

2 June 2023

Amber Ibbott
Director
Superannuation and Employer Obligations
Australian Taxation Office

By email: PAGSEO@ato.gov.au

Dear Ms Ibbott,

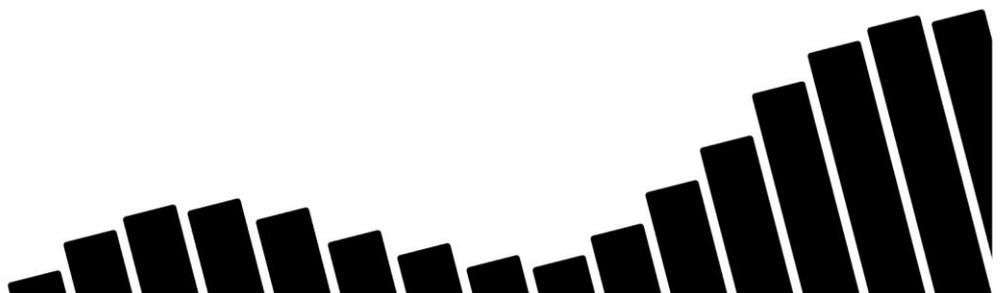
Draft Practical Compliance Guideline PCG 2023/D1 - Electric vehicle home charging rate

The Tax Institute welcomes the opportunity to make a submission to the Australian Taxation Office (**ATO**) in relation to Draft Practical Compliance Guideline PCG 2023/D1: Electric vehicle home charging rate – calculating electricity costs when charging a vehicle at an employee's or individual's home (**draft PCG**).

In the development of this submission, we have closely consulted with our National Fringe Benefits Tax (**FBT**) and Employment Taxes Technical Committee to prepare a considered response that represents the views of the broader membership of The Tax Institute.

We are of the view that the Commissioner of Taxation (**Commissioner**) should be granted the legislative powers to determine the appropriate rate for zero emission electric vehicles (**ZEVs**) through a legislative instrument. A practical compliance guideline is not an appropriate tool to overcome any shortcomings in the legislation, especially since a taxpayer's ability to rely on the rate may be limited at the objection stage, should a dispute arise.

However, until the appropriate legislative fix is implemented, we have set out below for your consideration, our detailed comments regarding the draft PCG.



Plug-in hybrid electric vehicles

The draft PCG will apply to ZEVs. Example 1 of the draft PCG states that the rate will not apply to plug-in hybrid electric vehicles (**PHEVs**) as these are not considered to be ZEVs. We understand that there are concerns with taxpayers potentially receiving a double deduction if they utilise the proposed rate in addition to claiming the costs for using liquid fuel. However, owners of PHEVs who rely on electricity and meet the other requirements set out in the draft PCG will also incur expenses associated with electricity for charging their vehicle at their home. These taxpayers will not benefit from a simplified compliance approach and will continue to face the challenges associated with accurately determining the cost of electricity used to charge an electric vehicle (**EV**).

We therefore consider that the draft PCG should also determine a rate for owners of PHEVs, to the extent the taxpayers have used electricity in addition to liquid fuel. We appreciate that extra evidentiary requirements may need to be inserted into the draft PCG so taxpayers can demonstrate that electricity charging costs were incurred. Consideration will also need to be given to the interaction between the rate for PHEVs and eligible motor vehicles that can use the cents per kilometre rate set out in Taxation Determination [TD 2023/1](#).

Determining a rate for PHEVs will provide taxpayers and tax practitioners with greater certainty and a simpler option to calculate their electricity costs. If the Commissioner is of the view that a different rate should apply for PHEVs compared to ZEVs, the different rate should be supported by a calculation methodology.

The Tax Institute is of the view that our recommendation seeks to appropriately balance the need for ensuring heightened compliance with the need for a safe harbour calculation method. Given the absence of ATO guidance or legislative clarity on how to appropriately calculate taxable values or deduction amounts relating to such vehicles, this is a difficult requirement for taxpayers to comply with.

Determination of the rate

Feedback from our members indicates that there is a perception that the proposed rate of 4.2 cents per kilometre does not correctly reflect the actual costs associated with charging an EV. These concerns are becoming increasingly prevalent given the continuing and sharp increases in electricity prices. Footnote 10 of the draft PCG briefly notes the sources considered when determining the rate. However, we consider that the draft PCG should provide further detail regarding the specific methodology employed by the ATO to determine the rate and the relevant time when the assessment was undertaken. We also consider that the rate needs to be regularly reviewed to ensure it appropriately keeps up with rising costs and better reflects the economic circumstances impacting Australians.

Novated leases and input tax credits for reimbursements

We consider that the draft PCG would benefit from further guidance concerning instances when an employer reimburses an employee for electricity expenses through the cents per km method for a car provided directly by the employer or through a novated lease. In these instances, it is currently unclear whether the:

- employer can claim a Goods and Services Tax (**GST**) input tax credit equivalent to 1/11th of the reimbursed amount; and

- requirement that the employee must have incurred the expense is sufficient for GST purposes.

The employee's electricity invoices will also include charges for usage beyond the work-related expense related to charging an EV. Employees will not be provided with a specific supplier tax invoice to support any amounts claimed. We are of the view that a practical solution to alleviate the evidentiary concern is to consider the employee's declaration of the kilometres travelled as sufficient substantiation for GST purposes.

Closing odometer reading for FBT year ended 31 March 2023

Paragraphs 18 and 19 of the draft PCG provide for a transitional approach to evidentiary requirements, permitting taxpayers to keep a reasonable estimate of the opening odometer reading for 1 April (for FBT purposes) or 1 July 2022 (for income tax purposes). We consider that the draft PCG should also allow employees to use a reasonable estimate for the:

- closing odometer reading for the 2022–23 FBT year on 31 March 2023; and
- opening odometer reading for the 2023–24 FBT year on 1 April 2023.

The draft PCG was issued on 31 March 2023. Many affected employees will not have been aware of the need to record an accurate odometer reading at this time to substantiate a cents per kilometre claim for electricity costs for either the 2022–23 or 2023–24 FBT year. Allowing employees to use a reasonable estimate will result in more equitable treatment and provide taxpayers with time to adequately prepare and retain the relevant records at the required time.

'Incurred' test and who incurs the costs

Paragraph 24 of the draft PCG states that the employee being reimbursed is required to incur the home electricity expense. We consider that this requirement would benefit from further clarification to better account for private household arrangements. For example, a household electricity supply contract and tax invoice may record a partner, spouse, or particular family member as the customer. However, private arrangements may exist regarding who pays the electricity provider.

We consider that the expense should be deemed as being incurred in some circumstances, including instances when the spouse or partner of the employee pays the bill (either from a joint or separate account). We also consider that the expense should be deemed as being incurred in instances where a private reimbursement agreement exists, including instances where a child pays their parents an amount reflecting their portion of the electricity bill. We note that evidence of such a reimbursement may be required. If written evidence (such as a contract) is required, further information should specify what the taxpayer will need to provide to demonstrate an arrangement. This will ensure that taxpayers are able to effectively prepare for and meet their evidentiary requirements.

'Incurred' test where solar credits are applied

It is common for households with solar panels to export surplus electricity into the distribution network under an arrangement with the relevant electricity provider. In some instances, households may have a net credit position for some periods with the electricity supplier because the value of the household surplus electricity fed into the network exceeds electricity usage charges. However, it is practically impossible to trace payments or credits to specific electricity used throughout the household.

We consider that the employee (or household) should be considered as acting in both a user/buyer capacity and a vendor capacity with the electricity supplier. Under this approach, the employee should be deemed to have incurred the total electricity costs charged before netting off potential credits. Where credits arise in a billing period, these should be considered as arising from the employee's separate sale of electricity to the grid. This will result in the employee being considered to have incurred the expenses being claimed, provided the employee has incurred gross electricity costs (before netting of any credits) that at least equal the amount being claimed in a particular FBT or income year.

We would be pleased to work with the ATO to further discuss the development of the draft PCG to ensure that it provides taxpayers and tax practitioners with the most useful and accurate guidance.

The Tax Institute is committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all.

If you would like to discuss any of the above, please contact our Senior Tax Counsel, Julie Abdalla, on (02) 8223 0058.

Yours faithfully,



Scott Treatt

General Manager,
Tax Policy and Advocacy



Paul Banister

Council Member