TR 96/D13 - Income tax: advance payments made under swap agreements

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This document has been Replaced.

Draft Taxation Ruling
Fringe benefits tax: car parking fringe benefits

other Rulings on this topic

TR 93/18; MT 2021; MT 2028; TD 93/71; TD 93/72; TD 93/106; TD 93/107; TD 93/198; TD 93/199; TD 93/240; TD 94/54

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Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office.

DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings which represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.

What this Ruling is about

Class of person/arrangement

1. This Ruling explains the car parking provisions of Division 10A of Part III of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA).

2. This Ruling is a consolidation, revision and amplification of all previous Taxation Rulings and Determinations on car parking fringe benefits and includes changes made to the FBTAA by the *Taxation Laws Amendment (FBT Cost of Compliance) Act 1995*. To the extent that this Ruling conflicts with previous Rulings or Determinations on car parking fringe benefits, this Ruling will prevail. Previous Rulings and Determinations on this topic will be either withdrawn or archived when the final Ruling issues.

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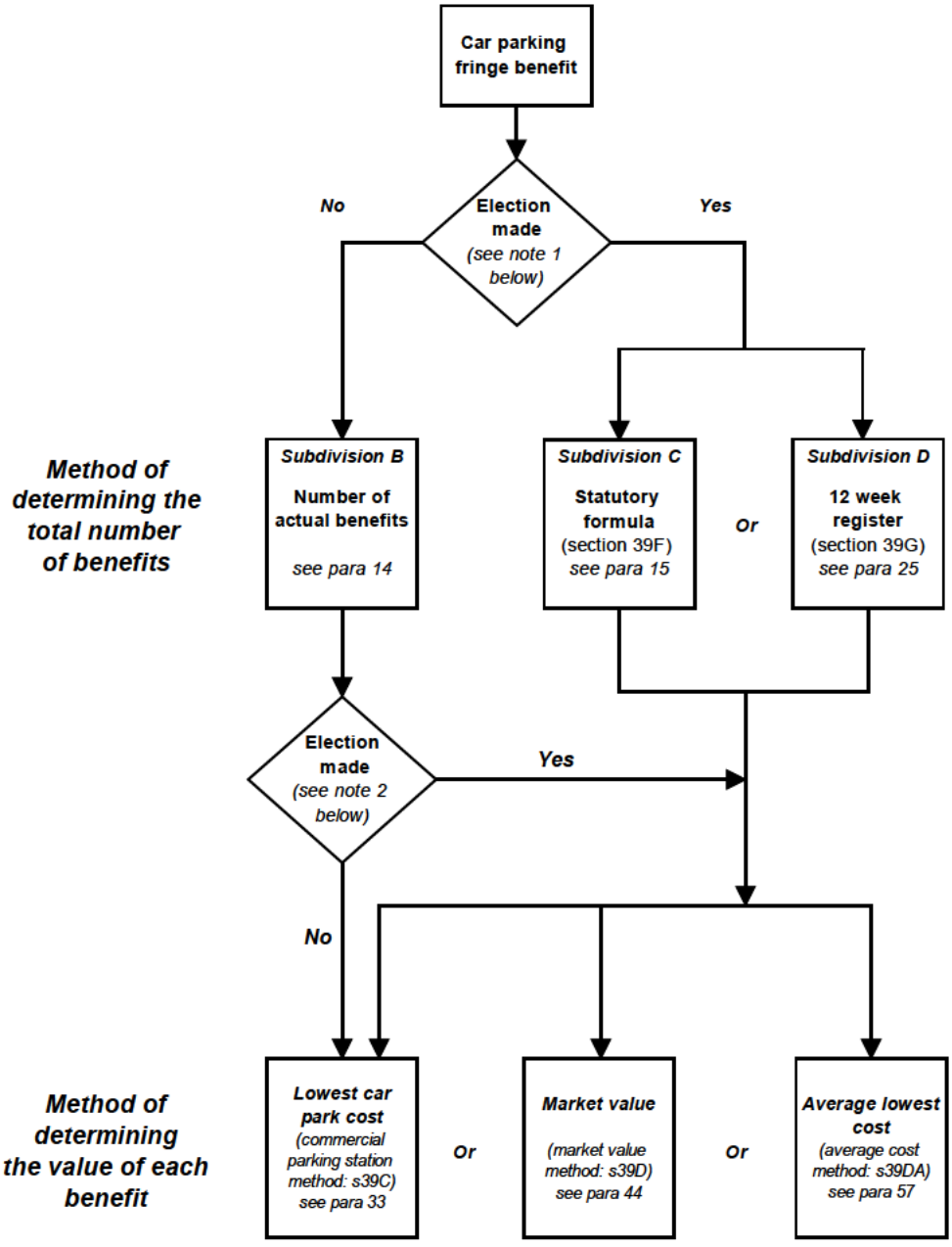
Ruling

3. This flowchart is a diagrammatic representation of Division 10A of the *Fringe Benefits Tax Assessment Act 1986*:

TABLE - How to determine the taxable value of car parking fringe benefits under Division 10A



Note 1: This election allows for employer to use two alternative methods of **calculating the total car parking fringe benefits** provided in an FBT year.

Note 2: This election allows for employer to use two alternative methods for **valuation of a car parking benefit** provided in and FBT year.

Note 3: ***Section references*** refer to sections of the FBTAA
Paragraph references refer to paragraph numbers in this Ruling.

PART A

When does a benefit arise?

4. Section 39A of the FBTAA lists the criteria which must be met before a car parking fringe benefit will arise:

a) a car is parked at premises that are owned or leased by or otherwise under the control of the provider (usually the employer);

b) there is a commercial parking station available for all day parking, within 1 km of the employer provided parking facility, which charges more than the car parking threshold figure;

c) the car is parked for a total of more than 4 hours between the hours of 7 am and 7 pm on the day. The 4 hour period need not be continuous but may be made up of several parking periods;

d) the car is owned by, leased to or otherwise under the control of an employee or associate, or it is provided by the employer or associate of the employer;

e) the parking is provided in respect of the employee's employment;

f) on that day, the employee has a primary place of employment;

g) the car is used by the employee to travel between place of residence and primary place of employment at least once on that day; and

h) the day is on or after 1 July 1993.

5. The car parking threshold for the FBT year ended 31 March 1996 is $5.00. The threshold will be indexed annually in line with changes in the All Groups Consumer Price Index. The indexed threshold for the 1997 FBT year is $5.20. The fee will not be representative if it is substantially greater or less than the average fee charged on each day during a four week period commencing or ending on the first FBT business day.

Question 1

6. Alan drives a company car from home to work and parks it at employer provided parking near his employer's business premises. There is a commercial parking station charging more than the car parking threshold fee within 1 km of the employer provided parking.

After the car is parked, it is made available for business use to other employees. Various employees use the car on the day so that in total the car is not parked at the employer provided parking for more than 4 hours.

Answer

7. No car parking benefit arises because the car is not parked at an employer provided parking for a total period of more than 4 hours on the day.

Question 2

8. Does employer provided parking for vehicles used for work related purposes, which are parked next to temporary places of work (e.g., electricity substations or building sites), constitute a car parking benefit?

Answer

9. An employee's primary place of employment is the business or associated premises of the employer where the duties are performed on a day. A substation or building site can constitute a place of employment on that day. A car parking fringe benefit may therefore arise where employer provided parking is made available at these work sites.

PART B

Methods of determining the number of benefits

10. Section 39A of the FBTAA provides that FBT is levied in respect of actual car parking benefits provided to employees or their associates if certain criteria are met. Based on those criteria, one car parking space can give rise to more than one benefit in a day if more than one car is parked in a space for periods totalling more than four hours. This may occur because vehicles are coming and going from the car park during a day, where cars are made available to employees for use on a pool basis or where employees work in shifts.

11. The number of car parking spaces is not restricted to physically marked car parking spaces, but includes all spaces which could reasonably be taken up by a car in an employer's car parking facility.

12. The number of benefits may be calculated by:

- keeping actual records of all car parking benefits provided;

- the use of a statutory formula; or
- the use of a representative 12 week register.

13. An employer may elect to use either the statutory formula or the 12 week register methods of calculating the number of benefits provided. An election may cover some or all of the benefits provided. If no election is made, an employer must calculate the number of benefits provided by keeping records of actual usage of car parking spaces.

Actual benefits provided

14. An employer may choose to base the number of taxable car fringe benefits on a record of the actual number of benefits provided in an FBT year.

Statutory formula method

15. This method is based on the number of car parking spaces that an employer has available for employee parking, the cost of the spaces, and a fixed statutory number of 228 days on which the benefit is deemed to have been provided.

16. An employer may elect to use this method to cover some or all of the benefits provided. An employer must specify whether an election covers all employees, particular employees, or all employees of a particular class. Under this method no additional benefits can arise other than the number of car parking spaces which are available.

Where the number of employees equals the number of spaces available - section 39FA

17. The value of one car parking space for one year is calculated using the following formula:

$$\textbf{Daily rate amount} \times \frac{\textbf{Number of days in availability periods in relation to the space}}{\textbf{366}} \times \textbf{228}$$

- The **daily rate amount** means the taxable value of one car parking benefit calculated using either the average cost, the market value or the commercial parking station method.

- The **availability period** means the number of days in an FBT year in which a car parking space is available for use by each employee covered by the election.

18. The total taxable value (total statutory benefit) of all car parking spaces covered by the election is arrived at by:

(i) working out all the amounts calculated by using the formula in paragraph 17 for each space available;

(ii) working out all of the employee contributions towards the cost of the benefit; and

(iii) subtracting (ii) from (i).

Example 1

19. K Ltd carries on business at a warehouse and has 10 car parking spaces available for use by its employees throughout the availability period of one FBT year. The company has 15 employees who may use the car parking facility. The company elects that the statutory formula method applies to all employees. The daily rate amount has been calculated at $3.50. The employees make no contribution towards the benefit.

The value of each car parking space for the FBT year is:

$3.50 x 228 = $798

The total statutory benefit is $798 x 10 = $7,980.

Where the number of employees is less than the number of spaces available - section 39FB

20. If the average number of employees covered by the election is less than the average number of spaces, the taxable value may be reduced by multiplying the total statutory benefit by:

$$\frac{\textbf{Average number of employees}}{\textbf{Average number of eligible spaces}}$$

- The **average number of employees** is the number of employees covered by the election at the beginning and at the end of the parking period, divided by two.
- The **average number of eligible spaces** is similarly calculated.

21. This will not apply if the average number of employees and eligible spaces is not representative. An average will be

unrepresentative if it differs substantially from that established in a four week period ending on the first day of the parking period or beginning on the last day of the parking period.

Example 2

22. Given the facts in *Example 1* above, the company has 10 spaces available throughout the parking period. It has 6 employees at the beginning of the parking period and 8 employees at the end (average number of employees is 7).

23. The company elects that the statutory formula method applies to all employees. The taxable value is calculated by multiplying the total statutory benefit by the average number of employees divided by the average number of spaces.

24. The total statutory benefit is:

$$\$7{,}980 \times \frac{7}{10} = \$5{,}586$$

12 week register method

25. Under Subdivision D of Division 10A of the FBTAA, an employer may elect to keep a register, for a continuous 12 week period, to determine the total value of car parking benefits for an FBT year.

26. An employer may keep separate registers for different classes of employees.

27. The total taxable value of the employer's car parking fringe benefits may be determined by the use of the following formula:

$$\left[\textbf{Total value of car parking benefits (register)} \times \frac{52}{12}\right] \times \frac{\textbf{Number of days in car parking availability periods}}{366}$$

- The **total value of car parking benefits (register)** is the amount that would be calculated by using either the commercial parking station, market value or average cost method, assuming that the register had been kept in that FBT

year and the value of benefits were calculated in accordance with the information in the register.

- The **car parking availability period** is the period during the first and last days in the FBT year in which a car parking benefit is provided for an employee covered by the election.

28. The 12 week period must be continuous and representative. Whether a chosen period is representative will depend upon the nature of the business activities and relevant patterns of usage.

29. If the register is maintained for one FBT year, it is valid for that year and the following four FBT years. If the register falls across two FBT years, it is only valid for the second and subsequent 4 years. A register will cease to be valid at the end of the FBT year if the number of benefits provided increases by more than 10% on any day in that FBT year.

30. If a register becomes invalid, the number of benefits will be based on whatever records are available, and the taxable value is calculated using the commercial parking station method.

31. The record keeping requirements of this method are discussed in the **Part E** of this Ruling.

PART C

Valuation methods

32. If an employer does not elect to use a specific valuation method, the taxable value of the car parking fringe benefit must be calculated by use of the commercial parking station method. More than one valuation method may be used to calculate the taxable value of employer provided parking facilities. A mixture of acceptable methods may be used to value separate benefits.

Commercial parking station method - the lowest all-day fee - section 39C

33. Under this method, the employer records and applies as the valuation, the lowest all-day fee charged by any commercial car park located within a 1 km radius of the employer provided parking.

34. The taxable value is the lowest fee charged during a daylight period, in the ordinary course of business, by any commercial parking station that is located within a 1 km radius of the premises on which the vehicle is parked.

Example 3

35. The lowest fee charged by ABC Carpark to members of the public is $5.50. The lowest fee charged to members of the public for all-day parking by the nearby XYZ Carpark is $2.00. X Pty Ltd may value the benefit at the lower of the two available fees, i.e., $2.00.

36. If all-day parking is provided by a commercial car park on a weekly, monthly, yearly or other periodic basis, the operator is taken to charge, on any particular day, a daily rate equivalent. This is calculated by use of the formula:

$$\frac{\textbf{Total fee}}{\textbf{Number of business days in period}}$$

- **Total fee** is the total fee charged by the operator in respect of all-day parking for the total days in that period.
- A **business day** is a day other than a Saturday, Sunday or a public holiday in the place concerned.

Example 4

37. A company leases the third floor of the ABC Carpark for use by its employees to park when at work. The lease value equates to $4.00 per day per car parking space (daily rate equivalent), but as this rate is not generally available to members of the public, it cannot be used for valuation purposes under this method.

38. Where an employer leases parking in a commercial parking station, the value for the purposes of the commercial parking station method need not be the value under the lease. To calculate the taxable value, if using the commercial parking station method, an employer need not use the value obtained from the commercial parking station at which the car parking facilities are provided.

39. For the FBT year ended 31 March 1994, 'all-day parking' was defined as the parking of a single car for a continuous period of six hours or more. Therefore, the lowest fee charged for any 6 hours of continuous parking on a particular day was acceptable. The definition of 'all-day parking' was changed from the FBT year ended 31 March 1995. The 6 hours of continuous parking must now fall within the daylight period hours of 7 am to 7 pm.

40. The lowest all-day fee may be a fee which a commercial parking station charges for *bona fide* early bird parking where a reasonable number of parking spaces are set aside for that purpose. A discount

rate for additional passengers, often called 'car pooling', would not be acceptable.

41. A nil fee is not a fee charged and therefore cannot be used as the lowest all-day fee - see *Case 27/95* 95 ATC 275; *AAT Case 10,128* (1995) 30 ATR 1297.

Example 5

42. Apex Parking is a 24 hour commercial car-park. It charges $3.00 a day for early-bird parking (for cars parked before 7.30 am), $1.50 hourly from 6.30 am to 6 pm with a maximum fee of $6.00 for all day parking and 20 cents per hour for cars parked between 6 pm and midnight.

43. The fee to be used for valuation purposes is $3.00, which is the lowest fee charged for all-day parking.

Market value basis - section 39D

44. The taxable value under this valuation method is the amount that the recipient could reasonably be expected to pay for the benefit if the provider and recipient were at arm's length. A market valuation must be provided by a suitably qualified valuer acting at arm's length in relation to the valuation. The valuation must be made before the declaration date which is generally the date of lodgment of the FBT return for the year.

45. The cost and availability of parking of a similar standard near that being valued is relevant in determining the market value of a car parking fringe benefit. However, it is inappropriate that the taxable value of the benefit be determined solely by reference to the cost of similar nearby car parking where the price of that car parking is artificially inflated by virtue of a monopoly or due to the availability of a captive market.

Example 6

46. Seaside Shire Council provides parking to employees in a parking area in which free all-day parking is also available to members of the public. In determining the value of the car parking fringe benefit provided by the council to its employees, it is appropriate for a valuer to consider the availability of that free public parking.

Example 7

47. Untitled Airlines provides parking to its employees on premises adjacent to Capital Airport. All the surrounding public parking is either leased from the Airport Authority or is operated by the Airport Authority, and is provided to the public at a minimum cost of $20.00 per day. In determining the market value of the parking provided to the employees of Untitled Airlines, it is appropriate to take into account that the value is inflated by the existence of a captive market for public parking and the monopoly held by the Airport Authority. It may be inappropriate in these circumstances to base the market value on values which are inflated.

A suitably qualified valuer

48. A suitably qualified valuer must be at arm's length in relation to the valuation and must have expertise in the valuation of car parking facilities. We consider that expertise in the valuation of parking may be acquired through relevant experience in the parking industry over a significant period of time or from a course of study. The attainment of relevant professional qualifications or recognition by an appropriate professional organisation is indicative of expertise in this field. The onus of proving that a person has expertise in a particular field will rest in each case with the employer. A person who would be likely to be acceptable as an expert witness on the issue of the valuation of parking facilities before a Court or Tribunal would be considered to be a suitably qualified valuer.

Example 8

49. Bill is a registered valuer who specialises in the valuation of commercial properties and car parks associated with commercial properties for the purposes of determining lease premiums. He is considered to be suitably qualified.

Example 9

50. Joe has worked as a personnel manager for Undercover Parking for 10 years and has not been involved in the valuation of car parking services in that time. Due to the nature of Joe's participation in the car parking industry, it is not considered that he is suitably qualified to assess the value of car parking facilities.

Example 10

51. John Jones is a real estate agent whose only experience and expertise is in the area of domestic housing. He will therefore not be a suitably qualified valuer of car parking facilities.

A valuer must be at arm's length in relation to the valuation

52. A valuer will not be considered to be at arm's length in relation to the valuation if they are:

- the employer obtaining the valuation or the provider of the car parking facilities to be valued;
- an associate of the employer or of the provider of the car parking facilities to be valued;
- an employee of either the employer or the provider of the car parking facilities to be valued; or
- an employee of an associate of the employer or the provider of the car parking facilities to be valued.

Example 11

53. Sue has been employed for 5 years by Undercover Parking as a sales manager. Her duties include the assessment of the value of car parks managed by Undercover and determination of the price to be charged to commercial clients. Although she has no formal qualifications in property valuation, she is considered to be a suitably qualified valuer for the purposes discussed above.

54. However, because Sue is an employee of the provider, she is not at arm's length in relation to the clients. Therefore, she would be precluded from providing valuations to clients of Undercover Parking for the purposes of determining their FBT liability under section 39D.

Form of market valuation

55. A market valuation of a car parking benefit must be provided in a form approved by the Commissioner. The valuation must:

- be in English;
- include the valuation date;
- give a precise description of the location of the car parking facilities valued;
- include the number of car parks valued and the value of the car parks based on a daily rate;

- state the full name of the valuer and a description of his or her qualifications as a valuer;
- be signed by the valuer; and
- include a declaration stating that the valuer is at arm's length in relation to the valuation.

56. It is also necessary for the employer to be able to produce, when required, details of the basis on which the valuation was determined.

Average cost method

57. Under this method, an employer calculates an average of the lowest fees charged to members of the public for all-day parking by a commercial car parking station within 1 km radius of parking facilities, on the first and last day in an FBT year. The taxable value is reduced by any recipient's contributions towards the benefit.

58. The fee used is the same as that used for the commercial parking station method. Because the value is an average of the lowest fees charged on the first and last days on which parking benefits are provided, it follows that different commercial parking stations may be used for valuations.

59. This method cannot be used if the lowest fee charged is not representative.

Example 12

60. A Company Ltd has, on the first and last days on which it provided car parking to its employees, determined the lowest fee charged by a commercial car parking facility. The fees charged were $3.50 on the first day and $5.50 on the last day of the 1996 FBT year. The fee which A Company Ltd will use to calculate its car parking benefits is:

$$\frac{\$3.50 + \$5.50}{2} = \$4.50$$

PART D

Record keeping

61. Employers are required by subsection 132(1) of the FBTAA to keep appropriate records which form the basis upon which FBT liability is determined. This general record-keeping requirement applies equally to records which explain the calculation of car parking fringe benefits. Subsection 132(3) of the FBTAA requires that records

relating to the provision of fringe benefits must be maintained in English or in a way which is readily accessible and convertible into English. Records relating to the provision of fringe benefits should be retained by employers for 5 years.

Actual benefits provided

62. Records kept under this method must be sufficient to establish the actual number and value of car parking benefits provided during an FBT year.

63. Employers who have not elected to use either the statutory formula or 12 week register method of determining the number of benefits should complete, by the lodgment date of their FBT return, a declaration stating:

(a) the number of car parking spaces available to be used by employees and/or their associates;

(b) the daily value of those spaces;

(c) the number of days in the year which are business days of the employer; and

(d) the method of valuation which the employer has chosen to use.

64. An employer may keep records noting the occasions over the FBT year when no car parking benefit arose in respect of a car parking space because an employee who would normally occupy the parking space was absent on a particular day.

65. Where the number of employees parking on employer provided premises is always fewer than the number of available car parking spaces, the employer may make an additional declaration in which is noted the actual number of employees who park on the premises.

66. Where there are more car parking spaces available than there are employees or associates who actually park in them, an employer may make an additional declaration to the effect that a certain number of car parking spaces are not occupied by employees for a period of more than 4 hours.

67. An employer may, in addition to the basic records, note the business days when certain car parking spaces were unoccupied because particular staff were absent from work.

Statutory formula method

68. Under this method, if the number of car parking spaces an employer has available does not exceed the number of employees, an

employer is deemed to have provided as many car parking spaces as he has available over an FBT year. An employer will therefore need to record the number of car parking spaces available over an FBT year.

69. In order to reduce the total statutory benefit if the number of spaces exceeds the number of employees, an employer must keep a record of the number of employees and spaces at the beginning and end of the FBT year. This will enable an average number of spaces and employees to be determined for the year.

12 week register method

70. An employer may elect to keep a 12 week register on which to base the total value of car parking benefits provided in an FBT year. The election must specify if it covers all employees, all employees of a particular class, or particular employees.

71. Where the number of car parking benefits for employees covered by the election increases by more than 10%, an employer must complete another register. An employer may also choose to complete a new register at any time, e.g., if the provision of car parking benefits decreases.

72. The register must include the following details:

- the date on which each car was parked;
- whether the car was parked for longer than 4 hours;
- whether the car was used to travel between the home of an employee who is covered by the election and their primary place of employment; and
- the place where the car was parked.

73. Entries must be made as soon as practicable after the above details are known.

74. The 12 week period during which the register is maintained must be continuous and representative of benefits provided over a full FBT year.

PART E
Ancillary matters

What is a commercial parking station?

75. The term 'commercial parking station' is defined in subsection 136(1) as:

> 'in relation to a particular day, means a permanent commercial car parking facility where any or all of the car parking spaces are

available in the ordinary course of business to members of the public for all-day parking on that day on payment of a fee, but does not include a parking facility on a public street, road, lane, thoroughfare or footpath paid for by inserting money in a meter or by obtaining a voucher.'

76. 'All-day parking' is defined in subsection 136(1) as:

'in relation to a particular day, means parking of a single car for a continuous period of 6 hours or more during a daylight period on that day'.

'Daylight period' is the period between 7 am and 7 pm.

77. A vacant lot, utilised commercially as a car park, could be considered to be a permanent commercial car park even where it is intended that a building will be erected on the site in due course.

78. We do not regard the following parking arrangements as constituting commercial parking stations:

- car parking facilities that have a primary purpose other than the provision of all-day parking that usually charge penalty rates which are significantly higher than the rates that would be charged at commercial all-day parking facilities for all-day parking, such as parking provided for short term shoppers or hotel guests;
- a car park that is not run with a view to making a profit or which charges a nominal fee (usually a significantly lower rate than the current market value), e.g., an all-day parking fee of less than $2.00 is likely to be a nominal fee;
- car parking that is established for a short period to cater for a special function;
- car parking spaces leased to a tenant by a property developer as part of an overall lease agreement for business premises;
- a sporting venue which provides parking facilities to persons associated with the venue only if:
  - (a) parking facilities are usually available only after 5 pm to coincide with night events; or
  - (b) parking is available only for a specific event, and the event is a daytime event; or
  - (c) parking is available to all members of the public only during sporting events; and
  - (d) when there is no sporting event, the parking facilities are not available to members of the public;

- a business that provides parking for its own employees and those of a nearby business, but to no other person, if there is no commercial car park within 1 km;
- a business, in an area without a commercial parking station and where street parking is not permitted, that provides for its employees to park during business hours in yards and driveways of surrounding houses;
- a kerb side parking meter, from the FBT year commencing 1 April 1994, even where it is possible to purchase all-day parking at the meter in a single transaction.

Measurement of the 1 km radius between a commercial parking station and car parking premises - section 39B

79. A commercial car parking station is taken to be located within a 1 km radius of business or associated premises, if and only if, a car entrance to the commercial parking station is situated less than 1 km, by the shortest practicable route, from a car entrance to those premises. This route can be travelled by foot, car, train, boat, etc., whichever produces the shortest practicable route.

80. Where the shortest route can be travelled on foot, we expect that public thoroughfares such as arcades through shopping centres will be utilised in determining the distance. However, illegal or impractical shortcuts through, e.g., private property, will not be considered to be part of a practicable route.

81. The 1 km radius may be measured by using an odometer reading, a street directory, information available from a public transport authority or by measurement on a scale map or any other method that will give a correct indication.

Exempt car parking benefits - section 58G

82. The payment or reimbursement by an employer of a car parking expense incurred by an employee will be exempt if the expense is not a car parking expense payment fringe benefit.

83. Car parking benefits will be exempt if the employer is a non profit scientific institution, a religious institution or a Commonwealth, State or Territory government educational institution.

Date of effect

84. This Ruling applies for the FBT year beginning 1 April 1996 and all subsequent years.

85. However, the Ruling does 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 the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Your comments

86. If you wish to comment on this Draft Ruling, please send your comments by: 12 July 1996

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Commissioner of Taxation

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subject references
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- daily rate amount
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- FBTAA 39C
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- FBTAA 39FA
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- FBTAA 58G
- FBTAA 132(1)
- FBTAA 132(3)
- FBTAA 136
- FBTAA 136(1)

case references
- Case 27/95 95 ATC 275; AAT Case 10,128 (1995) 30 ATR 1297