whilst both the tax measures are welcome, the widespread adoption of ZEVs in Australia is ultimately going to depend on the Government's other policy responses to the issue. Consumers continue to face supply constraints, a lack of choice of available models, and a critical mass of core infrastructure such as charging stations will be crucial. It will be important for the industry that widespread adoption is timed in conjunction with supporting infrastructure to ensure that the buyer experience is positive.

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