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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

TAXATION LAWS AMENDMENT BILL (NO. 2) 1993

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Circulated by the authority of the Treasurer,
the Hon John Dawkins, M.P.)

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General Outline and Financial Impact of the Amendments

These proposed amendments will amend Taxation Laws Amendment Bill (No.2) 1993 to extend the development allowance and the general investment allowance to panel van and utility truck derivatives of motor cars if designed to carry loads of 1 tonne or more.

The amendments will apply from the commencement of each allowance. That is, to vehicles ordered after 26 February 1992 in the case of the development allowance and to vehicles ordered after 8 February 1993 in the case of the general investment allowance.

The cost of the amendment under the development allowance is impossible to estimate but, by the nature of the allowance, is unlikely to be high. The total cost under the general investment allowance is unlikely to exceed \$2m.

Summary of proposed amendments

The development allowance provisions and the general investment allowance provisions are to be amended so that panel vans and utility trucks derived from a motor car will qualify for the allowances if designed to carry loads of 1 tonne or more. Such vehicles cannot qualify under the existing allowances irrespective of their carrying capacity.

The amendments will apply from the commencement of each allowance. That is, to vehicles ordered after 26 February 1992 in the case of the development allowance and to vehicles ordered after 8 February 1993 in the case of the general investment allowance.

Explanation of the proposed amendments

Background

The development allowance provides a deduction equal to 10% of the capital cost of the plant component of projects costing not less than \$50m and which meet certain other criteria specified in the *Development Allowance Authority Act 1992*. The allowance applies to new plant acquired or constructed after 26 February 1992 and first used or installed ready for use before 1 July 2002.

The general investment allowance, contained in Taxation Laws Amendment Bill (No.2) 1993, is a deduction equal to 10% of the cost of eligible plant. To qualify, the cost of a unit must be \$3000 or more and be acquired under a contract entered into after 8 February 1993 and before 1 July 1994. If constructed by a taxpayer, construction must commence between those dates. As well, the property must be first used, or be installed ready for use, before 1 July 1995.

Because of the similarity of both allowances, entitlement to the general investment allowance is to be mainly worked out using the existing development allowance provisions.

Certain classes of property are excluded from both allowances. Like the former investment allowance, neither allowance applies to "motor cars, station wagons, panel vans, utility trucks or similar vehicles" [subparagraph 82AF(2)(a)(i)]. Other vehicles can qualify if designed to carry loads of not less than 1 tonne or not fewer than 9 passengers [subparagraph 82AF(2)(a)(iii)].

A Taxation Board of Review decided that the exclusion of motor cars, station wagons, panel vans, utility trucks or similar vehicles refers to motor cars and vehicles derived from a motor car [Case M10 80 ATC 76; (1980) 23 CTBR (NS) Case 92].

So, no derivative of a motor car, such as a panel van or a utility truck, can qualify for the allowances, irrespective of their load carrying capacity. By comparison, vehicles not derived from a motor car but of a similar configuration and function to motor car derived panel vans and utility trucks can qualify for the allowances if designed to carry a load of 1 tonne or more.

The amendment

This distinction between motor car derived panel vans and utility trucks, and other vehicles of similar function, is to be removed. All utility trucks and panel vans will be able to qualify for the allowances if designed to carry a load of 1 tonne or more and if they satisfy the other conditions for eligibility.

Subparagraph 82AF(2)(a)(i), which contains the motor car and derivative exclusion, is to be amended by removing utility trucks and panel vans designed to carry loads of 1 tonne or more from its application [Clause 19A].

The terms "panel van" and "utility truck" are not defined. However, in common usage, they refer to motor cars, the rear section of which has been specially modified for carrying loads rather than passengers. The term "panel van" refers to such a vehicle that has an enclosed load carrying area. The term "utility truck" refers to a vehicle with a well-type box structure which may be covered with a tarpaulin or some other cover.

Application

This amendment is to apply from the commencement of the two allowances. That is achieved by specifying that the amendment applies in respect of a unit of property acquired or commenced to be constructed after 26 February 1992, the commencement date for the development allowance [Clause 19C(1)].

Because of the manner in which entitlement to the general investment allowance is worked out under the development allowance provisions, it follows that the amendment will also apply in relation to the general investment allowance which applies to property acquired or commenced to be constructed after 8 February 1993.

Consequential amendment

Vehicles which are excluded from the allowances by paragraph 82AF(2)(a) are not treated as assets under capital gains tax (CGT). Section 160A specifies that the meaning of asset under CGT "does not include a motor vehicle of a kind mentioned in paragraph 82AF(2)(a)".

As a result of the amendment to be made to paragraph 82AF(2)(a), section 160A is to be amended so that panel vans and utility trucks designed to carry loads of 1 tonne or more are treated as assets. This amendment applies in relation to such vehicles acquired after *date of introduction* [*Clauses 19B & 19C(2)*].