


PR 2020/11 - Income tax and fringe benefits tax: tax consequences for Subscribers under a Carly Subscription Agreement

 This cover sheet is provided for information only. It does not form part of *PR 2020/11 - Income tax and fringe benefits tax: tax consequences for Subscribers under a Carly Subscription Agreement*



Product Ruling

Income tax and fringe benefits tax: tax consequences for Subscribers under a Carly Subscription Agreement

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	11
Ruling	16
Scheme	17
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	34
Appendix 2:	
Detailed contents list	71

📌 Relying on this Ruling

This publication (excluding appendixes) 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.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

No guarantee of commercial success

The Commissioner **does not** sanction or guarantee this product. Further, the Commissioner gives no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. The Commissioner recommends a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out in the **Ruling** part of this document are available, **provided that** the scheme is carried out in accordance with the information we have been given, and have described below in the **Scheme** part of this document. If the scheme is not carried out as described, participants lose the protection of this Product Ruling.

Terms of use of this Product Ruling

This Product Ruling has been given on the basis that the entity(s) who applied for the Product Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Product Ruling.

What this Ruling is about

1. This Product Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified in the Ruling section apply to the defined class of entities that takes part in the scheme to which this Product Ruling relates. All legislative references in this Product Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated.
2. In this Product Ruling, the scheme involves the execution of a Subscription Agreement¹ offered by DriveMyCar Rentals Pty Ltd trading as Carly Car Subscription (Carly) pursuant to which a Vehicle is subscribed for from a Fleet Owner.
3. This Product Ruling does not address:
 - the tax treatment of any costs, fees and expenses payable by the Subscriber under the scheme, other than the Subscription Fee payable by the Subscriber under the Subscription Agreement and fuel costs in respect of the Vehicle subscribed for under the Subscription Agreement
 - the deductibility of amounts equal to the decline in value of the Vehicle under Division 40
 - the application of Division 242 in relation to the lease of a luxury car
 - how a deduction is calculated under Division 28, including the substantiation requirements related to that calculation
 - the situations set out in sections 28-170, 28-175, 28-180 and 28-185
 - the income tax consequences to arise upon reimbursement by a Business Customer to its employee for Subscription Fees paid by the employee under the Reimbursement Scenario
 - the application of section 53 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) to any car expense payment benefits which may be provided under the scheme
 - an assignment or transfer of any rights and obligations under the Subscription Agreement, and

¹ Unless otherwise defined, capitalised terms in this Product Ruling take their meaning as per the Subscriber Terms and Conditions referenced in paragraph 17 of this Product Ruling.

- whether the scheme constitutes a financial arrangement for the purposes of Division 230 (Taxation of financial arrangements).

4. Subject to paragraph 2 and subparagraph 16(b) of this Product Ruling, this Product Ruling addresses the taxation consequences associated with four different scenarios, described at paragraphs 29 to 32 of this Product Ruling and referred to respectively for the purposes of this Product Ruling as the:

- Individual Customer Scenario
- Business Customer Scenario
- Arranger Scenario, and
- Reimbursement Scenario.

Class of entities

5. This part of the Product Ruling specifies which entities can rely on the Ruling section of this Product Ruling and which entities cannot rely on the Ruling section. Those entities that can rely on the Ruling section are referred to as the Individual Customer and the Business Customer.

6. The class of entities that can rely on the Ruling section of this Product Ruling consists of those entities that enter into the scheme described in paragraphs 17 to 33 of this Product Ruling on or after 26 August 2020 and on or before 30 June 2023 and are an:

- individual (alone or in partnership) who enters into the Subscription Agreement with Carly as the Subscriber, and does not carry on a business or has not entered into the Subscription Agreement in the course of carrying on a business (an Individual Customer), or
- entity (a Business Customer) that either
 - enters into the Subscription Agreement with Carly as the Subscriber for its own business use or to provide the Vehicle to its employee, or
 - arranges for its employee to enter into the Subscription Agreement with Carly as the Subscriber.

7. The class of entities that can rely on the Ruling section of this Product Ruling does **not** include entities that:

- are non-residents for Australian taxation purposes
- enter into this scheme before 26 August 2020 or after 30 June 2023
- are an employee of a Business Customer referred to in paragraph 6 of this Product Ruling, or

- are subject to Division 230 in respect of this scheme.

Superannuation Industry (Supervision) Act 1993

8. This Product Ruling does not address the provisions of the *Superannuation Industry (Supervision) Act 1993* (SISA). The Commissioner gives no assurance that the scheme is an appropriate investment for a super fund. The trustees of super funds are advised that no consideration has been given in this Product Ruling as to whether investment in this scheme may contravene the provisions of the SISA.

Qualifications

9. The class of entities defined in this Product Ruling may rely on it provided the scheme is actually carried out in accordance with the scheme described in paragraphs 17 to 33 of this Product Ruling.

10. If the scheme actually carried out is materially different from the scheme that is described in this Product Ruling, then this Product Ruling:

- has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
- may be withdrawn or modified.

Date of effect

11. This Product Ruling applies prospectively from 26 August 2020, the date it was published. It applies only to the specified class of entities that enter into the scheme from 26 August 2020 until 30 June 2023, being its period of application. This Product Ruling will continue to apply to those entities even after its period of application has ended for the scheme entered into during the period of application.

12. However, the Product Ruling only applies to the extent that there is no change in the scheme or in the entity's involvement in the scheme.

Changes in the law

13. Although this Product Ruling deals with the income tax and fringe benefits tax laws enacted at the time it was issued, later amendments may impact on this Product Ruling. Any such changes will take precedence over the application of this Product Ruling and, to that extent, this Product Ruling will have no effect.

14. Entities who are considering to be participating in the scheme are advised to confirm with their taxation adviser that changes in the law have not affected this Product Ruling since it was issued.

Note to promoters and advisers

15. Product Rulings were introduced for the purpose of providing certainty about tax consequences for entities in schemes such as this. In keeping with that intention, the Commissioner suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Product Ruling has issued.

Ruling

16. Subject to paragraph 3 of this Product Ruling and the assumptions in paragraph 33 of this Product Ruling:

- (a) Under the Individual Customer Scenario
 - (i) Payment of the Subscription Fee and fuel costs by the Individual Customer will be deductible under section 8-1 in the income year incurred to the extent the Vehicle subscribed for by the Individual Customer under the Subscription Agreement is used in gaining or producing assessable income of the Individual Customer.
 - (ii) For the purposes of subsection 28-165(4), the Vehicle subscribed for by the Individual Customer under the Subscription Agreement will be taken to be a vehicle taken on hire under an agreement of a kind ordinarily entered into by people who take vehicles on hire intermittently, as the occasion requires, on an hourly, daily, weekly or short term basis where the Subscription Period in respect of the Subscription Agreement is one month or less.
 - (iii) Pursuant to subsection 28-165(4), where the Vehicle subscribed for by the Individual Customer under the Subscription Agreement has a Subscription Period of one month or less, subject to the application of paragraphs 28-165(4)(a) or (b), the Individual Customer cannot use the 'cents per kilometre' method under Subdivision 28-C or the 'log book' method under Subdivision 28-F (together referred to as the 'methods' for the purposes of this Product Ruling) to calculate any deduction for Subscription Fees and fuel costs incurred by the Individual Customer in respect of that Vehicle.

- (iv) Where the Vehicle subscribed for by the Individual Customer under the Subscription Agreement has a Subscription Period of longer than one month, the Individual Customer can use one of the methods to calculate a deduction available in accordance with sub-subparagraph 16(a)(i) of this Product Ruling in respect of that Vehicle. The exercise of the choice of the Individual Customer to Switch, in accordance with the Subscriber Terms and Conditions, during a period that is within one month of the Subscription Period commencing will not affect their entitlement to calculate any deduction using one of the methods.
- (b) Subparagraph 16(a) of this Product Ruling also applies to a Business Customer (outside of any of the four scenarios referred to in paragraphs 29 to 32 of this Product Ruling) who is an individual, the Subscriber under the Subscription Agreement and the end user of the Vehicle, which is subscribed for by the Business Customer for their business use only; not to provide the Vehicle to their employee (the Individual Business Customer).
- (c) Under the Business Customer Scenario and the Arranger Scenario, payment of the Subscription Fee by the Business Customer will be deductible under section 8-1 in the income year incurred where the Vehicle subscribed for by the Business Customer under the Subscription Agreement is provided to its employee for the Subscription Period.
- (d) Under the Business Customer Scenario

 - (i) For the purposes of subsection 7(7) of the FBTA, the Vehicle subscribed for by the Business Customer under the Subscription Agreement will be taken to be a car let on hire to the provider under an agreement of a kind ordinarily entered into by persons taking cars on hire intermittently as occasion requires on an hourly, daily, weekly or other short term basis where the Subscription Period in respect of the Subscription Agreement is less than three months.
 - (ii) Where the Vehicle subscribed for by the Business Customer under the Subscription Agreement has a Subscription Period of three months or longer, and the Vehicle is applied to a private use by the employee or taken to be available for the private use of the employee,

the application or availability of the Vehicle will constitute a car benefit provided by the Business Customer to the employee in respect of the employment of the employee pursuant to subsection 7(1) of the FBTAA. The exercise of the choice of the Business Customer to Switch, in accordance with the Subscriber Terms and Conditions, during a period that is within three months of the Subscription Period commencing will not change the character of the agreement for the purposes of paragraph 7(7)(b) of the FBTAA.

- (iii) For the purposes of calculating the taxable value of any car fringe benefit provided by the Business Customer to the employee under section 9 of the FBTAA (using the statutory formula), the base value of the Vehicle subscribed for is determined by reference to paragraph 9(2)(a) of the FBTAA, as explained in paragraph 64 of this Product Ruling. For the purposes of calculating the taxable value of any car fringe benefit provided by the Business Customer to the employee under section 10 of the FBTAA (using the cost basis), the operating costs will include the Subscription Fees and any fuel costs incurred by the Business Customer.
- (iv) Pursuant to subsection 7(7) of the FBTAA, where the Vehicle subscribed for by the Business Customer under a Subscription Agreement has a Subscription Period of less than three months, subject to the Vehicle having been or being reasonably expected to be on hire under successive agreements of a kind that result in substantial continuity of the hiring of the Vehicle, the application or availability of the Vehicle will not constitute a car benefit provided by the Business Customer. It will instead constitute a residual benefit under section 45 of the FBTAA.
- (e) Under the Arranger Scenario
 - (i) Where the Vehicle subscribed for by the Business Customer under the Subscription Agreement is applied to a private use by the employee or taken to be available for the private use of the employee, the application or availability of the Vehicle will constitute a car benefit provided by the Business Customer to the employee in respect of the employment of the employee pursuant to subsection 7(1) of the

- FBTAA (regardless of the duration of the Subscription Period).
- (ii) For the purposes of calculating the taxable value of any car fringe benefit provided by the Business Customer to the employee under section 9 of the FBTAA, the base value of the Vehicle subscribed for is determined by reference to paragraph 9(2)(a) of the FBTAA, as explained in paragraph 63 of this Product Ruling. For the purposes of calculating the taxable value of any car fringe benefit provided by the Business Customer to the employee under section 10 of the FBTAA (using the cost basis), the operating costs will include the Subscription Fees and any fuel costs incurred by the Business Customer.
- (f) Under the Reimbursement Scenario, the reimbursement by the Business Customer to the employee for the Subscription Fees paid by the employee to Carly under the Subscription Agreement will constitute an expense payment under section 20 of the FBTAA.
- (g) Provided the scheme ruled on is entered into and carried out as described in this Product Ruling, the anti-avoidance provisions in Part IVA of the *Income Tax Assessment Act 1936* (ITAA 1936) will not apply to the Individual or Business Customer.
- (h) Provided the scheme ruled on is entered into and carried out as described in this Product Ruling, the anti-avoidance provision of section 67 of the FBTAA will not apply to the Business Customer.

Scheme

17. The scheme that is the subject of this Product Ruling is identified and described in the following documents:

- application for a Product Ruling as constituted by documents and information received on 16 January 2020 and 12 March 2020
- draft Subscription Agreement between Carly and the Individual or Business Customer (as the Subscriber) received on 16 January 2020
- draft Subscriber Terms and Conditions received on 16 January 2020, and
- draft Fleet Owner Agreement between the Fleet Owner and Carly received on 16 January 2020.

Note: Certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

18. For the purposes of describing the scheme to which this Product Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which an Individual Customer or Business Customer, or any associate of an Individual Customer or Business Customer, will be a party to, which are a part of the scheme. Unless otherwise defined, capitalised terms in this Product Ruling take their meaning as per the Subscriber Terms and Conditions.

19. All Australian Securities and Investments Commission requirements are, or will be, complied with for the term of the agreements.

Overview

20. Carly offers a car subscription service under which the Subscription Agreement, a tripartite arrangement between Carly, a Subscriber and a Fleet Owner, is entered into.

21. The Subscription Agreement, together with the Subscriber Terms and Conditions, sets out the terms of the agreement between Carly and the Subscriber, as well as the terms of the subscription of the Vehicle by the Fleet Owner to the end user.

22. Depending on which of the four scenarios described at paragraphs 29 to 32 of this Product Ruling applies, under a Subscription Agreement the Subscriber and the end user of the Vehicle, or both, can be any one of the Individual Customer, the Business Customer and/or the employee of the Business Customer.

23. Pursuant to the terms of the Fleet Owner Agreement between Carly and a Fleet Owner, Carly acts as an agent for the Fleet Owner and facilitates the subscription of the Vehicles by the Fleet Owner. The Fleet Owner maintains ownership of the Vehicle provided during the Subscription Period. Some of Carly's other duties (as agent for the Fleet Owner) include:

- administration of subscriptions
- promotion of subscription services on its website
- liaising with customers, including performance of validation checks on the end user, and
- co-ordination of the handover and return of Vehicles.

24. Under the terms of the Subscription Agreement, Subscribers pay an all-inclusive bi-monthly Subscription Fee to Carly covering the use of a Vehicle, insurance, registration and servicing.

25. Under the terms of the Fleet Owner Agreement, Carly remits the Owner Rate to the Fleet Owner. The Owner Rate equates to a

portion of the Subscription Fee, the excess representing the profit to Carly.

26. The Subscription Period under the Subscription Agreement may be a monthly recurring subscription or a fixed-term subscription. The monthly recurring subscription is renewed every 30 days until cancelled. The fixed-term subscription is for a predetermined, fixed period.

27. As early as 16 days or later from the commencement of the Subscription Period, Subscribers have the option to Switch Vehicles. The term 'Switch' is defined in the Subscriber Terms and Conditions to mean the ability to conduct a single exchange of the Vehicle that is the subject to the current Subscription Agreement with another Vehicle provided by Carly subject to the same terms and conditions.

28. The Switched Vehicle will be subject to a new Subscription Agreement and the Subscription Fee applicable to the Switched Vehicle will apply from the date of the Switch. The subscription end date or recurring subscription date from the original Subscription Agreement will transfer to the new Subscription Agreement.

Scenarios

29. Under the Individual Customer Scenario:

- the Individual Customer is the Subscriber under the Subscription Agreement responsible for payment of the Subscription Fees to Carly
- Carly arranges a Vehicle subscription between the Fleet Owner and the Individual Customer, and
- the Fleet Owner provides the Vehicle directly to the Individual Customer, as the end user.

30. Under the Business Customer Scenario:

- the Business Customer is the Subscriber under the Subscription Agreement responsible for payment of the Subscription Fees to Carly
- Carly arranges a Vehicle subscription between the Fleet Owner and the Business Customer, and
- the Fleet Owner provides the Vehicle directly to the Business Customer, and the Business Customer provides the Vehicle to its employee, as an authorised end user.

31. Under the Arranger Scenario:

- the Business Customer is the Subscriber under the Subscription Agreement responsible for payment of the Subscription Fees to Carly

- Carly arranges a Vehicle subscription between the Fleet Owner and an employee of the Business Customer, and
 - the Fleet Owner provides the Vehicle directly to the employee of the Business Customer, as an authorised end user.
32. Under the Reimbursement Scenario:
- an employee of the Business Customer is the Subscriber under the Subscription Agreement responsible for payment of the Subscription Fees to Carly
 - Carly arranges a Vehicle subscription between the Fleet Owner and the employee of the Business Customer
 - the Fleet Owner provides the Vehicle directly to the employee of the Business Customer, as the end user, and
 - the Business Customer reimburses the employee for the Subscription Fees paid to Carly.

Assumptions

33. This Product Ruling is made on the basis of the following assumptions:
- (a) The Individual and Business Customers are Australian residents for taxation purposes.
 - (b) The Vehicle subscribed under the Subscription Agreement falls within the definition of 'car' under subsection 995-1(1).
 - (c) The Business Customer and the Fleet Owner are a 'person', as defined under subsection 136(1) of the FBTA.
 - (d) The Vehicle subscribed for under the Subscription Agreement falls within the definition of 'car' under subsection 136(1) of the FBTA.
 - (e) The Vehicle subscribed for by a Business Customer is not taken to be available for the private use of the Business Customer's employee by application of subsection 7(3) of the FBTA.
 - (f) The Vehicle subscribed for under the Subscription Agreement by the Business Customer is not an exempt vehicle pursuant to subsection 8(2) of the FBTA.
 - (g) All dealings between the Customer, Carly and the Fleet Owner will be at arm's length.

- (h) The scheme will be executed in the manner described in the Scheme section of this Product Ruling and scheme documentation referred to in paragraph 17 of the Product Ruling.

Commissioner of Taxation

26 August 2020

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.*

Deductibility of the Subscription Fees and fuel costs

34. Section 8-1 allows a deduction for any loss or outgoing to the extent that it is incurred in gaining or producing assessable income or it is necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income, provided that the loss or outgoing is not of a capital, private or domestic nature.

35. Where the Vehicle subscribed for under the Subscription Agreement by the Individual Customer under the Individual Customer Scenario is used by the Individual Customer in gaining or producing their assessable income, the Individual Customer will be entitled to a deduction under section 8-1 for payments of the Subscription Fee to Carly, and fuel costs incurred in relation to the Vehicle, to the extent that the Vehicle is used in gaining or producing the Individual Customer's assessable income (and not used for private purposes).

36. Where the Vehicle under the Subscription Agreement is subscribed for by an Individual Business Customer, the Individual Business Customer will be entitled to a deduction under section 8-1 for payments of the Subscription Fee to Carly, and fuel costs incurred in relation to the Vehicle, to the extent that the Vehicle is used in carrying on a business for the purpose of gaining or producing the Individual Business Customer's assessable income (and not used for private purposes).

37. Where the Vehicle is subscribed for under the Subscription Agreement by the Business Customer for provision to its employee under either the Business Customer Scenario or the Arranger Scenario, the Subscription Fee payments made by the Business Customer to Carly in accordance with its obligations under the Subscription Agreement are outgoings of the Business Customer, as an employer, that are necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income (and not outgoings of a private nature). Payments of the Subscription Fee by the Business Customer under the Business Customer Scenario and the Arranger Scenario are therefore deductible pursuant to section 8-1.

Calculation of car expense deductions: Division 28

38. Division 28 sets out the rules for working out deductions for 'car expenses' in respect of cars that are owned, leased or hired under a hire purchase agreement by an individual or a partnership that includes at least one individual (sections 28-1 and 28-10).

39. Unless an exception under Subdivision 28-J applies, deductions for car expenses can be calculated using one of the two methods (section 28-12).

40. For the purposes of Division 28, section 28-13 provides that a car expense is a loss or outgoing to do with a car and includes a loss or outgoing to do with operating a car. The Subscription Fee payable by the Subscriber under the Subscription Agreement is a loss or outgoing to do with a car and fuel costs paid in respect of the Vehicle constitute a loss or outgoing to do with operating a car.

41. Subdivision 28-J sets out the situations where neither of the two methods can be used or need to be used. These situations involve either the nature of the car or the way it is used (section 28-160).

42. Certain types of car taken on hire are prohibited by subsection 28-165(1) from using either of the two methods of calculating deductions for car expenses. In particular, subsection 28-165(1) applies to subsection 28-165(4), which states:

It also applies to a motor vehicle taken on hire under an agreement of a kind ordinarily entered into by people who take motor vehicles on hire intermittently, as the occasion requires, on an hourly, daily, weekly or short term basis, except if the motor vehicle:

- (a) has been taken on hire under successive agreements of a kind that result in substantial continuity of the motor vehicle being taken on hire; or
- (b) it is reasonable to expect that the motor vehicle will be taken on hire under successive agreements of a kind that will so result.

43. Where either of the two methods to calculate deductions for car expenses cannot be used as result of the operation of subsection 28-165(4), the individual (or partnership) must instead calculate the deductions under the normal principles governing deductions, including the rules for apportioning a loss or outgoing that is only partly attributable to producing assessable income (subsection 28-165(2)).

44. Since the expression 'short term' is not defined for the purposes of Division 28, it takes its ordinary meaning in the context of subsection 28-165(4).

45. Dictionary meanings of the expression 'short term' (as well as the words 'short' and 'term' separately) indicate a brief, low in amount, time or period through which something lasts, or to which limits have been set, such that it is limited in scope and having a comparatively short period of time, is contemplated.²

² Macmillan Publishers Australia, *The Macquarie Dictionary* online, www.macquariedictionary.com.au, viewed 19 August 2020.

46. Further, the imposition of a limitation on the scope of the general expression 'short term' by the application of the *ejusdem generis* principle, presupposes the identification of a group of 'like matters'. In the case of subsection 28-165(4), it is considered that a group of like matters has been created in the form of the words 'hourly, daily, weekly' which operate to limit the general expression 'short term'. Therefore, in considering the expression, 'hourly, daily, weekly or short term' basis, 'short term' must be something of or as the same kind with the words that precede it.

47. Considering these points, the Commissioner is of the view that the expression 'short term' in subsection 28-165(4) means a period of up to one month.

48. Where the Vehicle under the Subscription Agreement is subscribed for by the Individual Customer or the Individual Business Customer for a Subscription Period of one month or less (on a short term basis), subject to the application of paragraphs 28-165(4)(a) or (b) that Vehicle will be taken to be a car to which subsection 28-165(4) applies and subsection 28-165(1) will apply to prohibit the use of the two methods to calculate their deductions for car expenses. The Individual Customer or the Individual Business Customer under these circumstances will have to calculate their deductions for car expenses under the normal principles governing deductions.

49. Where the Vehicle under the Subscription Agreement is subscribed for by the Individual Customer or the Individual Business Customer for a Subscription Period of longer than one month (such that it is hired on a longer than short term basis), that Vehicle will not be taken to be a car to which subsection 28-165(4) applies and subsection 28-165(1) will not apply to prohibit the use of the two methods to calculate their deductions for car expenses.

50. Subsection 28-165(4) requires you to ascertain the true nature of the transaction by a consideration of the character of the agreement, so as to determine whether the agreement itself is of a kind ordinarily entered into by people who take cars on hire intermittently, as the occasion requires, on a short term basis. This is a determination which would be made upon entry into the agreement.

51. Therefore, where the Individual Customer or the Individual Business Customer enters into a Subscription Agreement with Carly for a Subscription Period that is longer than a short term basis, the option to Switch the Vehicle under that Subscription Agreement does not affect the characterisation of the agreement for the purposes of subsection 28-165(4). Similarly, where the Individual Customer or the Individual Business Customer enters into a Subscription Agreement with Carly for a Subscription Period that is longer than a short term basis but Switches the Vehicle within one month of the Subscription Period commencing, the characterisation of the agreement will not be affected.

FBT consequences in respect of provision of Vehicle

52. Subsection 7(1) of the FBTAA provides that where, in respect of the employment of an employee, a car held by a person (referred to as the 'provider'):

- is applied to a private use by the employee, or (with regard to subsection 7(2) of the FBTAA) is taken to be available for the private use of the employee, and
- either the provider is the employer of the employee, or the car is so applied or available under an arrangement between the provider and the employer,

then the application or availability of the car shall be taken to constitute a benefit provided by the provider to the employee in respect of the employment of the employee.

53. Paragraphs 162(1)(a) and (b) of the FBTAA respectively provide that a car is held by a person when the car is owned by that person or leased to that person. Pursuant to the assumption at subparagraph 33(c) of this Product Ruling, the Business Customer under the Business Customer Scenario and the Fleet Owner under the Arranger Scenario is a 'person' as defined in subsection 136(1) of the FBTAA.

54. As the Business Customer under the Business Customer Scenario will be the person to whom the Vehicle is leased, subject to subsection 7(7) of the FBTAA the Business Customer will hold the Vehicle (and be the provider) for the purposes of section 7 of the FBTAA. Similarly, as the Fleet Owner under the Arranger Scenario will be the person that owns the Vehicle, subject to subsection 7(7) of the FBTAA the Fleet Owner will hold the Vehicle (and be the provider) for the purposes of section 7 of the FBTAA.

55. Pursuant to paragraph 7(7)(b) of the FBTAA, a reference in Division 2 of the FBTAA to 'a car held by a person' does not include a reference to a car let on hire to the provider under an agreement of a kind ordinarily entered into by persons taking cars on hire intermittently as occasion requires on an hourly, daily, weekly or other short term basis, unless the car has been or may reasonably be expected to be on hire under successive agreements of a kind that result in substantial continuity of the hiring of the car.

56. Chapter 7 – Car fringe benefits of [Fringe benefits tax – a guide for employers](#) (the Guide) provides that cars hired under an agreement for a period of less than three months are, for the purposes of administering subsection 7(7) of the FBTAA, considered to be hired under an agreement of a kind ordinarily entered into by persons taking cars on hire intermittently as occasion requires on a short term basis, and therefore not 'held' (subject to the exception for cars hired under successive agreements). Chapter 7.1 of the Guide sets out:

If you hire a car for less than three months, you are not considered to 'hold' the car and it will not result in a car fringe benefit. However,

if you make a rental car ... available for the private use of an employee, and the car is hired for less than three months, a residual fringe benefit may arise.

57. Where the Vehicle under the Subscription Agreement is subscribed for by the Business Customer under the Business Customer Scenario for a Subscription Period of less than three months (on a short term basis), unless the Vehicle has been or may reasonably be expected to be on hire under successive agreements of a kind that result in substantial continuity of the hiring of the Vehicle, that Vehicle will be taken to be a car to which subsection 7(7) of the FBTAA applies. The Business Customer under these circumstances will not, for the purposes of section 7 of the FBTAA, be taken to hold the Vehicle and its provision to the Business Customer's employee will not constitute a car benefit provided by the Business Customer.

58. Where the Vehicle under the Subscription Agreement is subscribed for by the Business Customer under the Business Customer Scenario for a Subscription Period of less than three months (on a short term basis), and the Vehicle has not been and may not reasonably be expected to be on hire under successive agreements of a kind that result in substantial continuity of the hiring of the Vehicle, the provision of the Vehicle to the Business Customer's employee will constitute a residual benefit under section 45 of the FBTAA (as provided for in the Guide).

59. Where the Vehicle under the Subscription Agreement is subscribed for by the Business Customer under the Business Customer Scenario for a Subscription Period of three months or longer (such that it is hired on a longer than short term basis), that Vehicle will not be taken to be a car to which subsection 7(7) of the FBTAA applies. Therefore, where the Vehicle subscribed for by the Business Customer under these circumstances is applied to a private use by the employee or (pursuant to subsection 7(2) of the FBTAA) is taken to be available for the private use of the employee, the application or availability of the Vehicle will constitute a car benefit provided by the Business Customer to the employee in respect of the employee's employment pursuant to subsection 7(1) of the FBTAA.

60. As noted at paragraph 51 of this Product Ruling in the context of subsection 28-165(4), where the Business Customer enters into a Subscription Agreement with Carly for a Subscription Period that is longer than a short term basis for the purposes of subsection 7(7) of the FBTAA, the option to Switch the Vehicle under that Subscription Agreement will not affect the characterisation of the agreement. Similarly, where the Business Customer enters into a Subscription Agreement with Carly for a Subscription Period that is longer than a short term basis but Switches the Vehicle within three months of the Subscription Period commencing, the characterisation of the agreement for the purposes of subsection 7(7) of the FBTAA will not be affected.

61. Where the Vehicle under the Subscription Agreement is subscribed for by the Business Customer under the Arranger Scenario and applied to a private use by the employee or (pursuant to subsection 7(2) of the FBTAA) is taken to be available for the private use of the employee, the application or availability of the Vehicle will constitute a car benefit provided by the Business Customer to the employee in respect of the employee's employment pursuant to subsection 7(1) of the FBTAA. As the provider under these circumstances is the Fleet Owner (rather than the Business Customer) and the references to 'a car held by a person' under Division 2 of the FBTAA which are excluded by paragraph 7(7)(b) of the FBTAA are limited to cars let on hire to the provider (as per paragraph 55 of this Product Ruling), the duration of the Subscription Period under the Arranger Scenario is immaterial.

Calculating the taxable value of car fringe benefits

62. Where the provision of the Vehicle to the employee under the Business Customer Scenario constitutes a car fringe benefit, defined in subsection 136(1) of the FBTAA to mean a fringe benefit that is a car benefit, the taxable value of that car fringe benefit will be calculated by the Business Customer using either the statutory formula method in section 9 of the FBTAA, unless the Business Customer elects to use the operating cost method in section 10 of the FBTAA.

63. The statutory formula method applies a statutory rate to the base value of a car. Where the car is owned by the provider, as is the case in respect of the Fleet Owner under the Arranger Scenario, the base value of the Vehicle subscribed for under the Subscription Agreement is determined under paragraph 9(2)(a) of the FBTAA by reference to the 'cost price' of the Vehicle to the Fleet Owner (excluding registration and stamp duty), the cost of any fitted non-business accessories and dealer delivery charges.³

64. Where the car is subscribed for by the provider, as is the case in respect of the Business Customer under the Business Customer Scenario, the base value of the Vehicle subscribed for under the Subscription Agreement is determined under paragraph 9(2)(a) of the FBTAA by reference to the 'leased car value' of the Vehicle and any non-business accessories added after the Fleet Owner purchased the Vehicle.

³ All costs and charges include GST and luxury car tax if applicable.

65. Where the Subscription Period under the Subscription Agreement commenced at or about the time the Fleet Owner purchased the Vehicle, the leased car value will be the cost price of the Vehicle to the Fleet Owner (inclusive of GST and any luxury car tax), and where the Fleet Owner purchased the Vehicle at some other time, the leased car value will be the market value of the Vehicle at the time the Subscription Period under the Subscription Agreement commenced (that is, the amount a person could reasonably be expected to have paid to purchase the Vehicle under an arm's length transaction).

66. The taxable value of a car fringe benefit calculated under the operating cost method is a percentage (representing the extent of the business use percentage applicable to the car) of the total costs of operating the car during the year. The operating costs of the Vehicle determined under paragraph 10(3)(a) of the FBTA in respect of both the Business Customer Scenario and the Arranger Scenario will include the Subscription Fees paid by the Business Customer to Carly and any fuel costs paid for by the Business Customer.

FBT consequences under the Reimbursement Scenario

67. Where a person (referred to as the provider) reimburses another person (referred to as the recipient), in whole or in part, in respect of an amount of expenditure incurred by the recipient, that reimbursement will constitute an expense payment benefit pursuant to section 20 of the FBTA.

68. The reimbursement of the employee by the Business Customer for the Subscription Fees paid by the employee to Carly under the Reimbursement Scenario will constitute an expense payment benefit under section 20 of the FBTA.

69. As the Vehicle under the Reimbursement Scenario is subscribed for by the employee (rather than the Business Customer) the Vehicle is not held by the Business Customer in accordance with section 162 of the FBTA and the requirements under section 7 of the FBTA in relation to car benefits are not satisfied.

Anti-avoidance

70. Provided that the scheme ruled on is entered into and carried out as described in this Product Ruling, it is accepted that the scheme is an ordinary commercial transaction and neither Part IVA of the ITAA 1936 or section 67 of the FBTA will apply.

Appendix 2 – Detailed contents list

71. The following is a detailed contents list for this Product Ruling:

	Paragraph
What this Ruling is about	1
Class of entities	5
<i>Superannuation Industry (Supervision) Act 1993</i>	8
Qualifications	9
Date of effect	11
Changes in the law	13
Note to promoters and advisers	15
Ruling	16
Scheme	17
Overview	20
<i>Scenarios</i>	29
Assumptions	33
Appendix 1 – Explanation	34
Deductibility of the Subscription Fees and fuel costs	34
Calculation of car expense deductions: Division 28	38
FBT consequences in respect of provision of Vehicle	52
<i>Calculating the taxable value of car fringe benefits</i>	62
FBT consequences under the Reimbursement Scenario	67
Anti-avoidance	70
Appendix 2 – Detailed contents list	71

References

Previous draft:

Not previously issued as a draft

– ITAA 1997 28-1

– ITAA 1997 28-10

– ITAA 1997 28-12

– ITAA 1997 28-13

Legislative references:

– FBTAA 1986 Div 2

– ITAA 1997 Subdiv 28-C

– FBTAA 1986 7

– ITAA 1997 Subdiv 28-F

– FBTAA 1986 7(1)

– ITAA 1997 Subdiv 28-J

– FBTAA 1986 7(2)

– ITAA 1997 28-160

– FBTAA 1986 7(3)

– ITAA 1997 28-165(1)

– FBTAA 1986 7(7)

– ITAA 1997 28-165(2)

– FBTAA 1986 7(7)(b)

– ITAA 1997 28-165(4)

– FBTAA 1986 8(2)

– ITAA 1997 28-165(4)(a)

– FBTAA 1986 9

– ITAA 1997 28-165(4)(b)

– FBTAA 1986 9(2)(a)

– ITAA 1997 28-170

– FBTAA 1986 10

– ITAA 1997 28-175

– FBTAA 1986 10(3)(a)

– ITAA 1997 28-180

– FBTAA 1986 20

– ITAA 1997 28-185

– FBTAA 1986 45

– ITAA 1997 Div 40

– FBTAA 1986 53

– ITAA 1997 Div 230

– FBTAA 1986 67

– ITAA 1997 Div 242

– FBTAA 1986 136(1)

– ITAA 1997 995-1(1)

– FBTAA 1986 162

– SISA 1993

– FBTAA 1986 162(1)(a)

– TAA 1953

– FBTAA 1986 162(1)(b)

– ITAA 1936 Pt IVA

Other references:

– ITAA 1997 8-1

– [Fringe benefits tax – a guide for employers](#)

– ITAA 1997 Div 28

ATO references

NO: 1-KHOJQW2

ISSN: 2205-6114

BSL: PW

ATOLaw topic: Income tax ~~ Deductions ~~ Other

Fringe benefits tax ~~ Car benefits ~~ Other

Fringe benefits tax ~~ Expense payment benefits ~~

Other

© AUSTRALIAN TAXATION OFFICE FOR THE COMMONWEALTH OF AUSTRALIA

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).