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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TREASURY LAWS AMENDMENT (ELECTRIC CAR DISCOUNT) BILL 2022

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer, the Hon Jim Chalmers MP)

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

<i>Abbreviation</i>	<i>Definition</i>
Bill	Treasury Laws Amendment (Electric Car Discount) Bill 2022
FBT	Fringe benefits tax
FBTAA 1986	<i>Fringe Benefits Tax Assessment Act 1986</i>

General outline and financial impact

Electric car discount – fringe benefits tax exemption

Outline

The Bill amends the FBTAA 1986 to exempt from fringe benefits tax cars that are zero or low emissions vehicles held by the provider and used by or made available for private use of employees. Additionally, 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. This is to encourage a greater take up of electric cars by Australian road users to reduce Australia’s carbon emissions from the transport sector, by making electric cars more affordable. The operation of the amendment will be reviewed after three years in light of electric car take up.

Date of effect

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.

Proposal announced

The Bill implements the *Electric Car Discount* commitment announced by the Government during the 2022 Federal Election.

Financial impact

This proposal is estimated to have the following financial impact:

All figures in this table represent amounts in \$m.

2022-23	2023-24	2024-25	2025-26
-20.0	-40.0	-55.0	-90.0

Human rights implications

This Bill does not raise any human rights issues. See Statement of Compatibility with Human Rights — Chapter 2.

Compliance cost impact

The Bill is expected to have no more than a minor regulatory impact.

Chapter 1: *Electric car discount – fringe benefits tax exemption*

Outline of chapter

- 1.1 The Bill amends the FBTAA 1986 to exempt from FBT the use, or availability for use of cars that are zero or low emissions vehicles made available by employers to current employees. Additionally, 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.
- 1.2 The objective of these amendments 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 from the transport sector. These amendments will be reviewed after three years in light of electric car take up.
- 1.3 All legislative references in this Chapter are to the FBTAA 1986 unless otherwise indicated.

Context of amendments

- 1.4 The Government is supporting the take up of electric cars by increasing the affordability of those vehicles for Australians. Removing the FBT on eligible electric cars will increase competition in the market for cars by decreasing the price differential relative to internal combustion engine cars.
- 1.5 Increasing the affordability of electric cars plays a role in encouraging a greater take up of electric vehicles by Australians. An increase in electric cars will contribute to reducing Australia’s carbon emissions from the transport sector.
- 1.6 This amendment will apply to cars that are:
 - battery electric vehicles;
 - hydrogen fuel cell electric vehicles; and
 - plug-in hybrid electric vehicles.collectively referred to as zero or low emissions vehicles.
- 1.7 The FBT exemption relates to car fringe benefits and therefore will only apply to vehicles that are ‘cars’ for FBT purposes; other types of electric vehicles are excluded. Additionally, 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.

- 1.8 The Government will review the electric car discount in three years. The review will consider electric car take up at that time, whether this tax concessions should be continued, and if so, in what form.

Summary of new law

- 1.9 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. A car benefit is an exempt benefit for a year of tax if:
- the car is a zero or low emissions vehicle;
 - the value of the car at the first retail sale was below the luxury car tax threshold for fuel efficient vehicles; and
 - the car is first held and used on or after 1 July 2022.
- 1.10 Car fringe benefits that are exempt from FBT will continue to be included in the employee’s individual fringe benefits amount for the purposes of determining the employee’s reportable fringe benefits amount for each FBT year in which the exempt benefit is provided.

Comparison of key features of new law and current law

Table 1.1 Comparison of new law and current law

<i>New law</i>	<i>Current law</i>
Employers are exempt from FBT for car fringe benefits involving cars that are eligible zero or low emissions vehicles made available to employees. Additionally, 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.	Where an employer provides a fringe benefit to an employee on a car that is a zero or low emissions vehicle, the employer is subject to FBT on the taxable value of the benefit. The taxable value of a car fringe benefit can be calculated using a statutory formula or on a cost basis.

Detailed explanation of new law

New FBT exemption for car benefits derived from use or availability of eligible electric cars

- 1.11 Car fringe benefits arise where a car is applied to, or is taken to be available for, private use of an employee or an associate of the employee by their employer.
- 1.12 A car benefit (described in subsection 7(1)) is an exempt benefit if all of the following conditions are satisfied:
- the benefit is provided in the course of employment for a current employee in relation to an FBT year;
 - the benefit is provided in relation to a car that is a zero or low emissions vehicle; and
 - no amount of luxury car tax has become payable on the car (generally this means the value of the electric car, as defined by the *A New Tax System (Luxury Car Tax) Act 1999*, does not exceed the luxury car tax threshold within the meaning of that Act for fuel efficient vehicles at the time the car was first sold in a retail sale).

[Schedule 1, item 1, subsection 8A(1) of the FBTA 1986]

- 1.13 The amendments incentivise the take up of electric vehicles by providing an exemption from FBT which would otherwise be payable by employers making available to employees use of cars that are zero or low emissions vehicles. Where an employer provides a car fringe benefit to an employee, the employer is subject to FBT on the taxable value of the benefit. These amendments mean that if an employer makes an eligible electric car available for a current employee's private use, the car fringe benefit arising from its private use will not attract FBT. The benefit exempted from FBT for eligible electric cars will include any associated benefit in running the car for the period the car fringe benefit was provided.

[Schedule 1, item 2, section 53 of the FBTA 1986]

- 1.14 A car in relation to which luxury car tax has become payable within the meaning of the *A New Tax System (Luxury Car Tax) Act 1999* will not be eligible for the exemption. In practice this means that the first retail price of the car (and the price for any subsequent supply of the car which might attract luxury car tax) on or after 1 July 2022 will need to be below the relevant year luxury car tax threshold for fuel efficient cars. For example, an electric car that has a luxury car tax value over \$84,916 in 2022-23 (current indexed threshold) will not qualify for the exemption. A retail sale would be a supply or importation of the car to a customer for a purpose other than a quotable purpose (within the meaning of the *A New Tax System (Luxury Car Tax)*)

Act 1999).

[Schedule 1, item 1, paragraph 8A(1)(c) of the FBTA 1986]

- 1.15 This exemption will apply to electric cars that are first held and used on or after 1 July 2022. 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.
- 1.16 There are two distinct tests for the exemption to apply. One is whether the car was held by a person being either owned by that person, leased to that person or otherwise made available to that person by another person. This includes being held by an employer, an associate of an employer, or another person with whom an employer or associate has an arrangement relating to the use or availability of the car. The other is whether the car was used in that the car was applied to, or is taken to be available for use. The exemption will only apply if the first time that both of these tests are met is after 1 July 2022. For example, if Zena acquires an electric car on 1 April 2022 and makes that car available for the private use of her employee Jack, to provide car fringe benefits from that date for 4 years, the benefits provided from 1 July 2022 will not be exempt. Additionally, if Zena were to instead sell the car to another employer after Jack had used it for only 2 years (i.e. on 1 April 2024) the benefit that that employer may provide to its employees for the use of the electric car will also not be exempt.
- 1.17 Provided the conditions of the exemption are met, 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.
- 1.18 The amendments do not alter access to salary packaging arrangements. Provided the conditions above are satisfied, the exemption is available notwithstanding that the car fringe benefit is provided under a salary packaging arrangement between an employer and employee.

Cars that are zero and low emissions vehicles

- 1.19 An electric car will need to meet specific criteria to attract the exemption. The new FBT exemption is in relation to the provision of car benefits, therefore an electric car must satisfy the requirements to be covered by the car fringe benefits rules including the meaning of a car as set out in section 136 of the FBTA 1986. Additionally, the electric car must:
- use one or more electric motors for propulsion; and
 - be fuelled by either an off-vehicle electrical power source, a battery, an electric generator, a hydrogen fuel cell, or a combination of these.

[Schedule 1, items 1 and 6, sections 8A and 136 of FBTA 1986]

1.20 The term zero or low emissions vehicle is used to refer to a car that would be exempt from FBT if those cars were used to provide a car fringe benefit. 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.

[Schedule 1, item 1, subsection 8A(2) of FBTA 1986]

1.21 A car that has an internal combustion engine will not be within the scope unless it is able to be fuelled by a battery that can be recharged by an off-vehicle power source (i.e., plug-in hybrid car).

1.22 Cars that do not fit within the meaning of a zero or low emission vehicles will not be affected; their treatment for the purpose of FBT will remain the same. There is no change to the treatment of fringe benefits involving the use of other electric vehicles that are not cars, such as motorbikes.

Reporting exempt car fringe benefits

1.23 Car fringe benefits for zero or low emissions cars that are exempt from FBT will be included for the purposes of determining a current employee's reportable fringe benefits amount for each FBT year. The amendments effectively add back to the employee's individual fringe benefits amount the taxable value of the car benefit as if the exemption had not occurred.

[Schedule 1, items 3, 4 and 5, sections 135P and 135Q of FBTA 1986]

1.24 This is designed to ensure fairness in the tax and transfer systems, noting that the reportable fringe benefits amount is used to calculate and determine various liabilities and entitlements. These include calculating the Medicare levy surcharge, determining entitlement to certain tax offsets, and determining eligibility for certain family assistance payments.

Consequential amendments

1.25 The Bill also makes a minor consequential amendment to the FBTA 1986. It amends subsection 53(1) to ensure that particular benefits provided in relation to a car that is a zero or low emissions vehicle are exempt (in the same way that those benefits are exempt in relation to car benefits referred to in subsection 8(2)). Subsection 53(1) deals with car expense payment benefits, car property benefits and car residual benefits.

[Schedule 1, item 2, subsection 53(1) of FBTA 1986]

Commencement, application, and transitional provisions

- 1.26 The amendments apply to benefits first provided on or after 1 July 2022.
[Schedule 1, item 7]
- 1.27 The application of the law is retrospective; however, it is wholly beneficial for affected employers as the affected benefits would no longer be subject to the tax.
- 1.28 The amendments provided by the Bill commence from the first 1 January, 1 April, 1 July or 1 October to occur after the day the Bill receives Royal Assent.
[Section 2]

Chapter 2: Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Treasury Laws Amendment (Electric Car Discount) Bill 2022

Overview

- 2.1 The Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.
- 2.2 The Bill amends the *Fringe Benefits Tax Assessment Act 1986* to exempt from fringe benefits tax cars that are zero or low emissions vehicles held by the provider and used or made available for private use of employees. This 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 from the transport sector. The operation of the amendment will be reviewed after three years in light of electric car take up.

Human rights implications

- 2.3 This Bill does not engage any of the applicable rights or freedoms.

Conclusion

- 2.4 This Bill is compatible with human rights as it does not raise any human rights issues.