

FREQUENTLY ASKED QUESTIONS & ANSWERS

Below are some of the frequently asked questions regarding the consultation drafts of the Automotive Transformation Scheme (ATS) Regulations and ATS Order.

Legislative Structure

What is the rationale behind the legislative structure of the ATS?

The *Automotive Transformation Scheme Act 2009* (the Act), the Automotive Transformation Scheme Regulations 2010 (the Regulations) and the Automotive Transformation Scheme Order 2010 (the Order) are consistent with *A New Car Plan for a Greener Future* announced on 10 November 2008.

The Act established a framework for the ATS, with the administrative detail to be included in the ATS Regulations and Order. The design of the ATS provides the flexibility required to deal with changing circumstances in the Australian automotive industry. The Act guarantees \$2.5 billion in capped assistance and provides the certainty needed for the industry to plan long-term investments.

The Regulations and Order are legislative instruments that are subject to Parliamentary scrutiny. Any changes to the Act involve a lengthy process as changes have to be passed by both houses of the Parliament.

The Regulations are made under the authority of the Act and are a disallowable instrument. The Regulations are formulated by the Governor General and are required to be tabled in the Parliament for 15 sitting days.

The Order is made under the authority of the Regulations and is a disallowable instrument. The Order is formulated by the Minister and is required to be tabled in the Parliament for 15 sitting days.

The Government has engaged in extensive consultations with industry in developing the ATS. Likewise, the Government would consult the industry in the event of future changes to the Scheme.

Registration

Regulation 2.14 requires a person applying for registration for the ATS to apply before 1 January of an ATS year. Does this penalise new entrants who may have to wait before they can start receiving assistance?

New ATS applicants cannot apply to be registered for the ATS after 1 January of that ATS year.

This has been introduced to remove the potential adverse impact on the modulation rate from new participants registering (and claiming assistance) midway through an ATS year. The impact on the modulation rate may be significant as modulation is undertaken over an ATS year (4 quarters), rather than an ATS Stage (20 quarters).

Where an applicant is required to wait for the start of the next ATS year for its registration to take effect, its first quarterly return will include not only its investment and/or production for that quarter of the ATS year, but also any investment made in the previous two years, or eight quarters.

For new registrants, the first quarterly payment is based on the previous eight quarters plus the quarter of registration. In subsequent Quarterly Returns, the number of previous quarters increases to nine previous quarters plus the current quarter, then ten previous quarters plus the current quarter and finally to eleven previous quarters plus the current quarter. Ongoing calculations remain at twelve quarters. This is referred to as the 'twelve quarter rolling average'.

Once registration is granted, it has effect for the entire Scheme, unless a participant is deregistered.

Under what circumstances can registration under the ATS be transferred to another person?

A transfer of registration (regulations 2.30 and 2.32) or a transfer of investment (regulation 2.34) represents an exception to the general rule, as assistance will be provided for an investment an ATS participant did not undertake. A business case must be provided in such circumstances.

The transfer or registration is a separate new provision to allow for acquisitions and mergers. The Secretary has the discretion to approve or refuse a transfer of registration. Regulation 2.34 also allows for partial divestments of a business/group.

What is continuing registration in the national interest?

An ATS participant may seek the Minister's permission to continue registration as an ATS participant (regulation 2.25) on the basis that the registration would be in the national interest and this permission can be granted for no more than two successive ATS years. It would be anticipated that after a period of two years, a participant would then return to meet the normal on-going requirements under Regulations 2.21 to 2.24. If necessary, a participant would be able to re-apply for registration in the national interest after two years. Registration in the national interest for a non-ATS participant is provided for in Regulation 2.8.

Strategic Business Plans

Can you provide details on the content of strategic business plans and the period of time they are required to cover?

ATS participants must provide a five year strategic business plan (subregulation 2.12(3), which will be updated annually (regulation 2.27), as a condition of registration. The Department believes that the new reporting requirements provide an appropriate framework for obtaining meaningful information on the industry's performance and will not be too onerous on participants.

The content of the strategic business plan is set out in the Regulations. The reporting requirements, which are one part of the strategic business plan, are set out in Schedule 1 of the ATS Order.

It is important to note that assistance is not linked to the content of the business plans or the reporting requirements set out in the Order. Additional guidance on the requirements for the strategic business plan will be provided by AusIndustry as part of its ongoing education and awareness activities.

How will the strategic business plans be used?

The Government has made it clear that participation in the ATS requires a commitment to capability development, enhanced environmental outcomes and training to increase workers' skills. The Department will use information from the strategic business plans to prepare a report on the progress of the industry in achieving the object of the *Automotive Transformation Scheme Act 2009*. This report will include the total capped and uncapped assistance paid to all ATS participants.

The report will be included in the Department's Annual Report to Parliament from 2012 (section 27A of the Act).

Neither the performance of individual firms nor the amount of assistance they receive will be included in this report. All information provided by participants will be treated as Commercial-In-Confidence.

What information should ATS participants provide in their strategic business plans with respect to economic sustainability, particularly given the economic downturn?

Participants will need to address the reporting requirements in Schedule 1 of the ATS Order. These include reporting on research and development expenditure, capability development, improved business performance or other activities that contribute to placing the industry on an economically sustainable footing.

Participants may also include details on how they dealt with the global economic downturn when providing information on their progress in respect of economic sustainability.

What if a participant reports no improvement in environmental outcomes?

The Order requires participants to report on their progress towards economic sustainability, environmental and workforce skills outcomes as a condition of registration. Assistance is not calculated based on achieving certain outcomes. Assistance is provided only in respect of eligible investment and production.

How much time will it take to prepare the contents of the strategic business plan?

The Department cannot give guidance on the average length of time needed by an ATS participant to meet the reporting requirements.

What is the period of time to which the business plan must relate?

Business plans are updated every ATS year at the end of the third quarter and must always cover the next five year period (regulation 2.27).

Group registration

Are there differences between group registration in ACIS and the ATS?

Groups may seek permission to apply for registration under the ATS in the same manner as ACIS. Under the ATS, groups and individuals applying for a particular class of registration will need to satisfy the same registration requirements.

The ATS Regulations do not differentiate the production thresholds for registration between individual ACPs and group ACPs.

Allowable Research and Development – Exclusion of management & recruitment from the ATS

What is allowable Research and Development under the ATS?

The ATS will provide assistance in respect of investment in the allowable research and development activities set out in regulation 1.20. This includes the following activities:

1. basic and strategic research;
2. industrial and engineering design;
3. production engineering;
4. developing activities relating to the building and testing of prototypes;
5. re-engineering and modification of existing products and processes;
6. development and installation of purpose-designed systems for quality assurance and process control or materials or movement control;
7. testing and modification of new production systems (either purpose-built or interchangeable) to achieve repeatability within specific tolerances;
8. obtaining industrial property rights; and
9. activities conducted at the ATS participants own expense that are aimed at improving a product or process of an engine or component supplier to the ATS participant.

Are management and recruitment costs allowable under ATS?

Management and recruitment activities are not allowable research and development activities under ATS. Therefore costs associated with management and recruitment activities are not allowable under the ATS.

What is management?

The Macquarie Dictionary defines management as:

1. the act or manner of managing; handling, direction, or control
2. skill in managing, executive ability
3. the person or persons managing an institution
4. executives collectively

What if a manager is involved in an allowable research and development activity?

It is the type of activity that the manager engages in that will determine whether the activity is allowable research and development. Where a participant can demonstrate that a manager is undertaking an allowable research and development activity under regulation 1.20, then it is claimable under the ATS.

Transitional arrangements from ACIS to the ATS

What period of ACIS investment will be eligible under the ATS?

Up to 11 quarters of investment undertaken in ACIS may be claimed under the ATS (see Schedule 2 of the Order). This is because assistance for allowable investment is calculated using a 12 quarter rolling average. This is only for ACIS participants who apply for registration under the ATS before 1 January 2011.

For example in the first quarter of the ATS, the amount of assistance to be provided may include up to 11 quarters of eligible investment from ACIS and 1 quarter from the ATS.

How does the exclusion of management and recruitment costs incurred under ACIS affect the rolling average?

Given the changes in allowable research and development activity, ACIS participants wishing to register for the ATS will have to identify the percentage of research and development claims relating to management and recruitment activities for each of the relevant ACIS quarters.

This will enable the Department to calculate the amount of investment in management and recruitment claimed under ACIS and removes that amount from the calculation of the 12 quarter rolling average transferred from ACIS.

Record keeping and Quarterly returns

What are the record keeping requirements?

Participants are required to keep records for 5 years (regulation 2.26).

Will the timing of payments be different to ACIS?

Payments of assistance will be made one quarter in arrears (regulation 3.13). Assistance will be paid directly into a participant's bank accounts as soon as practicable after their entitlement to assistance has been calculated.

Can unclaimed capped production or investment be claimed in a subsequent quarter?

Regulation 3.7 sets out the requirements for claiming production or investment in a subsequent quarter. Subsection 8(4) of the Act provides that "subject to subsection (6), an amount of capped assistance in respect of a year must not be paid on or after 1 April in the following year." In effect, this restricts the recognition of production or investment from prior quarters to no later than in the return for the final quarter of the relevant ATS year.

Review of Decisions

What can I do if I'm not happy with a decision?

Part 5 of the Regulations provides for internal review and administrative review of certain decisions. The Secretary of the Department must give the person affected by the decision notice in writing setting out the reasons for the decision. An application for review of the decision by the Secretary can be made within 28 days after the person is given notice of the decision. If a person is dissatisfied with this decision, they may apply to the Administrative Appeals Tribunal (AAT) for a review of the decision.

Scheme Debt and interest

Are scheme debt amounts recovered returned to the ATS pool?

Recovered capped scheme debt amounts are returned to the ATS annual capped funding in the ATS year in which the amount is recovered so long as it is within the ATS stage (as prescribed by section 8 of the Act).

Capped scheme debt amounts recovered after the end of the ATS stage in which the scheme debt arose are returned to consolidated revenue.

If the Department identifies ineligible investment, when is interest calculated from?

Interest in respect of scheme debts is calculated from the date on which the overpayment was made (regulation 4.4).

Will interest be charged if a participant appeals a decision that an overpayment has occurred?

Where an ATS participant appeals a decision that an overpayment has occurred and the appeal is not upheld, the interest on the scheme debt is calculated from the time at which the overpayment was made (regulation 4.4).

Where an appeal is upheld the scheme debt is cancelled with no interest.

What is the rate of interest that will be charged?

The interest rate is the 90 day bank bill rate less 10 basis points (subregulation 4.4(2)(a)).

Is there a different rate for scheme debts that become overdue?

Interest on overdue scheme debts will be calculated at 20 per cent plus the 90 day bank bill rate less 10 basis points (regulation 4.4(2)(b)).

Where an appeal has been made in relation to a scheme debt, the debt is not deemed to be overdue until after a decision in relation to the appeal has been made (with the debt found to be valid) and the debt is then not paid by the prescribed period following the appeal.

Are there any circumstances where interest will not be charged for scheme debts?

Interest will not be charged on Scheme debts in circumstances where the Secretary believes that doing so would cause financial hardship or where the scheme debt arose because of an error made by the Department (subregulation 4.4(3)).

Sales-based cap

Will the application of the 5 per cent of sales limit under ACIS be the same under the ATS?

The amount of annual assistance paid to a participant under the ATS must not exceed 5 per cent of the sales value of the participant's ATS goods and services for the previous year (subregulation 3.11(1)).

How does the sales cap apply to new businesses in the automotive industry?

For new automotive businesses, that is a business that has never previously undertaken an automotive business, the amount of assistance paid in an eligible start-up period must not exceed 15 per cent of its eligible start-up investment amount (subregulation 3.11(2)). This is consistent with Australia's international obligations.

What is an eligible start-up period?

An eligible start-up period is the period starting on the day the ATS participant first enters into a financial commitment to carry on a business as an MVP, ACP, AMTP or ASP and ends on the day 12 months after it first begins production of goods or delivery of services.

Assistance rates

What are the assistance rates under the ATS?

The ATS provides assistance at a rate of up to 15 per cent of investment in allowable plant and equipment and a rate of up to 50 per cent of investment in allowable research and development (Part 2, Order).

When calculating the maximum claimable value of plant and equipment and research and development under ACIS investment loadings were included for both MVPs and the supply chain – is this still the case under the ATS?

In *A New Car Plan for a Greener Future*, the Government decided not to provide investment loadings for ATS supply chain participants as a mechanism to reduce the pressure on the modulation rate.

Publication of rulings

Will there be a system of private rulings or determinations on what is eligible investment and production, such as those provided by the Australian Taxation Office?

The Government will not provide rulings or determinations for individual ATS participants. The ATS is a self-assessment scheme, participants are free to seek their own professional advice on what may or may not be eligible under the Scheme.

In addition, participants may contact the Department's delivery arm, AusIndustry, with specific requests for assistance or information. AusIndustry will also continue the ACIS practice of publishing information newsletters which will include the outcomes of compliance monitoring activities and undertake educational activities that will be provided to all ATS participants.

Part 5 of the Regulations provides for internal review of decisions to minimise cost and time delays. In addition, regulation 4.1 provides that compliance monitoring audits can only go back three years. This will ensure that compliance audits only examine investment for which ATS participants are still receiving assistance (relating to the operation of the rolling average).

Research and Development

Does the amount of allowable research and development of an ATS participant need to be treated as an 'expense' or can it be 'capitalised'?

The ATS Regulations allow for research and development to be accounted in accordance with the Australian Accounting Standards and be either 'capitalised' or 'expensed' (regulation 1.26).

Own use

What is the accounting treatment of spare parts under the ATS?

The ATS will only support plant and equipment that is capitalised, not investment for routine expenses. The Regulations clarify that a spare or replacement part which is capitalised in accordance with the Australian Accounting Standards Board should qualify as allowable plant and equipment under Regulation 1.17. Regulation 1.26 also provides clarification on the timing of when an investment in a spare replacement part is taken to have occurred.