Automotive Transformation
Scheme Amendment
Regulations 2010 (No. 1)

Select Legislative Instrument 2010 No. 329

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the Automotive Transformation Scheme Act 2009.

Dated 8 December 2010

QUENTIN BRYCE
Governor-General

By Her Excellency’s Command

KIM CARR
Minister for Innovation, Industry, Science and Research
1 **Name of Regulations**
These Regulations are the *Automotive Transformation Scheme Amendment Regulations 2010 (No. 1)*.

2 **Commencement**
These Regulations commence on the day after they are registered.

3 **Amendment of Automotive Transformation Scheme Regulations 2010**
Schedule 1 amends the *Automotive Transformation Scheme Regulations 2010*.

**Schedule 1  Amendments**
(regulation 3)

[1] **Subregulation 1.5 (1), definition of acquire**

substitute

*acquire* includes acquire by purchase and acquire under a finance lease, operating lease or hire purchase agreement.

[2] **Subregulation 1.5 (1), after definition of GST**

insert

*hire purchase agreement* has the meaning given by the Australian Accounting Standards.

[3] **Subregulation 1.5 (1), after definition of sales value**

insert

Note Regulation 1.6 sets out the meaning of *production* and *provided in Australia*. 
[4] Paragraphs 1.9 (3) (f) and (g)

substitute
(f) any activity that is peripheral or incidental to the production process; or
(g) any activity that is not integral to the production process, including an aftermarket or customising activity; or

[5] Paragraph 1.17 (3) (g)

after
finance lease
insert
or hire purchase agreement

[6] Subparagraph 1.17 (4) (c) (iii)

omit
acquisition.
insert
acquisition; or

[7] After paragraph 1.17 (4) (c)

insert
(d) the investment in the plant and equipment is undertaken by the ATS participant by way of acquiring the plant and equipment under a hire purchase agreement, and:
   (i) the owner under the agreement has not been, and is not, an ATS participant; and
   (ii) the plant and equipment has been owned in Australia only by the owner under the agreement; and
   (iii) the plant and equipment has not been used in Australia before the acquisition.
[8] **Subregulation 1.18 (3)**

*substitute*

(3) If the plant and equipment is acquired by the MVP under a finance lease or hire purchase agreement (other than a sale and leaseback arrangement), the maximum claimable value for allowable plant and equipment is:

\[ D \times 1.2 \]

where:

\( D \) is the capital value of the plant and equipment shown on the lease document or hire purchase agreement.

[9] **Subregulation 1.19 (3)**

*substitute*

(3) If the plant and equipment is acquired by the ACP, AMTP or ASP under a finance lease or hire purchase agreement (other than a sale and leaseback arrangement), the maximum claimable value for allowable plant and equipment is the capital value of the plant and equipment shown on the lease document or hire purchase agreement.

[10] **Subregulation 1.20 (1)**

*substitute*

(1) An ATS participant may claim, as allowable research and development, research and development activities that are:

(a) directly related to the design, development, engineering or production of motor vehicles, engines, engine components, automotive components, automotive machine tools or automotive tooling; and

(b) undertaken for the purpose of:

(i) acquiring new knowledge; or

(ii) creating new or improved materials, products, devices, production processes or services.

*substitute*

(6) An MVP may not claim research and development that is directed at any production or provision of automotive services for the MVP’s own use.

[12] **Subregulation 1.21 (2), definition of F**

*omit*

as an expense

[13] **Subregulation 1.21 (6), 1.22 (2) and 1.22 (6)**

*omit*

as an expense

[14] **Paragraph 1.26 (1) (a)**

*omit*

by purchase or under a finance lease

*insert*

by purchase, under a finance lease or hire purchase agreement

[15] **Paragraph 1.29 (2) (c)**

*substitute*

(c) both of the following apply:

(i) the parties are parties to a contract, arrangement or understanding containing a cartel provision, within the meaning of section 44ZZRD of the *Trade Practices Act 1974*;
(ii) one or more of the parties has been convicted of an offence under, or ordered to pay a pecuniary penalty for contravening, attempting to contravene or being involved in a contravention of, Division 1 of Part IV of that Act in respect of the contract, arrangement or understanding.

[16] After subregulation 2.8 (6)

insert

(6A) If the Minister makes a decision to refuse permission for the person to apply for registration, the Minister must give the person notice in writing of the decision setting out the reasons for the decision.

[17] After subregulation 2.25 (6)

insert

(6A) If the Minister makes a decision to refuse permission for the person to continue registration as an ATS participant, the Minister must give the person notice in writing of the decision setting out the reasons for the decision.

[18] Subregulation 2.28 (3)

omit
  affect
insert
  effect
[19] Regulation 3.7

substitute

3.7 Rules concerning returns

(1) An ATS participant may, in providing a return for a quarter for an ATS year, cover any of the following items that it failed to cover in an earlier return for a quarter in the same ATS year:

(a) any particular MVP production achieved (in the case of an MVP);
(b) any particular eligible investment undertaken;
(c) any particular sales value achieved;
(d) an eligible start-up investment amount that has been spent.

(2) If the item is covered in a later return as provided for in subregulation (1), it is to be treated, for all purposes of the Scheme, as if it were achieved, undertaken or spent in the quarter in which it is reported and not in the quarter in which it was actually achieved, undertaken or spent.

(3) If the item is not covered in a later return as provided for in subregulation (1), it is to be treated, for all purposes of the Scheme other than subregulation 3.11 (4), as if it had never been achieved, undertaken or spent.

(4) If an ATS participant, in providing a return in respect of the final quarter for an ATS year, fails to cover any of the following items:

(a) any particular MVP production achieved (in the case of an MVP);
(b) any particular eligible investment undertaken;
(c) any particular sales value achieved;
(d) an eligible start-up investment amount that has been spent;

by the ATS participant in that or any earlier quarter in the ATS year, that production, investment or sales value, is to be treated, for all purposes of the Scheme other than subregulation 3.11 (4), as if it had never been achieved, undertaken or spent.
(5) If an ATS participant makes a return in respect of a particular quarter then, for the purposes of that return:
   (a) the ATS participant is to be treated as having been in existence for each of the relevant quarters in respect of that quarter whether or not the ATS participant was in existence; but
   (b) the ATS participant is to be treated as having undertaken no eligible investments and spent no eligible start-up investment amount in each such relevant quarter unless the ATS participant in fact undertook such investments or expenditure in that relevant quarter.

[20] **After subregulation 3.11 (2)**

*insert*

(3) If an eligible start-up period ends during an ATS year:
   (a) subregulation (2) applies to the payment of assistance up to and including the quarter in which the start-up period ends; and
   (b) for the quarters in the ATS year remaining after the quarter in which the eligible start-up period ends — the payment of assistance must not exceed 5% of the sales value of the ATS participant’s goods and services for the previous 4 quarters.

(4) For this regulation, any sales value achieved or eligible start-up investment amount spent by an ATS participant that the ATS participant failed to cover in a return for the previous year is to be treated as if it were achieved or spent during that year.

[21] **Regulation 4.2**

*omit*

   If an ATS participant

*insert*

(1) If an ATS participant
[22] Regulation 4.2

*insert*

(2) The Secretary may refuse to make a recovery under subregulation (1) if the Secretary believes that the ATS participant is unlikely to have sufficient entitlements in future quarters to cover the Scheme debt and, in the case of debt related to uncapped assistance, any interest payable under regulation 4.4.

[23] Subparagraph 4.3 (1) (c) (ii)

*omit* debt).

*insert* debt);

[24] After paragraph 4.3 (1) (c)

*insert*

(d) if the ATS participant chooses recovery by deduction under regulation 4.2 — the requirement that the ATS participant make a request for deduction to the Secretary no more than 30 days after the day on the notice.

[25] Subregulation 4.4 (2)

*substitute*

(2) If:

(a) the ATS participant pays the Scheme debt and interest worked out under this subregulation no more than 30 days after the day on the notice mentioned in regulation 4.3; or

(b) all of the following occur:

(i) the ATS participant requests, no more than 30 days after the day on the notice mentioned in regulation 4.3, that the Scheme debt be recovered by deduction under subregulation 4.2 (1);
(ii) the Secretary accepts that request;

(iii) if the Scheme debt relates to the payment of uncapped assistance — the Secretary also accepts a request for recovery by deduction of the interest worked out under this subregulation;

(iv) if the Scheme debt relates to the payment of capped assistance — the ATS participant pays the interest worked out under this subregulation within the time allowed by the Secretary under regulation 4.5; or

(c) both of the following occur:

(i) the ATS participant obtains an extension of time under regulation 4.5;

(ii) the ATS participant pays the Scheme debt and interest within the extended time;

the amount of interest payable on the Scheme debt is the 90 day bank accepted bill rate less 10 basis points worked out on the debt from the day the assistance was paid to the ATS participant.

(2A) If the ATS participant’s request for recovery by deduction under subregulation 4.2 (1) is refused, or the Scheme debt or interest payable under subregulation (2) has not been paid by the payable day, the amount of interest payable on the Scheme debt is the sum of:

(a) the amount worked out at the rate set out in subregulation (2), payable on the Scheme debt from the day the assistance was paid to the ATS participant until the end of the payable day; and

(b) the amount worked out at the rate of 20% per year on:

(i) any part of the Scheme debt that is unpaid at the end of the payable day; and

(ii) any part of the interest mentioned in paragraph (a) that is unpaid at the end of the payable day; payable from the day after the payable day until the debt and interest are paid in full.
(2B) In this regulation:

*payable day* means:

(a) the day that is 30 days after the day on the notice mentioned in regulation 4.3; or

(b) the day that payment has been extended to under regulation 4.5.

[26] **Subregulation 4.5 (1)**

*omit*

paragraph 4.4 (2) (a).

*insert*

subregulation 4.4 (2).

[27] **After paragraph 5.6 (f)**

*insert*

(fa) a decision by the Secretary under subregulation 4.2 (2) to refuse recovery of a Scheme debt by offsetting;

**Note**