


TD 2006/D10 - Income tax: is a hearse 'a car designed mainly for carrying passengers' for the purposes of section 40-230 of the Income Tax Assessment Act 1997 and therefore subject to the car limit?

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This document has been finalised by TD 2006/39.



Draft Taxation Determination

Income tax: is a hearse ‘a car designed mainly for carrying passengers’ for the purposes of section 40-230 of the *Income Tax Assessment Act 1997* and therefore subject to the car limit?

ⓘ This Ruling provides you with the following level of protection:

This publication is a draft for industry and professional comment. It represents the Commissioner’s preliminary view about the way in which a relevant taxation provision applies, or would apply to entities generally or to a class of entities in relation to a particular scheme or a class of schemes. You can rely on this publication (excluding appendices) to provide you with protection from interest and penalties in the way explained below. If a statement turns out to be incorrect and you under-pay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the under-payment provided you reasonably relied on the publication in good faith. However, even if you don’t have to pay a penalty or interest, you will have to pay the correct amount of tax provided the time limits under the law allow it.

Ruling

1. No. A hearse is not ‘a car designed mainly for carrying passengers’ for the purposes of section 40-230 of the *Income Tax Assessment Act 1997*.¹ Therefore, the first element of the cost of a hearse is not subject to the car limit.

Date of effect

2. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Commissioner of Taxation

1 March 2006

¹ All legislative references in this Determination are to the *Income Tax Assessment Act 1997*.

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner’s preliminary view has been reached. It does not form part of the proposed binding public ruling.*

Explanation

3. The cost of a depreciating asset is used to work out deductions for the decline in value of the asset under Division 40. The cost of a depreciating asset has two elements. The first and second elements of cost are worked out under Subdivision 40-C. The first element of cost is worked out as at the time the taxpayer starts to hold the asset and includes amounts the taxpayer is taken to have paid to hold the asset, such as the acquisition price. The second element is worked out after that time and includes such amounts as the cost of capital improvements.
4. The first element of the cost of certain cars is subject to a limit. Subsection 40-230(1) provides that the first element of the cost of a car designed mainly for carrying passengers (after applying section 40-225 and Subdivision 27-B) is reduced to the car limit for the financial year in which the taxpayer started to hold it, if its cost exceeds that limit.
5. The term ‘car’ is defined in subsection 995-1(1) to mean ‘a motor vehicle (except a motor cycle or similar vehicle) designed to carry a load of less than one tonne and fewer than nine passengers.’ If a hearse is designed to carry a load of one tonne or more, it is not a ‘car’ as defined in subsection 995-1(1). Therefore, section 40-230 would not apply. However, if a hearse is a ‘car’ as defined in subsection 995-1(1), whether it is ‘designed mainly for carrying passengers’ needs to be considered.
6. The *Macquarie Dictionary* [Multimedia], version 5.0.0, 1/10/01, defines a hearse as ‘a funeral vehicle for conveying a dead person to the place of burial’. As part of the process of producing a hearse ‘a station wagon body is extended, the rear doors are removed, flush panelling fitted and the compartment behind the driver’s seat suitably modified’ (paragraph 8 of Miscellaneous Taxation Ruling MT 2033).
7. MT 2033 states that a vehicle originally designed as a passenger car can be modified so it is not ‘designed for the principle purpose of carrying passengers’ for Fringe Benefits Tax purposes. The reasoning in MT 2033 applies similarly to the requirement in subsection 40-230(1) that a car be ‘designed mainly for carrying passengers’. It is necessary that the modifications effect a permanent alteration to the vehicle (paragraph 7 of MT 2033). The conversion of a car into a hearse involves extensive modifications which effect a permanent alteration to the vehicle so as to change its inherent design into a vehicle that is not designed mainly for carrying passengers.
8. Therefore, a hearse is not ‘designed mainly for carrying passengers’ for the purposes of section 40-230 and so the car limit does not apply for the purposes of working out a hearse’s decline in value.

Appendix 2 – Your comments

9. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date. (Note: The Tax Office prepares a compendium of comments for the consideration of the relevant Rulings Panel. The Tax Office may use a sanitised version (names and identifying information removed) of the compendium in providing its responses to persons providing comments. Please advise if you do not want your comments included in a sanitised compendium.)

Due date: 31 March 2006
Contact officer: Kevin Westbrook
E-mail address: Kevin.westbrook@ato.gov.au
Telephone: (07) 3213 5410
Facsimile: (07) 3213 5971
Address: GPO Box 9990
Brisbane Qld 4001

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 92/20; MT 2033

Previous Rulings/Determinations:

TD 95/25

Subject references:

- car limit
- capital allowances
- cost of a depreciating asset
- first element of cost

Legislative references:

- ITAA 1997 Subdiv 27-B
- ITAA 1997 Div 40
- ITAA 1997 Subdiv 40-C
- ITAA 1997 40-225
- ITAA 1997 40-230
- ITAA 1997 40-230(1)
- ITAA 1997 995-1(1)

Other references:

- The Macquarie Dictionary, [Multimedia], version 5.0.0, 1/10/01

ATO references

NO: 2006/2476

ISSN: 1038-8982

ATOlaw topic: Income Tax ~~ Capital allowances ~~ cost of depreciating assets