EXPLANATORY STATEMENT

AUTOMOTIVE TRANSFORMATION SCHEME AMENDMENT ORDER 2011 (No. 1)

Overview

The Automotive Transformation Scheme Amendment Order 2011 (the Amendment) is made under the authority of regulation 3.12 of the Automotive Transformation Scheme Regulations 2010 (the Regulations). The Regulations are made under the authority of the Automotive Transformation Scheme Act 2009 (the Act).

The Act established the legislative framework for the Automotive Transformation Scheme (ATS) with the administrative detail set out in the Regulations and the ATS Order 2010 (the Order). The Amendment is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

The ATS is the centrepiece of the Government’s $5.4 billion A New Car Plan for a Greener Future and encourages the innovation and investment necessary to place the Australian automotive industry on an economically sustainable footing.

The ATS is an entitlement scheme that provides cash payments to registered participants for strategic investment in research and development, plant and equipment, and the production of motor vehicles, engines and engine components. Section 4.2 of the Order sets out the treatment of other Commonwealth assistance for the purpose of calculating uncapped production amounts for motor vehicle producers (MVPs); and capped investment amounts for MVPs and non-MVPs.

The Amendment is a consequence of the commencement of the Tax Laws Amendment (Research and Development) Act 2011 and Income Tax Rates Amendment (Research and Development) Act 2011 (the R&D Acts).

The Amendment puts in place substitute paragraph 4.2(a) which includes the updated reference for the new claw-back provisions arising from the commencement of the R&D Acts. It prevents ATS participants from double dipping in respect of Commonwealth assistance received under the ATS and the Income Tax Assessment Act 1997. This maintains the Government’s policy of discouraging businesses gaining multiple government benefits for the same expenditure.

The Amendment has no impact on the day-to-day administration of the ATS or on the benefits ATS participants are entitled to receive.

Consultation

The Amendment was developed following consultation with the Department of Innovation, Industry, Science and Research and the Australian Government Solicitor as a consequence of the commencement of the R&D Acts.

In the 2009-10 Budget, the Government announced that it would replace the Research and Development (R&D) Tax Concession with a new, streamlined tax incentive. The
Government issued a consultation paper titled ‘The new research and development tax incentive’ in September 2009. A first exposure draft of the legislation for the new scheme was released in December 2009. Following consultations with stakeholders, a second exposure draft was released in March 2010. The second exposure draft included changes to make the legislation clearer and to remove unintended consequences. The R&D Acts reflect additional refinements following comments from and consultations with stakeholders on the second exposure draft.

The new R&D tax incentive put in place by the R&D Acts is the biggest reform to business innovation support for more than a decade. It cuts red tape and provides a more targeted incentive for companies to invest in R&D. The new R&D tax incentive is also an opportunity to ensure that public support for business R&D is consistent with the underlying rationale for government intervention and delivers value for money for taxpayers.

**Financial Implications**

There are no financial implications arising from the Amendment.
Details of the *Automotive Transformation Scheme Amendment Order 2011 (No. 1)*

1. **Name of Order**
   Section 1 prescribes that the name of the Order is the *Automotive Transformation Scheme Amendment Order 2011 (No. 1)*.

2. **Commencement**
   Section 2 provides that the Order commences on the day after it is registered on the Federal Register of Legislative Instruments.

3. **Amendment of Automotive Transformation Scheme Order 2010**
   Section 3 makes it clear that Schedule 1 amends the *Automotive Transformation Scheme Order 2010*.

**Schedule 1 — Amendments**

1. **Paragraph 4.2(a)**
   Substituted paragraph 4.2(a) is a consequence of the commencement of the *Tax Laws Amendment (Research and Development) Act 2011* and *Income Tax Rates Amendment (Research and Development) Act 2011*, which received assent on 8 September 2011.

   The substituted paragraph uses the claw-back provisions set out in Division 355 and Subdivision 20A of the *Income Tax Assessment Act 1997* (ITAA) and Part III of the *Industry Research and Development Act 1986* to prevent participants claiming allowable investment in research and development (R&D) under the Automotive Transformation Scheme and the ITAA. It reflects the new R&D tax credit arrangements which replaced the R&D tax concession arrangements for income years commencing on or after 1 July 2011.