


***TD 2006/39 - 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 cover sheet is provided for information only. It does not form part of *TD 2006/39 - 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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## Taxation Determination

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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?

**❶ This publication provides you with the following level of protection:**

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*. A public ruling is an expression of the Commissioner's opinion about the way in which a relevant 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. If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

### 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*.<sup>1</sup> Therefore, the first element of the cost of a hearse is not subject to the car limit.

### Date of effect

2. This Determination applies to years of income commencing both before and after its date of issue. However, the Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination.

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### Commissioner of Taxation

31 May 2006

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<sup>1</sup> 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 view has been reached. It does not form part of the 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.

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## References

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*Previous draft:*

TD 2006/D10

*Related Rulings/Determinations:*

MT 2033

*Previous Rulings/Determinations:*

TD 95/25

*Subject references:*

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

*Legislative references:*

- TAA 1953
- 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

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*ATO references*

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