



CR 2008/55 - Fringe benefits tax: employer clients of Auto-Ad Pty Limited whose employees hire cars from Smart Car Rentals Pty Limited

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 This document has changed over time. This is a consolidated version of the ruling which was published on *27 August 2008*



Class Ruling

Fringe benefits tax: employer clients of Auto-Ad Pty Limited whose employees hire cars from Smart Car Rentals Pty Limited

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! This publication provides you with the following level of protection:

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provision dealt with in this ruling is:
- subsection 136(1) (definition of 'benefit' and 'fringe benefit') of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA 1986).

All subsequent legislative references are to the FBTAA 1986 unless otherwise stated.

Class of entities

3. Auto-Ad is an advertising agency which manages brand awareness for its customers, primarily through advertising placed on the exterior of motor cars.

4. Smart Car is a car rental company that rents or hires out cars to the general public.

5. The customers of Auto-Ad are entities who enter into advertising agreements with Auto-Ad to advertise their products. Those customers whose employees hire cars from Smart Car are the employers who form the class of entities to which this ruling applies.

6. In this Ruling an employer belonging to this class of entities is referred to as the employer. On the same basis, an employee of the employer is referred to as the employee.

Qualifications

7. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

8. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 16 to 30 of this Ruling.

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

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

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Date of effect

11. This Ruling applies from 1 April 2008.

12. The Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

13. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

14. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

15. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

16. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- Class Ruling application, dated 5 February 2008;
- letter dated 11 March 2008 providing further information; and
- email dated 13 May 2008 providing Smart Car Rentals Pty Ltd – Terms and Conditions of Hire.

17. Auto-Ad is an advertising agency which manages brand awareness for its customers, primarily through advertising placed on the exterior of motor cars.

18. Smart Car is a car rental company that rents or hires out cars to the general public.

19. The customers of Auto-Ad are entities who enter into advertising agreements with Auto-Ad to advertise their products. Those customers whose employees hire cars from Smart Car are the employers who form the class of entities described at paragraphs 3 to 6 of this Ruling.

20. Auto-Ad purchases exterior advertising space on Smart Car cars. The advertising will encompass the entire exterior of the car with semi-permanent vinyl covering. The coverings are designed to last up to 12 months. This advertising promotes the product of an Auto-Ad customer.

21. Smart Car Rentals hire out cars with advertising attached or cars which are free of advertising. These cars are available for hire to individual hirers who are members of the public including employees of employers.
22. Employees of employers may hire Smart Car cars for their short-term use.
23. All individual hirers must enter into a rental agreement which includes standard terms and conditions such as the requirement to hold a current drivers license and the requirement to provide a security deposit (normally held against a credit card).
24. The daily rates charged by Smart Car are publicly displayed at the Smart Car office at Surfers Paradise. These rates are the only rates charged by Smart Car for public hire. The cars hired with advertising attached have a lower daily rate than those cars without advertising.
25. The cars are owned, maintained and insured by Smart Car. Cars are hired from the pool of cars available at any given time. The individual hirer can hire a different car, or rehire the same car at the end of the rental agreement.
26. The individual hirer pays the rental amount in its entirety.
27. The rental agreement is between Smart Car and the individual hirer.
28. The employer does not contribute towards the cost of the rental payments.
29. The employer does not have a contract or agreement with Smart Car.
30. The daily rate payable by the employee to Smart Car is not affected by which particular company's branding appears on the vehicle. The daily rate payable is only affected by whether the car hired is with or without advertising.

Ruling

31. Under the scheme described at paragraphs 16 to 30 of this Ruling, the benefit provided by Smart Car to the employee of the employer, being the provision of and use of a hire car, is not a benefit which satisfies the definition of 'fringe benefit' under subsection 136(1). Therefore, the provision of the benefit is not subject to fringe benefits tax.

Appendix 1 – Explanation

❗ *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.*

32. The term 'benefit' is defined in subsection 136(1) and includes any right, privilege, service or facility.

33. When Smart Car rents or hires a car to an employee of an employer, referred to at paragraph 6, it provides the employee with a car for the employee's use. The provision of the car and the employee's use of the car fall within the term 'benefit' as defined in subsection 136(1).

34. The definition of a 'fringe benefit' as defined in subsection 136(1) requires, amongst other things, that in order for a benefit to be a fringe benefit:

- the benefit must be provided to the employee or an associate of the employee;
- the benefit must be provided by a particular person including a person other than the employer or an associate of the employer under an arrangement; and
- the benefit must be provided in respect of the employment of the employee.

A failure to meet any of the above three requirements means that there will be no provision of a 'fringe benefit' and no resultant fringe benefits tax liability. This Ruling focuses on the third requirement above, that is whether the benefit is provided, 'in respect of the employment of the employee'.

35. The benefit provided to the employee of the employer results from a personal contractual relationship between Smart Car and the employee.

36. In Taxation Ruling TR 1999/6,¹ it was determined (subject to two exceptions not applicable in the present matter) that flight rewards that result from a personal (that is, non-employment) contractual relationship are not subject to fringe benefits tax.

37. TR 1999/6 applies the decision of Foster J in *Payne v. Federal Commissioner of Taxation* (1996) 66 FCR 299; 96 ATC 4407; (1996) 32 ATR 516 (*Payne's case*) in determining whether a flight reward provided under a contract between a third party and an employee is provided 'in respect of the employment of the employee' within the definition of 'fringe benefit' in subsection 136(1).

¹ TR 1999/6: Income tax and fringe benefits tax: flight rewards received under frequent flyer and other similar consumer loyalty programs.

38. Smart Car is in the business of renting cars to members of the public. Customers who are individual members of the public choose from the available pool of cars at the standard rental terms and conditions which include a lower hire rate for cars with advertising. It is the decision of the individual hirer, subject to availability of cars: as to which particular car to hire; whether the car hired will be with or without corporate advertising; or whether the car hired has a particular corporate 'logo' displayed belonging to the individual's own employer or belonging to some other entity.

39. The relationship between Smart Car and the individual who hires a car is one of 'retailer' and 'customer' in the car rental market place.

40. Under the scheme described at paragraphs 13 to 27 of this Ruling the only reason Smart Car makes a car available to an employee of an employer is because the employee is an individual hirer in the retail car rental market place. The employee rents a car at the standard retail terms and conditions available to the general public.

41. The employer plays no role in the rental agreement between Smart Car and the employee.

42. As described in TR 1999/6, as it applies *Payne's case*, and as equally applicable in the present matter, the benefit arises as a result of performance under a contract between the employee and a third party. There is no participation by the employer in the provision of the benefit. The benefit is not provided 'in respect of the employment of the employee'.

43. The definition of 'fringe benefit' in subsection 136(1) is dependent upon the benefit being 'in respect of the employment of the employee'. As a result the benefit being the provision of and use of a car by an employee of the employer is not a 'fringe benefit'. As there is no 'fringe benefit' the provision of the benefit is not subject to fringe benefits tax.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 1999/6

Subject references:

- benefit
- fringe benefit

Legislative references:

- FBTAA 1986
- FBTAA 1986 136(1)
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

Case references:

- Payne v. Federal Commissioner of Taxation (1996) 66 FCR 299; 96 ATC 4407; (1996) 32 ATR 516

ATO references

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