

TD 93/D280 - Fringe benefits tax: where an employee is provided with a car by the employer and the employee keeps the car in safe storage (e.g. in a commercial garage) while travelling interstate on business, under what circumstances is that car taken to be available for private use under section 7 of the Fringe Benefits Tax Assessment Act 1986?

 This cover sheet is provided for information only. It does not form part of *TD 93/D280 - Fringe benefits tax: where an employee is provided with a car by the employer and the employee keeps the car in safe storage (e.g. in a commercial garage) while travelling interstate on business, under what circumstances is that car taken to be available for private use under section 7 of the Fringe Benefits Tax Assessment Act 1986?*

This document has been finalised by TD 94/16.



Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Fringe benefits tax: where an employee is provided with a car by the employer and the employee keeps the car in safe storage (e.g. in a commercial garage) while travelling interstate on business, under what circumstances is that car taken to be available for private use under section 7 of the *Fringe Benefits Tax Assessment Act 1986*?

1. Where an employer's car is kept in safe storage at or near the employee's place of residence it will be taken to be available for the employee's private use regardless of any prohibition on the use of the car (subsection 7(2)). Further, the employer's car will also be taken to be available for the employee's private use where it is kept in safe storage away from the employee's place of residence but not at the employer's business premises, and the employee or an associate of the employee remains entitled to apply the car to a private use.

2. Where, however:

- a. the employer's car is kept in safe storage away from the employee's place of residence;
- b. the employer's car is not at the employer's business premises;
- c. the custody and control of the car has been removed from the employee and from the associates of the employee; and
- d. the employee is not entitled to use the car for private purposes and an associate of the employee is not entitled to use the car,

the car will not be taken to be available for the employee's private use, unless the condition in paragraph 2d. is not consistently enforced (subsections 7(3) & (4)).

3. The issue of what constitutes a prohibition against private use of a car and what is required for it to be consistently enforced is addressed in Taxation Ruling MT 2021.

Examples:

An employee who is provided with a car by her employer leaves the car in a commercial storage facility while on an interstate business trip. The employee cannot leave the car on the employer's premises because there are no car parking facilities available. The commercial storage facility is not in the vicinity of the employee's residence. The car will not be taken as being available for the employee's private use if the employer removes the control and custody of the car from the

employee (e.g. takes the car keys) and enforces a prohibition on the private use of the car by the employee or any associate of the employee.

An employee who is provided with a car by his employer leaves the car in safe storage at or near his residence while on an overseas business trip. Regardless of the conditions set out in paragraph 2d, the car is considered to be available for private use.

Commissioner of Taxation25/11/93

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