


# ***CR 2020/25 - Adelaide Airport Limited - provision of car parking facilities using an access card***

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## Class Ruling

# Adelaide Airport Limited – provision of car parking facilities using an access card

### **📌 Relying on this Ruling**

This publication (excluding appendix) 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.

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### **What this Ruling is about**

1. This Ruling sets out the tax consequences of using an access card to obtain car parking, the type of fringe benefit provided, and whether the fringe benefit is exempt.
2. Full details of this access card are set out in paragraphs 10 to 27 of this Ruling.

**Note:** By issuing this Ruling, the ATO is not endorsing this product. Potential purchasers/users must form their own view about the product.

### **Who this Ruling applies to**

3. This Ruling applies to you if you are an employer who enters into an arrangement with Adelaide Airport Limited (AAL) to provide car parking facilities to their employees under a salary sacrifice arrangement, and the employees you provide the car parking access card to do not have a primary place of employment within the vicinity of Adelaide Airport.

### **When this Ruling applies**

4. This Ruling applies from 1 April 2020 to 31 March 2025.

## Ruling

5. The provision of an access card by employers to their employees to facilitate car parking at Adelaide Airport is a residual benefit under section 45.<sup>1</sup>
6. The arrangement between AAL and employers does not constitute the provision of a car parking fringe benefit under subsection 39A(1).
7. AAL is the provider under the arrangement for the purposes of paragraph 39A(1)(a).
8. The provision of parking satisfies the meaning of 'motor vehicle parking facilities'.
9. The provision of parking is an exempt benefit under paragraph 58G(1)(b).

## Scheme

10. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.
11. Other information referenced is:
  - monthly invoice from AAL to employers
  - sample activity statement from AAL to employers
  - nominated Employee Parking Agreement between AAL and employers
  - AAL Car Park Conditions of Use.
12. AAL operates Adelaide and Parafield Airports in South Australia. AAL provides car parking facilities to assist travellers who are flying from Adelaide Airport to work elsewhere.
13. AAL wishes to improve the utilisation of the existing long-term parking facilities by offering an arrangement with employers to allow their employees to sacrifice salary in exchange for the ability to park in the facility.
14. The arrangement will be targeted at fly-in fly-out employees rather than employees who work at or in the vicinity of Adelaide Airport. The arrangement will also be offered to employees who work permanently, or regularly, in another location on a more traditional Monday-to-Friday arrangement, but would not be considered travelling for work purposes. The arrangement is offered to employers and their employees who do not have a primary place of employment within the vicinity of Adelaide Airport.
15. The employer enters into a commercial agreement with AAL to enter the Adelaide Airport Remote Employee Parking Program.
16. The agreement will cover an agreed period, with the right to terminate by either party with 30 days' notice.
17. The Nominated Employee Parking Agreement between AAL and an employer allows AAL to grant the employer access rights to parking at Adelaide Airport on the basis that the employer can permit nominated employees to use the allocated parking spaces on an 'as needs basis'. This arrangement is not a bailment arrangement.
18. AAL will provide the employer with an agreed number of access cards for AAL public car parking facilities.

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<sup>1</sup> All legislative references in this Ruling are to the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) unless otherwise indicated.

19. The access cards will be issued in the employer's name and the employer will control the employees to whom these cards will be distributed, with identifying features to enable the allocation of use to specific employees.
20. Conditions applying to all access cards include that:
- cards are not transferrable and are not permitted to be used by any other persons
  - cards must not be altered in any way and remain the property of AAL at all times
  - cards must only be issued to employees of the employer and are not to be issued to contractors or third parties
  - AAL reserves the right to suspend further issue of cards to any employer which has not returned cards which have expired or are no longer required
  - card holders must comply with any directions or instructions given by AAL in relation to the car park.
21. As the customer, the employer is:
- primarily liable to AAL for all expenditure incurred using the access cards, recouping the costs directly from their employees via the salary sacrifice agreement
  - responsible for the correct use of the access cards, and is subject to the conditions of use of AAL car parks
  - able to nominate which public car park facilities are available under the scheme, with availability of each facility under the scheme ultimately at the discretion of AAL.
22. Employees of participating employers will register with their employer to participate in the program. The employer then provides the employee with a car park access card.
23. Employees of participating employers will enter into an effective salary sacrifice agreement to forego future earnings in exchange for participating in the program.
24. Employees use the car park access card to enter and exit the public car park facilities at Adelaide Airport, with all parking charges debited against the account linked to the access card. The car park access card is charged the applicable tariff on the day of entry of the car park.
25. At the end of each agreed period, AAL invoices the employer directly for all parking charges applied to the access cards assigned to their account during the agreed period.
26. AAL provides an activity statement to the employer detailing all transactions made on each access card during the agreed period.
27. At such time as the employee ceases employment or exits the program, the employer will advise AAL, following which the car park access card will be cancelled or deactivated.

**Appendix – Explanation**

**ⓘ** *This Explanation 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.*

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**Is the employee's use of an access card provided by their employer under an arrangement with AAL a residual benefit?**

28. Section 45 provides that a benefit will be a residual benefit '...if the benefit is not a benefit by virtue of a provision of Subdivision A of Divisions 2 to 11 (inclusive)'.

29. An expense payment benefit is discussed in section 20:

Where a person (in this section referred to as the **provider**):

- (a) makes a payment in discharge, in whole or in part, of an obligation of another person (in this section referred to as the **recipient**) to pay an amount to a third person in respect of expenditure incurred by the recipient; or
- (b) reimburses another person (in this section also referred to as the **recipient**), in whole or in part, in respect of an amount of expenditure incurred by the recipient;

the making of the payment referred to in paragraph (a), or the reimbursement referred to in paragraph (b), shall be taken to constitute the provision of a benefit by the provider to the recipient.

30. The arrangement is between AAL and the employer such that the employer incurs the parking liability and is responsible for paying the expense directly to AAL. The employer is not making a payment to the employee, or reimbursing the employee for expenditure incurred. The use of an access card is not an expense payment benefit.

31. The provision of an access card is not a benefit under any other division except possibly a car parking fringe benefit. If the provision of an access card is not a car parking fringe benefit, it will be a residual benefit.

**Does the arrangement constitute the provision of a car parking fringe benefit?**

32. A car parking benefit arises under subsection 39A(1) if all of the following conditions are satisfied:

If the following conditions are satisfied in relation to a daylight period, or a combination of daylight periods, on a particular day:

- (a) during the period or periods, a car is parked on one or more premises of a person (the **provider**), where:
  - (i) the premises, or each of the premises, on which the car is parked are business premises, or associated premises, of the provider; and
  - (ii) a commercial parking station is located within 1 km radius of the premises, or each of the premises, on which the car is parked; and
  - (iii) the lowest fee charged by the operator of any such commercial parking station in the ordinary course of business to members of the public for all-day parking on the first business day of the FBT year is more than the car parking threshold;
- (b) the total duration of the period or periods exceeds 4 hours;
- (c) any of the following applies:
  - (i) a car benefit relating to the car is provided on that day to an employee or an associate of an employee in respect of the employment of the employee;
  - (ii) the car is owned by, or leased to, an employee or an associate of an employee at any time during the period or periods;
  - (iii) the car is made available to an employee or an associate of an employee at any time during the period or periods by another person, where:
    - (A) the other person is neither the employer of the employee nor an associate of the employer of the employee; and
    - (B) the other person did not make the car available under an arrangement to which the employer of the employee, or an associate of the employer of the employee, is a party;
- (d) the provision of parking facilities for the car during the period or periods is in respect of the employment of the employee;
- (e) on that day, the employee has a primary place of employment;
- (f) during the period or periods, the car is parked at, or in the vicinity of, that primary place of employment;
- (g) on that day, the car is used in connection with travel by the employee between:
  - (i) the place of residence of the employee; and
  - (ii) that primary place of employment;
- (h) the provision of parking facilities for the car during the period or periods is not taken, under the regulations, to be excluded from this section;
- (i) the day is on or after 1 July 1993;

the provision of parking facilities for the car during the period or periods is taken to constitute a benefit provided by the provider to the employee or the associate of the employee in respect of the employment of the employee.

***Are the premises considered to be 'business premises' of the provider?***

33. 'Business premises' are defined in subsection 136(1) to mean:
- ...in relation to a person, means premises, or a part of premises, of the person used, in whole or in part, for the purposes of business operations of the person, but does not include:
- (a) premises, or a part of premises, used as a place of residence of an employee of the person or an employee of an associate of the person; or
  - (b) a corporate box; or
  - (c) boats or planes used primarily for the purpose of providing entertainment unless the boat or plane is used in the person's business of providing entertainment; or
  - (d) other premises used primarily for the purpose of providing entertainment unless the premises are used in the person's business of providing entertainment.

34. Where there is no designated car parking space for the employee, such that the operator of the commercial car parking station retains ownership or other exclusive occupancy rights in respect of the car parking space occupied by the employee on any given day, the operator of the commercial car parking station will be the 'provider'. If, on the other hand, there is a designated car parking space such that the employer has exclusive occupancy rights for that space, then the employer is the provider.

35. The car is parked in a car park owned by AAL which offers parking to third-party employers. The terms of the agreement between AAL and third-party employers does not offer leasing, ownership or any right to possession of the parking spaces. AAL retains all ownership and possession of the parking spaces under the arrangement. AAL is considered to be the provider for the purposes of subsection 39A(1).

36. For the purpose of paragraph 39A(1)(a) AAL is considered to be the provider and the car park would be considered the business premises of the provider.

***Is Adelaide Airport the primary place of employment of the employee?***

37. The Explanatory Memorandum to the Taxation Laws Amendment (Car Parking) Bill 1992 states the following in relation to 'primary place of employment':

The term 'primary place of employment' is defined to mean the employer's business premises, or associated premises, on which the employee would normally carry out his or her employment duties. Where an employee carries out employment duties on more than one of the employer's business premises in a particular day, the primary place of employment on that day is the place where, in consideration of the time spent and the substance of the duties carried out, a reasonable person would conclude that place to be the primary place of employment.

38. The primary place of employment is determined on a daily basis. Employees using the access card are typically fly-in fly-out workers using Adelaide Airport to fly to another employment location. Generally, on a day of flying to an alternative employment location, the majority of the time would be flying, or working at the alternate employment location.

39. Where an employee has more than one place of employment on a particular day, their primary place of employment on that day is the place where, considering the nature of the employment, the time spent and the substance of the duties carried out, a reasonable person would conclude that place to be the primary place of employment.

40. Where the employee parks their car at Adelaide Airport and their primary place of employment is located at another location that they are travelling to (such as a mine site in a remote locality interstate), Adelaide Airport will not be the primary place of employment of the employee.

41. Therefore the arrangement does not constitute the provision of a car parking fringe benefit.

### **Does the provision of parking meet the meaning of ‘motor vehicle parking facilities’?**

42. ‘Motor vehicle parking facilities’ is not a defined term in the FBTAA. ATO Interpretative Decision ATO ID 2012/18 *Fringe Benefits Tax Exempt benefits: reimbursement of parking fees – remote area employees* states ‘It is considered that any defined area which may be utilised for the purposes of parking motor vehicles would qualify as a “motor vehicle parking facility”.’

43. It is accepted that AAL’s parking facilities are a defined area which may be utilised for the purposes of parking motor vehicles and would qualify as a motor vehicle parking facility.

### **Will the provision of parking be an exempt benefit?**

44. Paragraph 58G(1)(b) states as follows:

Each of the following benefits is an exempt benefit:

- (a) ...
- (b) a residual benefit where the recipients benefit consists of motor vehicle parking facilities.

45. The benefit of the provision of an access card is a residual benefit. The benefit consists of motor vehicle parking facilities.

46. The benefit is an exempt benefit.



## References

*Previous draft:*

Not previously issued as a draft

- FBTA 58G(1)(b)
- FBTA 136(1)
- TA 1953

*Legislative references:*

- FBTA 20
- FBTA 39A
- FBTA 39A(1)(a)
- FBTA 45

*Other references:*

ATO ID 2012/18  
Explanatory Memorandum to the Taxation  
Laws Amendment (Car Parking) Bill 1992

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ATO references

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