


# ***CR 2022/28 - Perth Airport Pty Ltd - provision of parking to an individual under an arrangement with their employer***

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## Class Ruling

# Perth Airport Pty Ltd – provision of parking to an individual under an arrangement with their employer

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### **📌 Relying on this Ruling**

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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### **What this Ruling is about**

1. This Ruling sets out, for an employer, the fringe benefits tax (FBT) consequences of the provision of parking under an arrangement with Perth Airport Pty Ltd (PAPL), the type of fringe benefit provided and whether the fringe benefit is exempt.
2. Full details of the arrangement for the provision of parking are set out in paragraphs 11 to 30 of this Ruling.
3. All legislative references in this Ruling are to the *Fringe Benefits Tax Assessment Act 1986* (FBTAA), unless otherwise indicated.

**Note:** By issuing this Ruling, the ATO is not endorsing this product. Potential purchasers/users must form their own view about the product.

### **Who this Ruling applies to**

4. This Ruling applies to you if you are an employer:
  - who enters into an arrangement with PAPL to provide parking to your employees, and

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- the employees you provide with an access card or a dedicated parking application (for electronic device access) to acquire the parking do not have a primary place of employment within the vicinity of Perth Airport.

### **When this Ruling applies**

5. This Ruling applies from 1 April 2022 to 31 March 2027.

### **Ruling**

6. The provision of parking to an employee under the arrangement between the employer and PAPL is a residual benefit under section 45.
7. The arrangement between PAPL and employers does not constitute the provision of a car parking benefit under subsection 39A(1).
8. PAPL is the 'provider' under the arrangement for the purposes of paragraph 39A(1)(a).
9. The parking facilities satisfy the meaning of 'motor vehicle parking facilities'.
10. The provision of parking to an employee under the arrangement between the employer and PAPL is an exempt benefit under paragraph 58G(1)(b).

### **Scheme**

11. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.
12. Other information referenced is the Employee Parking Agreement between PAPL and employers.
13. PAPL operates the domestic and international airports and general aviation precinct for charter flights located in Western Australia (Perth Airport) and provides, among other things, short-term and long-term parking facilities at the location to the general public.
14. PAPL runs a program, titled the 'Employee Parking Agreement' program (EPAP), under which it enters into a contractual agreement (contract) with employers, to facilitate the provision of parking in permitted parking areas (all of which are public parking areas) within the parking facilities to relevant employees of such employers, at the employers' cost.
15. The EPAP is available to employers whose employees' permanent, regular or alternative place of employment is not at, or in the vicinity of, Perth Airport and are required by their employers to fly to the relevant destination for work, where such travel would not be regarded as travelling in the course of business. Such employees include those on fly-in fly-out work arrangements, those who choose to live in or near Perth and work elsewhere, and those who have an alternative work location elsewhere in addition to one in or near Perth.

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16. The contracts between PAPL and employers generally have an initial term of three years. Either party may terminate the contract with 30 days' notice throughout the initial term. The parties can agree to extend the contract for further terms. The contract will continue following the expiry of the initial term if the parties do not terminate or extend the contract or enter into a new contract.

17. Under a contract, PAPL provides employers with pre-programmed access cards or a dedicated parking application (for electronic device access). Employers can distribute these access cards or give access to use the parking application, at their sole discretion, to their employees to access parking at Perth Airport to get to their primary place of employment. The access card and the parking application allow the employee holding the card or able to use the application to access the permitted parking areas within the parking facilities and does not form part of, or constitute, a bailment arrangement.

18. The employee uses the access card or parking application to park a vehicle in specified parking areas within PAPL's parking facilities, from shortly before they depart from Perth Airport until they return to Perth Airport.

19. Employee details are provided by employers to PAPL for the purposes of allocating a particular access card to a particular employee by encoding it with an electronic serial number that links the employee's details to PAPL's car park management system.

20. Employees will be given access to use the parking application by their employer who will have access to an administrator website for the parking application. Each employee given access to the parking application will have an identifier in the application that links their details to PAPL's car park management system.

21. The information, collected by PAPL's car park management system, is used to track the usage of the parking by the employees so that PAPL can invoice the correct parking charges to the employer's monthly account for billing purposes.

22. The following conditions apply to access cards:

- access cards are not transferrable and are not permitted to be used by a person other than the person whose details are linked to PAPL's car park management system
- damaged or lost cards will be replaced at a cost of \$20 each, which is charged to the employer
- access cards must not be bent or left in direct sunlight, and
- access cards remain the property of PAPL and must be returned to PAPL within ten business days of the expiry of the contract, or the earlier termination thereof.

23. The conditions that apply to the parking application are similar to access cards to the extent:

- the parking application is not transferable and cannot be used by a person other than the person whose details are linked to PAPL's car park management system, and
- PAPL remains the owner of the parking application administrator website.

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24. Under the contract, employers, as the customers of PAPL:
- are liable to PAPL for all expenditures incurred on their monthly account by their employees in relation to parking transactions using an access card or parking application and other costs (for example, the damaged or lost card fee of \$20)
  - receive monthly invoices from PAPL which detail the parking transactions during the month, including the access card number or parking application identifier, the employee's full name and the date and time of when an employee entered or exited (or both) the parking facilities, the total number of days and hours that the vehicle was parked and the total cost associated for each employees' parking transactions in the parking facilities
  - must make payments to PAPL within 30 days (or as otherwise agreed between the parties) following the end of the month in which the invoice was issued by PAPL
  - are responsible to ensure that their employees adhere to the conditions of use of PAPL's parking and use and take care of the access cards appropriately, and
  - can request PAPL to amend the permitted parking areas to include additional parking areas within the greater parking facilities of PAPL.
25. Additionally, under the contract, PAPL can amend the permitted parking areas within the parking facilities, at any time and at its sole discretion.
26. PAPL sets the prices of its parking and reserves the right to adjust prices at any time and at its sole discretion. The price of parking under the EPAP is currently the lesser of:
- the price that is displayed at the parking area entrance or via the Perth Airport website, and
  - the prices for the relevant parking area as detailed in a contract.
27. Where PAPL requires the price of the parking to be the advertised price rather than the price outlined in a contract, PAPL will notify the relevant employers in writing.
28. Employees do not incur, and are not liable to pay for, any expenses for, or in relation to, the parking provided under the EPAP and a contract. Separate to the contracts, an employer and employee may enter an effective salary sacrifice arrangement to recoup costs incurred by the employer from employees' pre-tax income.
29. An employer may request an access card to be cancelled by providing at least three business days' notice to PAPL. An employer may make such a request where the employee ceases employment, the employee no longer requires an access card or the employer chooses to no longer provide the employee with an access card (and the employer does not want to reallocate the access card to another employee).
30. An employer may cancel an employee's access to the parking application through their access to the administrator website for the parking application.

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**Commissioner of Taxation**

23 March 2022

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## Appendix – Explanation

**❶** *This Explanation 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.*

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### Is the provision of parking to an employee under an arrangement between the employer and Perth Airport Pty Ltd a residual benefit?

31. Section 45 provides that a benefit is a residual benefit if it is not a benefit by virtue of a provision of Subdivision A of Divisions 2 to 11 (inclusive) of Part III.

32. An expense payment benefit is discussed in section 20:

Where a person (in this section referred to as the **provider**):

- (a) makes a payment in discharge, in whole or in part, of an obligation of another person (in this section referred to as the **recipient**) to pay an amount to a third person in respect of expenditure incurred by the recipient; or
- (b) reimburses another person (in this section also referred to as the **recipient**), in whole or in part, in respect of an amount of expenditure incurred by the recipient;

the making of the payment referred to in paragraph (a), or the reimbursement referred to in paragraph (b), shall be taken to constitute the provision of a benefit by the provider to the recipient.

33. The arrangement between PAPL and the employer is such that the employer incurs the liability for the parking transactions of an employee and is responsible for paying the parking-related expenses directly to PAPL. The employer is not making a payment to PAPL in discharge of an obligation of the employee to pay PAPL for the parking, nor reimbursing the employee for parking expenditure incurred by the employee. The provision of the parking under the arrangement is not an expense payment benefit.

34. The provision of parking under the arrangement is not a benefit under any other Division except possibly a car parking benefit. If the provision of parking under the arrangement is not a car parking benefit, it will be a residual benefit.

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**Does the arrangement constitute the provision of a car parking benefit?**

35. A car parking benefit arises under subsection 39A(1) if all of the following conditions are satisfied.

If the following conditions are satisfied in relation to a daylight period, or a combination of daylight periods, on a particular day:

- (a) during the period or periods, a car is parked on one or more premises of a person (the **provider**), where:
  - (i) the premises, or each of the premises, on which the car is parked are business premises, or associated premises, of the provider; and
  - (ii) a commercial parking station is located within 1 km radius of the premises, or each of the premises, on which the car is parked; and
  - (iii) the lowest fee charged by the operator of any such commercial parking station in the ordinary course of business to members of the public for all-day parking on the first business day of the FBT year is more than the car parking threshold;
- (b) the total duration of the period or periods exceeds 4 hours;
- (c) any of the following applies:
  - (i) a car benefit relating to the car is provided on that day to an employee or an associate of an employee in respect of the employment of the employee;
  - (ii) the car is owned by, or leased to, an employee or an associate of an employee at any time during the period or periods;
  - (iii) the car is made available to an employee or an associate of an employee at any time during the period or periods by another person, where:
    - (A) the other person is neither the employer of the employee nor an associate of the employer of the employee; and
    - (B) the other person did not make the car available under an arrangement to which the employer of the employee, or an associate of the employer of the employee, is a party;
- (d) the provision of parking facilities for the car during the period or periods is in respect of the employment of the employee;
- (e) on that day, the employee has a primary place of employment;
- (f) during the period or periods, the car is parked at, or in the vicinity of, that primary place of employment;
- (g) on that day, the car is used in connection with travel by the employee between:
  - (i) the place of residence of the employee; and
  - (ii) that primary place of employment;
- (h) the provision of parking facilities for the car during the period or periods is not taken, under the regulations, to be excluded from this section;
- (i) the day is on or after 1 July 1993;

the provision of parking facilities for the car during the period or periods is taken to constitute a benefit provided by the provider to the employee or the associate of the employee in respect of the employment of the employee.

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36. The relevant matters for consideration include the business premises of the provider in paragraph 39A(1)(a) and at, or in the vicinity of, the primary place of employment of the employee in paragraph 39A(1)(f).

***Are the premises considered to be 'business premises' of the provider?***

37. 'Business premises' are defined in subsection 136(1) to mean:

... in relation to a person, means premises, or a part of premises, of the person used, in whole or in part, for the purposes of business operations of the person, but does not include:

- (a) premises, or a part of premises, used as a place of residence of an employee of the person or an employee of an associate of the person; or
- (b) a corporate box; or
- (c) boats or planes used primarily for the purpose of providing entertainment unless the boat or plane is used in the person's business of providing entertainment; or
- (d) other premises used primarily for the purpose of providing entertainment unless the premises are used in the person's business of providing entertainment.

38. Where there is no designated car parking space for the employee, such that the operator of the commercial car parking station retains ownership or other exclusive occupancy rights in respect of the car parking space occupied by the employee on any given day, the operator of the commercial car parking station will be the 'provider'. If, on the other hand, there is a designated car parking space such that the employer has exclusive occupancy rights for that space, the employer is the provider.

39. The vehicle is parked in a parking facility operated by PAPL which offers parking to the general public and employers under the contract. The terms of the contract between PAPL and employers do not offer leasing, ownership or any right to possession of the parking spaces in the parking facilities. PAPL retains all ownership and rights of possession of the parking spaces under the arrangement.

40. For the purpose of paragraph 39A(1)(a), PAPL is considered to be the provider and the car park would be considered the business premises of the provider.

***Is Perth Airport the primary place of employment of the employee?***

41. 'Primary place of employment' is defined in subsection 136(1) as follows:

***primary place of employment***, in relation to an employee in relation to a day, means business premises, or associated premises, of the employer of the employee, or of an associate of the employer, where:

- (a) if the employee performed duties of his or her employment on that day – on that day; or
- (b) in any other case – on the most recent day before that day on which the employee performed duties of his or her employment;

those premises are or were:

- (c) the sole or primary place of employment of the employee; or
- (d) otherwise the sole or primary place from which or at which the employee performs duties of his or her employment.



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42. The primary place of employment is to be determined according to the circumstances of the employee on any given day. Employees provided with parking under the arrangement may include those who live in or near Perth and perform their duties of employment intrastate or interstate (for example, employees working on a fly-in fly-out basis) or who have an alternate employment location elsewhere in addition to one in or near Perth. These employees use Perth Airport to travel to their employment location or alternate employment location. Generally, on a day of flying to their employment location or alternative employment location, the majority of the time would be flying, or working at their employment location or alternate employment location.

43. Where an employee has more than one place of employment on a particular day, their primary place of employment on that day is the place where, considering the nature of the employment, the time spent and the substance of the duties carried out, a reasonable person would conclude that place to be the primary place of employment.

44. Where the employee parks a vehicle at Perth Airport, and their primary place of employment is located at another location they are travelling to (such as a mine site in a remote locality intrastate or interstate), Perth Airport will not be the primary place of employment of the employee.

45. Therefore, the arrangement does not constitute the provision of a car parking benefit under subsection 39A(1) because all of the requirements have not been met.

#### **Do the parking facilities meet the meaning of ‘motor vehicle parking facilities’?**

46. ‘Motor vehicle parking facilities’ is not a defined term in the FBTA. ATO Interpretative Decision ATO ID 2012/18 *Exempt benefits: reimbursement of parking fees – remote area employees* states:

It is considered that any defined area which may be utilised for the purposes of parking motor vehicles would qualify as a ‘motor vehicle parking facility’.

47. It is accepted that PAPL’s parking facilities are a defined area which are utilised for the purposes of parking motor vehicles to members of the general public for short-term or long-term parking. The parking facilities would fall within the meaning of a motor vehicle parking facility.

#### **Is the provision of parking under the arrangement between the employer and Perth Airport Pty Ltd an exempt benefit?**

48. Paragraph 58G(1)(b) states:

Each of the following benefits is an exempt benefit:

- (a) ...
- (b) a residual benefit where the recipients benefit consists of motor vehicle parking facilities.

49. The benefit of the provision of parking under the arrangement between the employer and PAPL is a residual benefit. The benefit received by an employee consists of motor vehicle parking facilities.

50. The benefit of the provision of parking to an employee under the arrangement between the employer and PAPL is an exempt benefit under subsection 58G(1)(b).

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## References

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*Previous draft:*

Not previously issued as a draft

*Legislative references:*

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- FBTA 2009 Pt III Div 3 Subdiv A
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- TAA 1953

*Other references:*

- ATO ID 2012/18
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ATO references

NO: 1-RX5L203

ISSN: 2205-5517

BSL: SEO

ATOlaw topic: Fringe benefits tax ~ Residual benefits ~ Other

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