


# ***TR 93/D15 - Fringe benefits tax: record keeping requirements relating to car parking benefits***

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This document has been finalised by TR 93/18.

## **Draft Taxation Ruling**

### **Fringe benefits tax: record keeping requirements relating to car parking benefits.**

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## **What this Ruling is about**

This Ruling explains what records an employer should maintain in order to substantiate their liability to fringe benefits tax under the *Fringe Benefits Tax Assessment Act 1936* (the FBTAA) in respect of "car parking benefits" provided to employees. This Ruling does not consider record keeping requirements in respect of the receipt of employee contributions.

## **Ruling**

2. In all cases, records relating to the provision of car parking benefits must be maintained in English and in a form that is readily accessible. Records should be indicative of the actual amount of car parking benefits provided over the course of an FBT year of tax. A discrepancy of 10% or more between the stated provision of car parking in any of the declarations or records discussed below, and the actual level of car parking benefits provided, would not be considered to be reasonable.

3. All employers providing car parking benefits should complete a declaration relating to an FBT year of tax stating:

the number of car parking spaces available to be provided to employees and/or their associates

the value of those spaces based on either the amount charged by the lowest priced commercial car park within a 1 km radius as per section 39C of the FBTAA or the "market value" method as set out in section 39D; and

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the number of days in the year which are business days of the employer.

4. If no further information is provided, the employer will be subject to FBT on the basis that one car parking benefit arose on each business day in respect of all the available car parking spaces.

5. Where the actual number of car parking benefits provided to employees is more or less than would be the case if all available car parking spaces were occupied by one car on business days, an employer may adopt one or both of the following "reporting" systems to demonstrate the actual benefits provided.

## **Reporting of vacant car parks**

6. Where the number of employees parking on premises provided by a "provider" within the terms of new paragraph 39A(a) of the FBTAA is always less than the number of available car parking spaces, the employer may make an additional declaration stating the actual number of employees who park on the premises.

## **The "exception/addition" reporting system**

7. An employer should also note

the occasions over the FBT year of tax when no car parking benefit arose in respect of a car parking space because an employee who would normally occupy the parking space was absent on a particular day; and/or

the occasions which are not ordinary business days of the employer (such as may be the case on weekends) where a "car parking benefit" nevertheless arises in respect of an employee or associate.

8. An employer may also choose to maintain a more detailed register, which may be used as an alternative to the reporting systems described at paragraphs 6 and 7 above.

## **The register system**

9. If an employer chooses to use this system, the basic information set out at paragraph 3 should also be provided. The register should record the actual movement of vehicles in and out of a car park provided by a "provider", and should be compiled every two years over a period of not less than 12 weeks. This information will then form the basis of assessment for the current and following years of tax.

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## Date of effect

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10. This Ruling applies to records relating to car parking benefits provided to employees from 1 July 1993, which is the application date of the *Taxation Laws Amendment (Car Parking) Act 1992*.

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## Explanations

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11. Amendments to the FBTAA contained in the Taxation Laws Amendment (Car Parking) Act provide that an employer will be subject to fringe benefits tax in respect of car parking benefits provided to employees or employees associates. There are a number of criteria set out in new section 39A of the FBTAA that will determine if a "car parking benefit" has been provided on a particular day. These include:

- (a) a car is parked on the premises of the "provider" which is the business premises of the provider, is leased by the provider or is otherwise under the control of the provider and the entrance of which is within a 1km radius (as measured by the shortest practicable route) of the entrance to a commercial car parking station
- (b) the car is parked for a total period in excess of 4 hours between the hours of 7am and 7pm
- (c) the car is owned, leased or under the control of the employee or associate or is provided by the employer
- (d) the employee has a "primary place of employment" (being the place where the employee performed the majority of employment duties) either on that particular day, or on the most recent day before that day when employment duties were performed.
- (e) the provision of parking is in respect of the employment of the employee; and
- (f) the car is used for at least one commuter trip between the "primary place of employment" and the "place of residence" of the employee (as defined in section 136 of the FBTAA).

12. Once it is established that a car parking benefit has been provided within the terms of section 39A of the FBTAA on a particular day, the taxable value of the benefit is either:

determined by reference to the lowest fee charged by a commercial car parking station within a radius of 1 km of the

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entrance to the place where the car is parked (section 39C of the FBTAA); or

the actual market value of the parking facilities provided, as estimated by a suitably qualified valuer (section 39D of the FBTAA).

## ***Record keeping generally***

13. An employer is required to keep records that will enable the employer to discharge their statutory evidentiary obligations to a standard that will satisfy a court or tribunal.

14. Section 14ZZK of the *Taxation Administration Act 1953* (the TAA) applies in respect of applications to the Administrative Appeals Tribunal relating to reviewable objection decisions made by the Commissioner of Taxation. Section 14ZZO of the same Act applies to applications to the Federal court in respect of appealable objection decisions made to the Federal Court. Both sections specify that the burden of proof rests with a taxpayer in proving that either

- . an assessment was excessive; or
- . a decision should not have been made or should have been made differently.

15. These provisions in the TAA operate in the same manner as former section 86A of the FBTAA and former section 190 of the *Income Tax Assessment Act 1936* (the ITAA).

16. Judicial decisions relating to former section 190 of the ITAA are relevant to these provisions. The **standard of proof** required of a taxpayer under former section 190 was the "ordinary civil standard" being proof on the balance of probabilities *FCT v Dalco (1990) 20 ATR 1370; 90 ATC 4088 ; McCormack v FCT 79 ATC 4111; Macmine Pty Ltd v FCT 79 ATC 4133*.

17. Like former sections 86A of the FBTAA and 190 of the ITAA, sections 14ZZK and 14ZZO of the TAA are silent as to the standard of proof required of a taxpayer. We consider that the ordinary civil standard of proof on the balance of probabilities applies in respect of these provisions also.

## ***Record keeping - car parking benefits***

### **Basic records**

18. To meet the requirements of the FBTAA, we consider that the minimum "records" which should be maintained by an employer in respect of car parking benefits provided to employees or their

associates is a declaration relating to a year of tax. The declaration should state the number of car parking spaces made available to employees or associates on business days, the number of business days in the year of tax, and the value of those car parking spaces using either of the methods of valuation described at paragraph 12.

19. Where only these records are maintained, the employer will be taxable on the basis that all the car parking spaces were occupied once for a period in excess of 4 hours on each business day of the year and no contribution was provided by employees.

#### **Example**

20. Capital City Enterprise allows its 30 non-executive staff members to park in 10 car parking spots leased by it on a first come first served basis and at no charge. The car parking spots are always occupied on business days. The cheapest all day parking within a 1 km radius costs \$5 per day. Capital City provide a declaration stating the number of spaces in the car park, their value and the number of business days in the year. Based on a total value of \$50 per business day, and 250 business days in the year of tax, the total assessable value of car parking benefits provided will be \$12,500.

21. It is possible for more than one "car parking benefit" to be provided in respect of one car parking space on a given day. Under the criteria set out in section 39A (outlined at paragraph 11), a daily "car parking benefit" can arise in any period or periods totalling 4 hours between the hours of 7am and 7pm. It would not be considered reasonable for an employer to simply rely on a basic declaration for a year of tax where it is likely that more than one "car parking benefit" may accrue in relation to a particular car parking space on a given day.

22. This may occur because vehicles are coming and going from the car park, in which case the employer should use the register system discussed at paragraphs 37 to 40 below. Alternatively the employer may have employees working in shifts. The suggested approach for employers who employ shift workers is discussed below at paragraphs 32 to 34.

#### **Vacant car parks**

23. In cases where there are more car parking spaces available to employees than there are employees or associates who actually park in them, a taxpayer may make an additional declaration to the effect that a certain number of available car parking spaces are never occupied by employees (or associates) for a period of 4 hours or more between the

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hours of 7am and 7pm. Where it could be argued that such a declaration is not reasonably representative of the facts, the employer will bear the onus of providing supporting documentation, such as personnel records, to verify the accuracy of the declaration.

## **Example**

24. Greenfields mini-mart has 20 employees on the premises during each working day but has available 50 car parking spaces which may be occupied by either customers or employees. They provide a declaration stating the number of available spaces, the value of the spaces, the number of business days in the year of tax, and the fact that no more than 20 employees park in the car park between the hours of 7am and 7pm each day. Greenfields is taxable on the basis that 20 car parking benefits arose on each business day.

## **The exception system**

25. In some cases it will be appropriate for an employer to adopt an "exception" reporting system in relation to parking provided to individual employees.

26. Under this system, an employer maintains the basic records described at paragraphs 18 and 19 above, and in addition, over the period of the relevant year of tax, notes the business days when certain car parking spaces were unoccupied because particular staff were absent from the place of employment. This system would be appropriate where a space usually occupied by an employee (the first employee) is not occupied by any other employee for a period in excess of four hours per day in the absence of the first employee.

27. In compiling information on staff absences under this system, an employer may rely on other records. For example, personnel records (to verify staff absences), records of travel arrangements, or a register of absences.

## **Example**

28. Large Organisation Ltd provide car parking to 200 senior staff at their CBD building. Using only this information, the company would be taxable on the basis that 50,000 car parking benefits were provided in the FBT year of tax (based on 200 staff x 250 business days per year). The value of each benefit is determined to be \$5. Therefore the total taxable value for the year of tax would be \$250,000.

29. The Administrator in each area notes in a diary the days over the course of the year when senior staff were absent from the office for the entire day. Using this method, the collated results identify 10,000 instances in total in which a car parking benefit did not arise. The number of car parking benefits provided is reduced by this amount. The taxable value of the car parking benefits reflecting this information is also reduced to \$200,000.

30. An employer may, where appropriate, use the exception reporting system in conjunction with the system of reporting permanently vacant car parks discussed at paragraph 23.

#### **Example**

31. Greenfields (see example at paragraph 24) determines, on the basis of its personnel records, that the 20 members of its staff who would normally use the car park were absent from work (on sick leave or holiday leave) for a total of 400 days of the year. The taxable value of car parking benefits provided in the year is further reduced to reflect these absences.

#### **Shift workers**

32. Section 39A provides that FBT is levied in respect of actual car parking benefits provided to employees, or their associates, as determined from criteria described at paragraph 11. It is indicated at paragraph 21 that, based on those criteria, it is possible for more than one car parking benefit to arise in respect of a particular car parking space on a particular day. This may be due to the fact that employees are engaged in shift work.

33. An employer who employs staff working on a regular "shift" basis, may utilise the declaration and reporting systems described above in respect of each shift of employees who will obtain car parking benefits. Where this is the case, the basic declarations relating to each shift should note the time of commencement and completion of the shift.

34. Where more than one car parking benefit may arise due to staff coming and going from the place of employment, the register system of record keeping discussed at paragraphs 37 to 40 below should be utilised.

#### **"Extra-ordinary" benefits**

35. The records described above must reflect to a reasonable degree of accuracy, all instances in which a "car parking benefit" is provided

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to an employee or an employees associate. Many employers provide car parking benefits to employees who utilise employer provided car parking outside normal business hours; for example on weekends. Employers who are providing car parking benefits to staff on days which the employer does not consider to be normal business days (which are noted in the basic declaration described at paragraph 18) should make a separate note of these "extra-ordinary" car parking benefits.

## Example

36. The manager at the firm Smith and Jones is aware that associates are often working on weekends, even though the actual "business days" of the firm are Monday to Friday. The manager ensures that staff who work on weekends advise her on the following Monday of the instances over the weekend when a "car parking benefit" has arisen. Because the lowest daily rate available at a commercial car parking station within a 1km radius is less on weekends than during the week, the value of the car parking benefits provided on weekends is also less than during the week. Smith and Jones provide a separate declaration which states both the number of "extra-ordinary" car parking benefits provided, and their value etc.

## Register system

37. A system involving the maintenance of a register of vehicles using car parking facilities is generally available to any employer, at the employers discretion. It is expected that this system would mostly be utilised by employers who, for example, operate a "pool" of vehicles (which are available to employees for travel to and from work) or whose employees regularly use their own vehicles during the day and the time they are parked at the employers premises varies.

38. The register should be compiled in respect of all vehicles under the control of an employee or associate which park in car parking spaces provided in respect of the employment of an employee. For each vehicle under the control of an employee or associate entering or leaving the car parking facilities, the register notes:

- . the identification of the vehicle
- . the date
- . times of entry and departure from the car park
- . the nature of the journey/destination (to identify travel between home and work )
- . the name of the driver/person making the entry

39. Whilst there is no set format in which the information must be recorded, the register should be compiled over a 12 week period every two years in respect of all the vehicles to which the information will apply. The 12 week recording period must take place in the first year of the two years of tax to which it relates. The information contained on the register will be required in addition to the basic information contained in the employer's declaration as set out at paragraph 18.

40. The period during which the register is maintained should be reasonably representative of the full two year period. A register compiled over the Christmas period, a period of high leave or, alternatively, a period of exceptionally high business usage of vehicles, would not be reasonably representative.

#### **Example**

41. Real Estate Pty Ltd has 10 car parking spaces behind its suburban premises which are used both by staff and customers. Four of the spaces are occupied on a permanent basis by staff, and so Real Estate do no more than complete a "basic" declaration in respect of these spaces. However, in addition, 6 of the staff use their own cars in the course of their work. It is quite common for these 6 staff cars to be parked in the car park for a period of less than four hours in total per day. Real Estate institutes a register which all drivers of the 6 cars fill in each time one of these cars enters or leaves the car park over a period of 12 weeks.

42. From the register it is determined that, in respect of these 6 cars, an average of 10 daily "car parking benefits" per week arose during the period (120 car parking benefits in total). This result is extrapolated to cover a 12 month period, and forms the basis of the assessment of FBT on car parking benefits provided in respect of these 6 vehicles for that year of tax (e.g. 1994-5). Where reasonable, the value of car parking benefits as determined from the 12 week register maintained in the first year of tax will also form the basis for determining the value of car parking benefits provided in the following year of tax.

43. In determining the benefits provided in the first or following years of tax, it is reasonable to pro-rata the level of car parking benefits as indicated by the register to take account of additional or reduced staff.

#### **Example**

44. Real Estate employ 3 additional agents commencing 1 October 1995 (ie in the second year of tax). All three use their private vehicle for work related purposes and park at the employer's premises at some time during a business week. Based on the level of car parking

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benefits provided in respect of 6 vehicles as indicated by the register, it can be assumed that 5 additional "car parking benefits" per week arose in respect of the 3 additional vehicles (10 benefits per week for 6 cars = 5 per week for 3 cars).

45. For the year of tax 1995-6 Real Estate will need to provide a declaration stating that 4 car parking benefits valued at \$2 each were provided over 250 business days (total value \$2000). In respect of car parking benefits provided to agents, based on the register compiled in 1994, 10 daily car parking benefits per week were provided in respect of 6 vehicles in the first 6 months (ie 260 benefits). In the following 6 months, 15 daily car parking benefits per week are taken to have arisen in respect of 9 vehicles (390 benefits). The total value of benefits provided to agents for the year of tax is \$1300 (650 benefits over 250 business days x \$2). Therefore the total taxable value of all car parking benefits provided by Real Estate for the 1995-6 year of tax is \$3300 (\$2000 + \$1300).

## Using a combination of systems

46. It may be appropriate for an employer to utilise a combination of any or all of the methods of record keeping discussed above, where the pattern of car park usage varies between different groups of employees.

## Example

47. Manufacturer Pty Ltd lease premises in a commercial centre. Their lease entitles them to the use of up to 300 car parking spaces in the adjacent car park. Manufacturer employ 200 staff of which 100 are located permanently on the premises. The remaining 100 are sales people who come and go during the course of the day. In respect of an FBT year of tax, Manufacturer prepare a declaration stating

- . the total number of available car parking spaces (300)
- . the maximum number of staff who will park in the car park at any one time (200)
- . the value of the car parks based on a daily rate (\$1)
- . the number of business days in the year of tax (250)

Based on these figures alone, the taxable value of the car parking benefit would be \$50,000 (200 x \$1 x 250 business days)

48. However, in order to demonstrate that the taxable value of car parking benefits provided is less than this amount, a 12 week register is collated in respect of the 100 sales staff. This register indicates that the total value of the car parking benefits taken to have been provided

to these staff over the course of the year is actually \$5000 (based on 100 per week x 50 weeks).

49. In addition, the actual value of car parking benefits provided to the permanently located 100 staff is calculated by deducting the days on which absences have been noted on personnel records from the total number of business days. A total of 2000 days absent were recorded over the course of the year. Therefore, the total value of car parking benefits provided to these staff is determined to be \$23,000 [(100 benefits x \$1 x 250 business days) - 2000].

50. Based on these figures, the total taxable value of car parking benefits provided over the course of the year is \$28,000 (\$23,000 + \$5,000).

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- TAA 14ZZK, 14ZZO

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- FCT v Dalco 90 ATC 4088
- McCormack v FCT 79 ATC 4111
- Macmine Pty Ltd v FCT 79 ATC 4133