

TR 2011/3EC - Compendium

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Ruling Compendium – TR 2011/3

This is a compendium of responses to the issues raised by external parties to draft TR 2011/D1 – Fringe benefits tax: meaning of 'cost price' of a car, for the purpose of calculating the taxable value of car fringe benefits

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

Issue No.	Issue raised	Tax Office Response/Action taken
1	<p>1.1 The phrase 'at or about the same time' is used in Example 6 at paragraphs 38 and 41. Further guidance was requested in relation to what this phrase means; what is this period in practice as manufacturers can make payments anywhere from at the time of purchase through to 2 months later.</p> <p>1.2 If a manufacturer's rebate is provided to an employer but not passed on to the Fleet Management Company (FMC), what is the consequence for the FBT 'cost price' when the FMC is the purchaser?</p>	<p>1.1 To avoid any confusion in determining the period in which a manufacturers rebate can be paid, the words 'at or about the same time' have been deleted from paragraphs 38 and 41 in the Ruling. It is noted that the wording in Example 5 at paragraph 33 that 'the employer later receives...' and at paragraph 34 'The rebate was received by the employer after the acquisition...' will remain in the Ruling.</p> <p>1.2 The principle set out in the Ruling at paragraphs 11 and 12 applies. Unless the rebate is made available to the purchaser there can be no reduction in the cost price. Where an employer does not pass on a manufacturer rebate to the FMC, the amount of purchase price that has been borne by the FMC (as purchaser) would not be reduced and accordingly the 'expenditure incurred' by the FMC would not be reduced.</p>
2	<p>The Ruling does not address the issue of what impact an up-front contribution by an employee will have on the characterisation of an arrangement as a 'bona fide lease'. The final Ruling should inform taxpayers that they need to consider such arrangements carefully.</p>	<p>The Ruling deals with the meaning of 'cost price' of a car for the purpose of calculating the taxable value of car fringe benefits. The Ruling does not deal with other issues, such as whether an arrangement is a bona fide lease. A footnote has been added to paragraph 9 to inform a reader that where an employee makes a contribution to a car that is subject to a novated lease arrangement, consideration must be given to whether a bona fide lease exists. In this regard, Taxation Ruling IT 28, Taxation Ruling TR 98/15 and Taxation Determination TD 95/63 will apply.</p>

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Issue No.	Issue raised	Tax Office Response/Action taken
3	<p>3.1 Example 1 at paragraphs 14 to 17 sets out an arrangement in which an employee trades-in their own car so that the employer can acquire a more luxurious car. The result being the expenditure incurred by the employer is the amount paid by the employer (that is the purchase price was reduced by the employee's trade-in). Is the outcome the same in a novated lease situation?</p> <p>3.2 Paragraph 3 of the draft Ruling is expressed to apply to basic leases. This should also state that the Ruling applies to 'novated leases'.</p>	<p>3.1 Refer response to Issue 2 and Issue 3.2 of this Compendium.</p> <p>3.2 Paragraph 3 in the 'What this Ruling is about' section has been amended in the Ruling to make it clear that the Ruling has application to cars held by employers under lease arrangements (including novated lease arrangements).</p>
4	<p>Where an employee/director is owed monies by way of a loan account, can a journal entry be used to reduce the amount of the cost price of a car by reduction of the loan account?</p> <p>Reference is made to Taxation Ruling MT 2050 in this regard.</p>	<p>It is noted that Taxation Ruling MT 2050 considers whether journal entries can be a payment of a 'recipients contribution', recipient's payment' or recipients rent'.</p> <p>MT 2050 sets out the conditions that must be satisfied for journal entries to be accepted as a payment. It is clearly stated at paragraph 7 of MT 2050, that 'an agreement to make a voluntary payment by one party to another does not create a liability between the parties. In such a situation journal entries would not be 'payment'.</p> <p>Accordingly, in circumstances where there is a voluntary undertaking by an employee to make an up-front contribution to the purchase of a car, in applying MT 2050, there would be no 'payment'.</p>
5	<p>Can the proceeds of an employee trade-in or cash payment directly to a car dealer bring the cost of a car below the depreciation cost limit?</p>	<p>The Ruling explains at paragraphs 74 and 75, that there are relevant differences in the terms used in the <i>Fringe Benefits Tax Assessment Act 1986</i> (FBTAA) and the <i>Income Tax Act Assessment 1997</i> (ITAA 1997).</p> <p>The cost of a car for the purposes of the capital allowance provisions is worked out under Subdivision 40-C of the ITAA 1997, which includes specific integrity rules concerning car limits.</p> <p>The Ruling, which concerns the interpretation of the term 'cost price' of a car for FBT purposes, is not applicable to the interpretation of 'cost' of a car for income tax capital allowance purposes.</p>

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Issue No.	Issue raised	Tax Office Response/Action taken
6	Request that the final ruling include some commentary on common sponsorship arrangements where an employer receives the right to allocate a car to an employee at no cost.	Sponsorship arrangements can be varied and ultimately the taxation outcomes will be determined on the facts of a particular arrangement. Where the use of a car is donated to an employer and that car is made available to an employee, section 13 of the FBTAA would have application. The operation of section 13 is discussed at paragraphs 13 and 97 to 99 of the Ruling. In particular, paragraph 99 of the Ruling describes how subsection 13(4) of the FBTAA deems expenditure to have been incurred where a car has been donated to an employer.