

MT 2028 - Fringe benefits tax : car parking

⚠ This cover sheet is provided for information only. It does not form part of *MT 2028 - Fringe benefits tax : car parking*

⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *18 September 1986*

TAXATION RULING NO. MT 2028

FRINGE BENEFITS TAX : CAR PARKING

F.O.I. EMBARGO: May be released

REF H.O. REF: L85/10-3 DATE OF EFFECT: Immediate

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1210282	FRINGE BENEFITS TAX	FRINGE BENEFITS TAX ASSESSMENT ACT: DIVISIONS 5 AND 12 OF PART III; s.24, 45, 49, 51, 52, 106, 136 and 148.

PREAMBLE An expense payment fringe benefit arises under Division 5 of Part III of the Fringe Benefits Tax Assessment Act (the "Act") where an employer pays parking expenses incurred by an employee or reimburses the employee for such expenses. The value of the benefit is the amount paid or reimbursed. That value is, however, reduced to the extent that the amount incurred by the employee would otherwise have been deductible for income tax purposes, subject to the relevant substantiation requirements of section 24 of the Act being satisfied. The value so determined is taxable in the year in which the payment or reimbursement is made.

2. This office has been asked whether the provision of car parking spaces for the use of employees in the following circumstances would similarly constitute a taxable fringe benefit -

- (a) where an employer incurs expenditure in securing parking spaces at a nearby commercial parking station for use by its employees; and
- (b) where an employer makes available to employees parking spaces within its own premises.

The latter was expressed to cover both situations where the premises are owned by the employer and arrangements whereby the employer leases the whole or part of a building and, as a consequence, becomes entitled to a fixed number of parking spaces in the building.

3. In the event that a fringe benefit arises in these circumstances we have also been asked about the basis of valuation to be applied. In addressing these issues it has been assumed that the requirement that the benefit be provided in respect of the employment of the employee has been satisfied.

RULING 4. The provision of car parking spaces in the circumstances

outlined in paragraph 2 constitutes a residual benefit under section 45 of the Act. Section 45, which forms part of Division 12 of Part III of the Act, applies to all benefits that are not subject to the specific rules incorporated in the preceding Divisions. For these purposes, benefit is defined widely in sub-section 136(1) of the Act to include any privilege, service or facility and any right in relation to real or personal property. As such it would include any rights to occupy parking spaces.

5. Further, when the term benefit is read in conjunction with sub-section 148(1) of the Act, a benefit will exist for the purposes of section 45 whether or not the use of the parking facility is in connection with the performance of employment duties. At the same time this would, by virtue of the operation of section 52, be a consideration in determining the value of the benefit for FBT purposes. This is discussed further in paragraphs 21 to 27.

6. It has been put to this office that the provision of parking spaces on the employer's premises would be exempt from tax by virtue of the operation of sub-section 47(3) of the Act. That sub-section exempts from FBT benefits constituted by the use of property located on the employer's business premises, provided that the use occurs on a working day and that the property is itself used principally in the business operations of the employer. Business premises is defined for these purposes in sub-section 136(1) to mean, broadly, premises used for the purpose of business operations of the employer.

7. It is not accepted that the operation of sub-section 47(3) extends to the provision of car parking spaces. The benefit in these circumstances is the right of use of part of the business premises themselves, not of property located on those premises.

8. It has been further suggested that there can be no benefit for FBT purposes where parking is provided on the employer's premises for an employer-provided car; this being a case of the employer's own property being garaged on the employer's premises.

9. In addressing this issue it is appropriate to restate that for there to be a taxable fringe benefit under the Act, the benefit must be one that is provided to an employee (or associate). In deciding whether this primary requirement is satisfied in the circumstances under consideration, it is necessary to determine whether the right to occupy the parking space can be attributed to the employee. This will be the result where, as is commonly the case under "salary package" arrangements, the car is provided for the exclusive use of the employee. On the other hand, if the car is provided under more restrictive arrangements under which the employee is required to return it to the employer's control during office hours for use in the employer's business operations, the garaging rights are not attributable to the employee and, as such, no fringe benefit arises.

Valuation - Payment To Commercial Parking Station

10. Where the amount paid to the parking station is incurred under an arm's length transaction, the taxable value of the benefit

would, depending on the facts of the case, be determined under paragraph 51(a) or (b) of the Act. Irrespective of which paragraph is applied, however, the value would be fixed at the amount paid by the employer. In the event that the payment was not made under an arm's length transaction, the taxable value would be determined under paragraph 51(c) by reference to the amount that would be payable under such a transaction.

11. Section 51 applies, consistent with the operation of the Act generally, to determine the value of the benefit provided to individual employees. Where the relevant parking space is for the use of an individual employee, the amount paid to secure those rights is, as detailed in the preceding paragraph, the value of the benefit to the employee. Where over the period of access secured by the payment, two or more employees have been granted rights to use the space, the amount of the payment would be accepted as being the aggregate value of the benefits provided to each employee. Should it become necessary for the purposes of the application of the otherwise deductible rule discussed in paragraphs 21 to 27 to determine the value of the benefit provided to individual employees, an apportionment based on their respective use of the facilities would ordinarily be appropriate.

12. The taxable value so determined is subject to tax in the year in which the parking rights secured by the payment occurs. Where the rights extend over more than one FBT year, the payment is allocated between those years according to the extent to which it relates to rights obtained during each year. By way of example, if a payment of \$5,000 was made to secure parking rights over the period 1 January 1987 to 30 June 1987, an amount of \$2,500 would be subject to tax in each of the FBT years ending 31 March 1987 and 31 March 1988. This follows from the operation of section 51 which limits the amount taxable in a FBT year to the amount of payment which relates to the "recipients current benefit". This term is defined in sub-section 136(1) to be, broadly, so much of any benefit extending over a period as relates to the year of tax.

13. Section 51 applies also to reduce the taxable value of a benefit by the amount of any payment made by the employee to secure the benefit (see the definition of recipients contribution in sub-section 136(1)). In the present case, the taxable value determined by reference to the amount paid to the parking station would be reduced by the amount of any payment made by employees for the right to occupy the parking spaces during the year.

14. A further reduction of the net taxable value so determined would be available under the otherwise deductible rule discussed in paragraphs 21 to 27.

Valuation - Parking In Employer's Premises

15. Parking provided to employees in the circumstances described in paragraph 2(b), would be subject to valuation in accordance with paragraph 51(c). Under this paragraph, the taxable value is ascertained by the notional value of the benefit provided in the FBT year. Notional value is defined for these purposes in sub-section 136(1) as the amount that the employee could reasonably

be expected to have been required to pay to obtain the benefit under an arm's length transaction. It is considered that the amount, if any, that an employee could have been expected to pay will generally be dependent on whether or not there is a commercial market for car parking in the area where the employer's premises are located.

16. Thus, if the premises are located in a suburban area or small country town where parking is readily available within a reasonable distance from the employer's premises it is unlikely that the employee could have been required to pay anything to park in the employer's premises. It would ordinarily be the case that such locations would be characterised by a lack of commercial parking facilities.

17. It may be in these circumstances that there is a convenience factor in parking at, rather than near, the place of employment or, where this is the case, parking in under-cover spaces. Whether the employee could have been required to pay for that convenience is, however, problematical. In the circumstances, a nil value will generally be accepted where the conditions outlined in paragraph 16 apply.

18. On the other hand, circumstances in which there would be a taxable value would generally be characterised by a lack of available free parking within a reasonable distance from the employer's premises and the existence of commercial parking stations. Commonly, this would be the case where the employer's premises are located in a major city. In these cases, the rate charged for comparable parking entitlements at nearby commercial parking stations provides an appropriate benchmark for determining what the employee could reasonably be expected to have been required to pay to acquire the benefit. A value based on the lowest long-term rate charged by the commercial parking station would be accepted as appropriate for these purposes. Where spaces are not specifically dedicated to individual employees (see paragraph 11), a value determined by applying that rate to the number of parking spaces would be accepted as an appropriate basis of valuation.

19. The preceding discussion is based on the assumption that the employer is not in the business of providing car parking to the public. In the event that this is the case, e.g. where the employees of a company which operates a commercial parking station are provided with free parking in the station, the taxable value would be determined under section 49 of the Act by reference to 75% of the lowest amount payable by members of the public at the time for equivalent rights.

20. The taxable value determined in accordance with these rules would be reduced, firstly, by the amount (if any) paid by an employee to obtain the right to occupy the parking space and, secondly, in accordance with the otherwise deductible rule discussed in the following paragraphs.

Reduction In Taxable Value - Otherwise Deductible Rule

21. Under section 52 of the Act, the taxable value determined under the preceding rules is subject to reduction to the extent to

which, had the employee paid to obtain the relevant parking rights, the amount would have been deductible for income tax purposes. This reduction applies to the net taxable value determined after deducting any actual payment by employees to the employer.

22. The extent to which such expenses would have been deductible to the employee depends on whether business use is made of the car on days when parking benefits are provided. If the car is used during the course of the day by the employee in his or her employment (e.g., in visiting clients, customers etc.,) any parking fees that might have been incurred in parking the car at or near the employer's premises for this purpose would have been deductible for income tax purposes. If the car is used on business every day on which the parking benefits are provided, it follows that the taxable value would be nil.

23. Certain substantiation requirements apply for the purposes of the operation of section 52. As is relevant for present purposes, the otherwise deductible reduction will apply only where the employee lodges with the employer a declaration in an approved format specifying the business connection and the deductible percentage, i.e., the extent to which any parking fees paid would have been deductible for income tax purposes (see paragraph 52(1)(c)). Generally, an apportionment based on the number of days on which business use is made of the car would be acceptable for this purpose.

24. Such a declaration must normally be provided before the date of lodgment of the employer's FBT return, although there is provision for the Commissioner of Taxation to extend the period where there are circumstances warranting that action (see the definition of "declaration date" in sub-section 136(1)). If an employer wishes to use these reductions in calculating either of the quarterly instalments in the current (transitional) year, the declarations are similarly required to be lodged before the date of lodgment of the relevant quarterly statement (see paragraph 106(1)(c) of the Act).

25. Further details of these requirements, including details of the approved format for declarations, are contained in paragraphs 5 and 5.6 of the "Fringe Benefits Tax supplement to a guide for employers", issued by this office in September 1986.

26. It should be noted that, by virtue of the operation of sub-paragraph 52(1)(c)(i), no declaration is required where any expenses that might otherwise have been incurred in obtaining the parking rights would have been wholly deductible for income tax purposes, i.e., where the car is used on business every day on which the parking rights are utilised (see also the definition of exclusive employee residual benefit in sub-section 136(1)).

27. As discussed in paragraph 11, when applying the otherwise deductible rule in cases where the aggregate taxable value of parking rights conferred on employees has been determined in accordance with paragraphs 11 and 18, it would generally be appropriate to apportion that aggregate value between employees according to their actual use of the parking facilities. Any

deductible percentage applicable to an employee could then be deducted from that amount (as reduced by any employee contribution) in determining the net taxable value.

COMMISSIONER OF TAXATION
18 September 1986