


CR 2009/18 - Fringe benefits tax: employers who are corporate members of Charter Drive Pty Limited and whose employees, as individual members, hire cars from Charter Drive Pty Limited

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Class Ruling

Fringe benefits tax: employers who are corporate members of Charter Drive Pty Limited and whose employees, as individual members, hire cars from Charter Drive Pty Limited

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

This publication (excluding appendices) 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. The class of entities to which this Ruling applies are employers who are corporate members of Charter Drive Pty Ltd (Charter Drive) and whose employees, as individual members, hire cars from Charter Drive.

Qualifications

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

5. 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 9 to 27 of this Ruling.

6. 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

8. This Ruling applies from 1 April 2008. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. 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 3 September 2008;
- Charter Drive Member Terms and Conditions; and
- revised description of the scheme as advised by the applicant in emails dated 27 January 2009 and 18 March 2009.

10. Charter Drive operates in the car sharing and car club industries in Australia (herein referred to as 'car sharing').

11. Charter Drive owns the cars.

12. Charter Drive hires the cars to their corporate customers or to individual customers who are members of the general public.

13. In order for a person (corporate or individual) to hire a car from Charter Drive they are required to become a member of Charter Drive. Members are subject to the terms and conditions set out in the 'Charter Drive Member Terms and Conditions'. All members (corporate or individual) are subject to the same terms and conditions and pay the same advertised hire rates.

14. Each member is provided with a Charter Drive 'smart card' which is used to gain access to a Charter Drive car. Access outside of contracted periods or by a member not authorised to use that particular car will incur financial penalties.

15. Each car owned by Charter Drive has a designated parking area from where the vehicle is picked up at the start of the hire period and returned to at the end of the hire period. Designated parking areas can be on-street parking and off-street parking locations, including public car parks, hotel car parks and business address car parks. Parking in some cases is at the private business address of a corporate member customer in their own building or premises.

16. Each car is fitted with a Global Positioning System device which is designed to assist Charter Drive identify where the cars are located at any point in time as well to ensure that a given individual returns a vehicle on time and does not take the vehicles to restricted areas as identified by Charter Drive.

17. A Charter Drive car hired to a corporate member during business hours (generally 9am to 5pm on weekdays) cannot also be used by the corporate member outside of those hours unless arranged with Charter Drive in a separate lease agreement. A fee is then payable for the additional period. Penalties can apply for a breach of a member's conditions including where a car is returned late without prior arrangement. However, business hours are not fixed and may be varied according to the needs of each corporate customer and by agreement with Charter Drive.

18. Outside of business hours (non-business hours are generally 5pm to 9am weekdays and on weekends) the cars are available for hire to individual members. These individual members can include employees of an employer. The cars are picked up from a designated parking area and returned to the same designated parking area, within the non-business hours. An individual member can hire outside of these hours but the member must enter into a separate lease agreement with Charter Drive.

19. In cases where a car is parked at the private business address of an employer, that particular location may limit access to staff of that employer so the car would only be able to be hired by one of these employees.

20. This car sharing arrangement is designed to facilitate maximum usage of cars during business and non-business hours.

21. Currently there are car pick-up/drop-off locations in Sydney and Melbourne, many of which are accessible to all Charter Drive members.

22. Individual members who are employees and who hire Charter Drive cars at any time are required to enter into their own separate lease agreements.

23. Charter Drive individual membership for employees and any subsequent lease agreements are arranged with Charter Drive directly and not through the employer. The employee individual members are required to pay separate deposits and their own membership joining fees.

24. Employee individual members hiring a Charter Drive car are personally liable to Charter Drive for all charges incurred including car hire charges.

25. The employer is a corporate Charter Drive member.

26. The employee is an employee of the employer.

27. The employer may provide its employees access to Charter Drive advertising material and to the Charter Drive website.

Ruling

28. An employee of an employer, where the employee is an individual Charter Drive member and the employer is a corporate Charter Drive member, hires a car from Charter Drive. The same car was previously hired from Charter Drive by the employer. The employee receives a 'benefit' as defined in subsection 136(1), either by way of the employee using the car or by way of the employee being allowed to use the car during the hire period.

29. The 'benefit' received by the employee, being the availability or use of the car, is the result of a commercial arrangement between Charter Drive and the employee Charter Drive member. The employer does not participate in this arrangement other than by making information available about Charter Drive. As a result, the benefit is not provided in respect of the employment of the employee and the benefit is not a 'fringe benefit' as defined in subsection 136(1).

Commissioner of Taxation

1 April 2009

Appendix 1 – Explanation

① *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.*

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

31. When Charter Drive hires a car to an employee of an employer in the class of entities, who is an individual Charter Drive member, the employee's use of the car or the availability for use during the hire period is a right, privilege, service or facility and is a 'benefit' as defined.

32. 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 listed in paragraph 32, that is, whether the benefit is provided 'in respect of the employment of the employee'.

33. The benefit provided to the employee results from a personal contractual relationship between Charter Drive and the individual Charter Drive member who is an employee.

34. In Taxation Ruling TR 1999/6 Income tax and fringe benefits tax: flight rewards received under frequent flyer and other similar consumer loyalty programs, it was determined (subject to two exceptions not applicable in the present matter) that flight rewards which result from a personal (that is, non-employment) contractual relationship are not subject to fringe benefits tax.

35. TR 1999/6 applies the decision of Foster J in *Payne v. Federal Commissioner of Taxation*¹ (*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 (1996) 66 FCR 299; 96 ATC 4407; (1996) 32 ATR 516.

36. Charter Drive is in the business of hiring cars to corporate and individual members. These individual members include employees of employers in the class of entities. Individual members choose from the available pool of cars at the standard terms and conditions. It is the decision of the individual member, subject to availability of cars, as to which particular car to hire.

37. The relationship between Charter Drive and the individual member who hires a car is one of 'retailer' and 'customer' in the car hire market place.

38. The only reason Charter Drive makes a car available to an employee is because the employee is a customer in a retail car hire market. The employee hires a car at the standard retail terms and conditions available to the general public.

39. The employer plays no role in the hire agreement between Charter Drive and the individual member who is an employee.

40. As described in TR 1999/6, including at paragraph 25, as it applies *Payne's* case, and as equally applicable in the present matter, the benefit arises as a result of performance under a personal contract between the individual member who is an employee and Charter Drive. There is no participation by the employer, other than by an indirect or 'contributory cause' of the receipt of the benefit, by making information about Charter Drive available to the employee. The benefit is not provided 'in respect of the employment of the employee'.

41. The definition of 'fringe benefit' in subsection 136(1) is dependent on the benefit being 'in respect of the employment of the employee'. As a result, the benefit being the availability or use of a Charter Drive car by an individual Charter Drive member who is an employee is not a 'fringe benefit'.

Appendix 2 – Detailed contents list

42. 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
- Copyright Act 1968

Case references:

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

ATO references

NO: 2009/2895

ISSN: 1445-2014

ATOlaw topic: Fringe Benefits Tax -- Interpretation – including meaning of ‘fringe benefit’