


# ***CR 2016/12 - Fringe benefits tax: employers who are clients of United Airport Parking Pty Ltd and who enter into the Corporate Car Parking Agreement***

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## Class Ruling

### Fringe benefits tax: employers who are clients of United Airport Parking Pty Ltd and who enter into the Corporate Car Parking Agreement

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#### **❶ 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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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 provisions identified below apply to the defined class of entities who take part in the scheme to which this Ruling relates.

### Relevant provision

2. The relevant provision dealt with in this Ruling is section 7 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA). All legislative references are to the FBTAA unless otherwise indicated.

### Class of entities

3. The class of entities to which this Ruling applies is employers who provide the private use of a car that they own or lease to an employee (or an associate) and enter into a Corporate Car Parking Agreement (CCPA) with United Airport Parking Pty Ltd (UAP).

4. The Ruling refers to a person belonging to the class of entities as 'the employer'.

## Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.
6. 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 10 to 19 of this Ruling.
7. 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.

## Date of effect

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8. This Ruling applies from 1 April 2015 to 31 March 2020. 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

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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 9 October 2015
  - correspondence provided on 2 December 2015, and
  - a copy of the CCPA.
10. UAP is a privately owned company that operates a secure, undercover, lock up car parking facility (UAP car parking facility).
11. UAP will enter into an agreement (the CCPA) with employers that will enable a car provided for the private use of an employee (or associate) to be parked in the UAP car parking facility.
12. Under the terms of the agreement an employee (or associate) is able to make a booking to park the car in the UAP car parking facility for a nominated period of time using UAP's website.
13. The UAP car parking facility is not located at or near the residence of an employee (or associate) of the employer.

14. For each booking UAP will send the employee a booking confirmation and provide instructions for parking the car including the location of the car parking facility, the process for parking and surrendering the car and keys.

15. To surrender the car and the car keys the employee (or associate) will park the car in a vacant bay in the UAP car parking facility and provide the car keys to a UAP employee at the Cashier's Office.

16. The UAP employee will place the car keys into a key lock safe and give the key to the key lock safe to the employee (or associate) together with a Parking Receipt. The UAP employee will then place the key lock safe into the UAP general safe.

17. To obtain the car at the end of the nominated period the employee (or associate) must provide the key to the key lock safe to a UAP employee who will unlock the key lock safe and provide the car keys to the employee (or associate).

18. The employee may pay the parking fees on behalf of the employer when obtaining the keys at the conclusion of the nominated period. Alternatively, the employer may pay the parking fees on a monthly basis.

19. Clause 4.3 of the CCPA sets out the use of the car during the nominated period. During this period:

- the employee is prohibited from using the car for any purpose
- UAP has exclusive possession of the car and will not be subject to any instructions or directions by the employer, except those requiring observance of the terms of the agreement, and
- UAP will only move the car to ensure the effective operation of the car parking facility.

## **Ruling**

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20. A car benefit will not arise under section 7 during the period in which the car is parked in the UAP car parking facility.

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**Commissioner of Taxation**

9 March 2016

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## 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.*

### **Will a car benefit arise during the period in which the car is parked in the UAP car parking facility?**

21. Subsection 136(1) defines 'car benefit' as meaning a benefit referred to in subsection 7(1). Section 7, as relevant, sets out the following conditions:

#### **7(1) [Car applied to, available for employee's private use]**

Where:

- (a) at any time on a day, in respect of the employment of an employee, a car held by a person (in this subsection referred to as the **provider**):
  - (i) is applied to a private use by the employee or an associate of the employee; or
  - (ii) is taken to be available for the private use of the employee or an associate of the employee; and
- (b) either of the following conditions is satisfied:
  - (i) the provider is the employer, or an associate of the employer, of the employee;
  - (ii) ...

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

#### **7(2) [Car garaged at employee's residence]**

Where, at a particular time, the following conditions are satisfied in relation to an employee of an employer:

- (a) a car is held by a person, being:
  - (i) the employer;
  - (ii) an associate of the employer; or
  - (iii) ...
- (b) the car is garaged or kept at or near a place of residence of the employee or of an associate of the employee;

the car shall be taken, for the purposes of this Act, to be available at that time for the private use of the employee or associate, as the case may be.

**7(3) [Car not at employer's business premises]**

Where, at a particular time, the following conditions are satisfied in relation to an employee of an employer:

- (a) a car is held by a person, being:
  - (i) the employer;
  - (ii) an associate of the employer; or
  - (iii) a person (other than the employer or an associate of the employer) with whom, or in respect of whom, the employer or an associate of the employer has an arrangement relating to the use or availability of the car;
- (b) the car is not at business premises of:
  - (i) the employer;
  - (ii) an associate of the employer; or
  - (iii) person (other than the employer or an associate of the employer) with whom, or in respect of whom, the employer or an associate of the employer has an arrangement relating to the use or availability of the car;
- (c) any of the following conditions is satisfied:
  - (i) the employee is entitled to apply the car to a private use;
  - (ii) the employee is not performing the duties of his or her employment and has custody or control of the car;
  - (iii) an associate of the employee is entitled to use, or has custody or control of, the car;

the car shall be taken, for the purposes of this Act, to be available at that time for the private use of the employee or associate, as the case may be.

**7(4) [Prohibition on private use not consistently enforced]**

For the purposes of subsection (3), where a prohibition on the application of a car, or on the application of a car for a private use, by a person is not consistently enforced, the person shall be deemed to be entitled to use the car, or to apply the car to a private use, notwithstanding the prohibition.

22. The employer owns or leases a car and provides the use of the car to an employee (or associate). Under subsection 7(1) a car benefit will arise if the car is:

- applied to a private use by the employee (or associate), or
- is taken to be available for the private use of the employee (or associate).

23. During the period in which the car is parked in the UAP car parking facility the car is not used. Therefore, it will not be applied to a private use by the employee (or associate) and a car benefit will only arise if the car is taken to be available for the private use of an employee (or associate).

**Will the car be taken to be available for the private use of an employee (or associate) during the period it is parked in the UAP car parking facility?**

24. Subsections 7(2) and 7(3) set out the circumstances in which a car shall be taken to be available for the private use of an employee or associate.

***Subsection 7(2)***

25. Under subsection 7(2) unless the car is a marked car used by an ambulance service, a firefighting service or a police service, the car will be taken to be available for the private use of an employee (or associate) if it is garaged at or near the residence of an employee (or associate). As the UAP car parking facility is not located at or near the residence of an employee (or associate) of the employer a car benefit will not be taken to arise under subsection 7(2).

***Subsection 7(3)***

26. The car will be taken to be available for the private use of an employee (or associate) under subsection 7(3) if:

- (i) the car is not at the business premises of:
  - the employer (or associate), or
  - another person with whom the employer (or associate) has an arrangement relating to the use or availability of the car, and
- (ii) the employee is entitled to apply the car to a private use, or
- (iii) the employee is not performing the duties of his or her employment and has custody or control of the car, or
- (iv) an associate of the employee is entitled to use, or has custody or control of the car.

27. During the relevant period the car is at the business premises of UAP. UAP is not the employer or an associate of the employer.

28. Under the terms of the agreement entered into by the employer and UAP:

- the employer is liable to pay the Parking Fees that arise when an employee (acting as an agent of the employer) parks a car held by the employer in the parking facility
- the employee is prohibited from using the car for any purpose
- UAP has exclusive possession of the car and will not be subject to any instructions or directions by the employer, except those requiring observance of the terms of the agreement, and
- UAP will only move the car to ensure the effective operation of the car parking facility.

29. As these restrictions that relate to the use or availability of the car are contained in an agreement between the employer and UAP, a car benefit will not be taken to arise under subsection 7(3) as the car is at business premises of a person with whom the employer has an arrangement relating to the use or availability of the car.

30. Further, it is noted that none of the conditions in paragraph 7(3)(c) will be satisfied during the period in which the car is parked at the UAP car parking facility as:

- the employee is prohibited from using the car for any purpose
- the employee does not have custody or control of the car
- an associate of the employee is not entitled to use the car, and
- an associate of the employee does not have custody or control of the car.

31. Support for this conclusion is provided by Taxation Determination TD 94/16 *Fringe benefits tax: where an employee is provided with a car by the employer and the car is kept in safe storage (e.g. in a commercial garage) while the employee is travelling, under what circumstances is that car taken to be available for private use under section 7 of the Fringe Benefits Tax Assessment Act 1986?*



## Conclusion

32. A car benefit will not arise under section 7 during the period in which the car is parked in the UAP car parking facility as:

- the car is not applied to a private use by an employee (or associate)
- the car is not garaged at or near the residence of an employee (or associate)
- the car is at business premises of a person with whom the employer has an arrangement relating to the use or availability of the car
- the employee is prohibited from using the car for any purpose
- the employee does not have custody or control of the car
- an associate of the employee is not entitled to use the car, and
- an associate of the employee does not have custody or control of the car.

## **Appendix 2 – Detailed contents list**

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

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TD 94/16; TR 2006/10

*Legislative references:*

- FBTAA 1986

- FBTAA 1986 7
- FBTAA 1986 7(1)
- FBTAA 1986 7(2)
- FBTAA 1986 7(3)
- FBTAA 1986 7(3)(c)
- FBTAA 1986 7(4)
- FBTAA 1986 136(1)

- TAA 1953

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ATO references

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