


PR 2024/14 - Carly Car Subscription Agreement

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Product Ruling

Carly Car Subscription Agreement

📌 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.

Terms of use of this Ruling

This Ruling has been given on the basis that the entity who applied for the Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Ruling.

Changes in the law

Product Rulings were introduced for the purpose of providing certainty about tax consequences for entities in schemes such as this. In keeping with that intention, the Commissioner suggests promoters and advisers ensure that participants are fully informed of any legislative changes after the Ruling has issued. Similarly, entities that are considering participating in the Scheme are advised to confirm with their tax adviser that changes in the law have not affected this Ruling since it was issued.

No guarantee of commercial success

The Commissioner does not sanction or guarantee this product. Further, the Commissioner gives no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. The Commissioner recommends a financial (or other) adviser be consulted for such information.

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What this Ruling is about

1. This Ruling sets out the fringe benefits tax and income tax consequences for entities that execute a Subscription Agreement offered by Carly Car Subscription Pty Ltd (Carly) pursuant to which a Vehicle is subscribed for from a Fleet Owner.

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2. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated. Terms which are defined in the Subscriber Terms and Conditions and the Fleet Owner Agreement referred to in paragraph 11 of this Ruling have been capitalised.
3. This Ruling does not address:
- the tax treatment of any costs, fees and expenses payable by the Subscriber under the scheme, other than the Subscription Fee payable by the Subscriber under the Subscription Agreement and fuel costs in respect of the Vehicle subscribed for under the Subscription Agreement
 - the deductibility of amounts equal to the decline in value of the Vehicle under Division 40
 - the application of Division 242 in relation to the lease of a luxury car
 - how a deduction is calculated under Division 28, including the substantiation requirements related to that calculation
 - the situations set out in sections 28-170, 28-175, 28-180 and 28-185
 - the income tax consequences to arise under the Reimbursement Scenario or the Salary Sacrifice Scenario
 - the application of section 53 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) to any car expense payment benefits which may be provided under the scheme
 - the tax consequences in connection with a salary sacrifice agreement entered into as part of the Salary Sacrifice Scenario
 - an assignment or transfer of any rights and obligations under the Subscription Agreement or the Novation Agreement, and
 - whether the scheme constitutes a financial arrangement for the purposes of Division 230 (taxation of financial arrangements).
4. Subject to paragraph 3 and subparagraph 9(b) of this Ruling, this Ruling addresses the tax consequences associated with 4 different scenarios, described at paragraphs 23 to 26 of this Ruling and referred to respectively for the purposes of this Ruling as the:
- Individual Customer Scenario
 - Business Customer Scenario
 - Salary Sacrifice Scenario, and
 - Reimbursement Scenario.

Who this Ruling applies to

5. This Ruling applies to you if you are accepted to participate in the scheme described in paragraphs 11 to 26 of this Ruling on or after 1 July 2024 and on or before 30 June 2027 and are an:

- individual (alone or in partnership) who enters into the Subscription Agreement with Carly as the Subscriber, and does not carry on a business

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or has not entered into the Subscription Agreement in the course of carrying on a business (an Individual Customer)¹, or

- entity (a Business Customer) that either
 - enters into the Subscription Agreement with Carly as the Subscriber for its own business use² or to provide the Vehicle to its employee
 - has a Subscription Agreement entered into by an employee novated to it under the terms of the Novation Agreement, or
 - reimburses an employee that enters into the Subscription Agreement with Carly as the Subscriber.

6. This Ruling does not apply to you if you:

- are a non-resident for Australian tax purposes
- enter into this scheme before 1 July 2024 or after 30 June 2027
- are an employee of a Business Customer referred to in paragraph 5 of this Ruling, or
- are subject to Division 230 in respect of this scheme.

Date of effect

7. This Ruling applies from 1 July 2024 to the class of entities specified in paragraph 5 of this Ruling that enter into the scheme from 1 July 2024 until 30 June 2027.

8. However, the Ruling only applies and may be relied on to the extent that there is no change in the scheme or in the entity's involvement in the scheme. If the scheme carried out is materially different from the scheme described at paragraphs 11 to 26 of this Ruling, this Ruling cannot be relied upon and may be withdrawn or modified.

Ruling

9. Subject to paragraph 3 of this Ruling and the assumptions in paragraph 10 of this Ruling:

- (a) Under the Individual Customer Scenario
 - (i) Payment of the Subscription Fee and fuel costs by the Individual Customer will be deductible under section 8-1 in the income year incurred to the extent the Vehicle subscribed for by the Individual Customer under the Subscription Agreement is used in gaining or producing assessable income of the Individual Customer.
 - (ii) For the purposes of subsection 28-165(4), the Vehicle subscribed for by the Individual Customer under the Subscription Agreement will be taken to be a vehicle taken on hire under an agreement of a kind ordinarily entered into by people who take vehicles on hire intermittently, as the occasion requires, on an hourly, daily, weekly or

¹ This excludes any Individual Customer who is subject to the Salary Sacrifice Scenario.

² A Business Customer that enters into the Subscription Agreement with Carly as the Subscriber for its own business use is referred to as an 'Individual Business Customer' for the purposes of this Ruling.

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- short-term basis where the Subscription Period in respect of the Subscription Agreement is one month or less.
- (iii) Pursuant to subsection 28-165(4), where the Vehicle subscribed for by the Individual Customer under the Subscription Agreement has a Subscription Period of one month or less, subject to the application of paragraphs 28-165(4)(a) or (b), the Individual Customer cannot use the 'cents per kilometre' method under Subdivision 28-C or the 'log book' method under Subdivision 28-F (together referred to as the 'methods' for the purposes of this Ruling) to calculate any deduction for Subscription Fees and fuel costs incurred by the Individual Customer in respect of that Vehicle.
 - (iv) Where the Vehicle subscribed for by the Individual Customer under the Subscription Agreement has a Subscription Period of longer than one month, the Individual Customer can use one of the methods to calculate a deduction available in accordance with sub-paragraph 9(a)(i) of this Ruling in respect of that Vehicle. The exercise of the choice of the Individual Customer to Switch, in accordance with the Subscriber Terms and Conditions, during a period that is within one month of the Subscription Period commencing will not affect their entitlement to calculate any deduction using one of the methods.
- (b) Subparagraph 9(a) of this Ruling also applies to a Business Customer (outside of any of the 4 scenarios referred to in paragraphs 23 to 26 of this Ruling) who is an individual, the Subscriber under the Subscription Agreement and the end user of the Vehicle, which is subscribed for by the Business Customer for their business use only; not to provide the Vehicle to their employee (the Individual Business Customer).
- (c) Under the Business Customer Scenario
- (i) Payment of the Subscription Fee by the Business Customer will be deductible under section 8-1 in the income year incurred where the Vehicle subscribed for by the Business Customer under the Subscription Agreement is provided to its employee for the Subscription Period.
 - (ii) For the purposes of subsection 7(7) of the FBTAA, the Vehicle subscribed for by the Business Customer under the Subscription Agreement will be taken to be a car let on hire to the provider under an agreement of a kind ordinarily entered into by persons taking cars on hire intermittently as occasion requires on an hourly, daily, weekly or other short-term basis where the Subscription Period in respect of the Subscription Agreement is less than 3 months.
 - (iii) Where the Vehicle subscribed for by the Business Customer under the Subscription Agreement has a Subscription Period of 3 months or longer, and the Vehicle is applied to a private use by the employee or taken to be available for the private use of the employee, the application or availability of the Vehicle will constitute a car benefit provided by the Business Customer to the employee in respect of the employment of the employee pursuant to subsection 7(1) of the FBTAA. The exercise of the choice of the Business Customer to Switch, in accordance with the Subscriber Terms and Conditions, during a period that is within 3 months of the

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- Subscription Period commencing will not change the character of the agreement for the purposes of paragraph 7(7)(b) of the FBTA.
- (iv) Pursuant to subsection 7(7) of the FBTA, where the Vehicle subscribed for by the Business Customer under a Subscription Agreement has a Subscription Period of less than 3 months, subject to the Vehicle having been or being reasonably expected to be on hire under successive agreements of a kind that result in substantial continuity of the hiring of the Vehicle, the application or availability of the Vehicle will not constitute a car benefit provided by the Business Customer. It will instead constitute a residual benefit under section 45 of the FBTA.
- (d) Under the Salary Sacrifice Scenario, where the Vehicle subscribed for by the Business Customer under the Subscription Agreement (as a consequence of its novation) is applied to a private use by the employee or taken to be available for the private use of the employee, the application or availability of the Vehicle will constitute a car benefit provided by the Business Customer to the employee in respect of the employment of the employee pursuant to subsection 7(1) of the FBTA.
- (e) Under the Business Customer Scenario and the Salary Sacrifice Scenario
- (i) A car benefit provided by the Business Customer to the employee (as per the circumstances referred to in sub-subparagraph 9(c)(iii) or subparagraph 9(d) of this Ruling) will be an exempt benefit in relation to a year of tax pursuant to subsection 8A(1) of the FBTA where
- the benefit is provided in respect of the employment of a current employee³
 - the Vehicle is a 'zero or low emissions vehicle' as defined in subsection 8A(2) of the FBTA at the time it is provided
 - no amount of luxury car tax has or will become payable on a supply or importation of the Vehicle before the Vehicle is provided, and
 - the Vehicle was first held by the Fleet Owner on or after 1 July 2022 and first used on or after 1 July 2022.⁴
- (ii) For the purposes of calculating the taxable value of any car fringe benefit provided by the Business Customer to the employee under section 9 of the FBTA (using the statutory formula), the base value of the Vehicle subscribed for is determined by reference to paragraph 9(2)(a) of the FBTA, as explained in paragraph 57 of this Ruling. For the purposes of calculating the taxable value of any car fringe benefit provided by the Business Customer to the employee under section 10 of the FBTA (using the cost basis), the operating costs will include the Subscription Fees and any fuel costs incurred by the Business Customer.
- (f) Under the Reimbursement Scenario, the reimbursement by the Business Customer to the employee for the Subscription Fees paid by the employee

³ Defined in subsection 136(1) of the FBTA.

⁴ See section 7 of the *Treasury Laws Amendment (Electric Car Discount) Act 2022*.

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to Carly under the Subscription Agreement will constitute an expense payment benefit under section 20 of the FBTAA.

- (g) Provided the scheme ruled on is entered into and carried out as described in this Ruling, the anti-avoidance provisions in Part IVA of the *Income Tax Assessment Act 1936* will not apply to the Individual or Business Customer.
- (h) Provided the scheme ruled on is entered into and carried out as described in this Ruling, the anti-avoidance provision of section 67 of the FBTAA will not apply to the Business Customer.

Assumptions

10. This Ruling is made on the basis of the following necessary assumptions:
- (a) The Individual and Business Customers are Australian residents for tax purposes.
 - (b) The Vehicle subscribed for under the Subscription Agreement falls within the definition of 'car' under subsection 995-1(1).
 - (c) The Business Customer is a 'person', as defined under subsection 136(1) of the FBTAA.
 - (d) The Vehicle subscribed for under the Subscription Agreement falls within the definition of 'car' under subsection 136(1) of the FBTAA.
 - (e) The Vehicle subscribed for by a Business Customer is not taken to be available for the private use of the Business Customer's employee by application of subsection 7(3) of the FBTAA.
 - (f) The Vehicle subscribed for under the Subscription Agreement by the Business Customer is not an exempt vehicle pursuant to subsection 8(2) of the FBTAA.
 - (g) All dealings between the Individual or Business Customer, Carly and the Fleet Owner will be at arm's length.
 - (h) The scheme will be executed in the manner described in the Scheme section of this Ruling and scheme documentation referred to in paragraph 11 of this Ruling.

Scheme

11. The scheme is identified and described in the following:
- application for a product ruling as constituted by documents and information received on 20 December 2023, 21 December 2023, 2 February 2024, 16 April 2024, 24 June 2024 and 9 July 2024
 - draft Subscription Agreement between Carly and the Individual Customer or Business Customer (as the Subscriber) received on 2 February 2024
 - draft Subscriber Terms and Conditions received on 2 February 2024
 - draft Fleet Owner Agreement between the Fleet Owner and Carly received on 2 February 2024, and

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- draft Novation Agreement between a Business Customer, their employee, and Carly received on 9 July 2024.

Note: Certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under freedom of information legislation.

12. For the purposes of describing the scheme, and aside from a salary sacrifice agreement to be executed as part of the Salary Sacrifice Scenario, there are no other agreements (whether formal or informal, and whether or not legally enforceable) which an Individual Customer or Business Customer, or any associate of an Individual Customer or Business Customer, will be a party to which are a part of the scheme.

13. All Australian Securities and Investments Commission requirements are, or will be, complied with for the term of the agreements.

Overview of scheme

14. Carly offers a car subscription service under which the Subscription Agreement, a tripartite arrangement between Carly, a Subscriber and a Fleet Owner, is entered into.

15. The Subscription Agreement, together with the Subscriber Terms and Conditions, sets out the terms of the agreement between Carly and the Subscriber, as well as the terms of the subscription of the Vehicle by the Fleet Owner to the end user.

16. Depending on which of the 4 scenarios described at paragraphs 23 to 26 of this Ruling applies, under a Subscription Agreement the Subscriber and the end user of the Vehicle, or both, can be any one of the Individual Customer, the Business Customer or the employee of the Business Customer.

17. Pursuant to the terms of the Fleet Owner Agreement between Carly and a Fleet Owner, Carly acts as an agent for the Fleet Owner and facilitates the subscription of the Vehicles by the Fleet Owner. The Fleet Owner maintains ownership of the Vehicle provided during the Subscription Period. Some of Carly's duties (as agent for the Fleet Owner) include:

- administration of subscriptions
- promotion of subscription services on its website
- provision of insurance coverage
- liaising with customers, including performance of validation checks on the end user
- collection of payments from customers, and
- coordination of the handover and return of Vehicles.

18. Under the terms of the Subscription Agreement, Subscribers pay an all-inclusive bi-monthly Subscription Fee to Carly covering the use of a Vehicle, insurance, registration and servicing.

19. Under the terms of the Fleet Owner Agreement, Carly remits the Fleet Owner Rate to the Fleet Owner. The Fleet Owner Rate equates to a portion of the Subscription Fee, the excess representing the profit to Carly.

20. Subject to a minimum period of 30 days or (in the case of the Salary Sacrifice Scenario only) 3 months, the Subscription Period under the Subscription Agreement may be a monthly recurring subscription or a fixed-term subscription. The monthly recurring

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subscription will be renewed every 30 days until cancelled. The fixed-term subscription is for a predetermined, fixed period.

21. As early as 16 days or later from the commencement of the Subscription Period, Subscribers have the option to Switch Vehicles. The term 'Switch' is defined in the Subscriber Terms and Conditions to mean the ability to conduct a single exchange of the Vehicle that is the subject to the current Subscription Agreement with another Vehicle provided by Carly subject to the same terms and conditions.

22. The Switched Vehicle will be subject to a new Subscription Agreement and the Subscription Fee applicable to the Switched Vehicle will apply from the date of the Switch. The subscription end date or recurring subscription date from the original Subscription Agreement will transfer to the new Subscription Agreement.

Scenarios

23. Under the Individual Customer Scenario:

- The Individual Customer is the Subscriber under the Subscription Agreement responsible for payment of the Subscription Fees to Carly.
- Carly arranges a Vehicle subscription between the Fleet Owner and the Individual Customer.
- The Fleet Owner provides the Vehicle directly to the Individual Customer, as the end user.

24. Under the Business Customer Scenario:

- The Business Customer is the Subscriber under the Subscription Agreement responsible for payment of the Subscription Fees to Carly.
- Carly arranges a Vehicle subscription between the Fleet Owner and the Business Customer.
- The Fleet Owner provides the Vehicle directly to the Business Customer, and the Business Customer provides the Vehicle to its employee, as an authorised end user.

25. Under the Salary Sacrifice Scenario:

- An Individual Customer who is the employee of the Business Customer is the Subscriber under the Subscription Agreement responsible for payment of the Subscription Fees to Carly.
- Pursuant to the terms of a Novation Agreement executed by the employee, the Business Customer and Carly
 - the employee's responsibility for payment of the Subscription Fees to Carly (together with all other obligations of the employee under the Subscription Agreement) is novated to the Business Customer (as the new Subscriber)
 - Carly arranges a Vehicle subscription between the Fleet Owner and the Business Customer, and
 - the Business Customer is required to make the Vehicle available for possession and use by the employee for the duration of the Novation Agreement.

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- The Fleet Owner provides the Vehicle (on behalf of the Business Customer) directly to the employee, as an authorised end user.
 - The Vehicle is provided by the Business Customer to the employee as part of the employee's total remuneration package, under a salary sacrifice agreement, whereby the employee's salary and wages are reduced by an amount equal to the Subscription Fee payments made by the Business Customer (via a salary packaging provider) to Carly under the Novation Agreement and an administrative fee payable by the employee to the salary packaging provider.
26. Under the Reimbursement Scenario:
- An employee of the Business Customer is the Subscriber under the Subscription Agreement responsible for payment of the Subscription Fees to Carly.
 - Carly arranges a Vehicle subscription between the Fleet Owner and the employee of the Business Customer.
 - The Fleet Owner provides the Vehicle directly to the employee of the Business Customer, as the end user.
 - The Business Customer reimburses the employee for the Subscription Fees paid to Carly.

Commissioner of Taxation

4 September 2024

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Appendix – Explanation

❶ *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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Deductibility of the Subscription Fees and fuel costs

27. Section 8-1 allows a deduction for any loss or outgoing to the extent that it is incurred in gaining or producing assessable income or it is necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income, provided that the loss or outgoing is not of a capital, private or domestic nature.

28. Where the Vehicle subscribed for under the Subscription Agreement by the Individual Customer under the Individual Customer Scenario is used by the Individual Customer in gaining or producing their assessable income, the Individual Customer will be entitled to a deduction under section 8-1 for payments of the Subscription Fee to Carly, and fuel costs incurred in relation to the Vehicle, to the extent that the Vehicle is used in gaining or producing the Individual Customer's assessable income (and not used for private purposes).

29. Where the Vehicle under the Subscription Agreement is subscribed for by an Individual Business Customer, the Individual Business Customer will be entitled to a deduction under section 8-1 for payments of the Subscription Fee to Carly, and fuel costs incurred in relation to the Vehicle, to the extent that the Vehicle is used in carrying on a business for the purpose of gaining or producing the Individual Business Customer's assessable income (and not used for private purposes).

30. Where the Vehicle is subscribed for under the Subscription Agreement by the Business Customer for provision to its employee under the Business Customer Scenario, the Subscription Fee payments made by the Business Customer to Carly in accordance with its obligations under the Subscription Agreement are outgoings of the Business Customer, as an employer, that are necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income (and not outgoings of a private nature). Payments of the Subscription Fee by the Business Customer under the Business Customer Scenario are therefore deductible pursuant to section 8-1.

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Calculation of car expense deductions – Division 28

31. Division 28 sets out the rules for working out deductions for ‘car expenses’ in respect of cars that are owned, leased or hired under a hire purchase agreement by an individual or a partnership that includes at least one individual (sections 28-1 and 28-10).

32. Unless an exception under Subdivision 28-J applies, deductions for car expenses can be calculated using one of the 2 methods (section 28-12).

33. For the purposes of Division 28, section 28-13 provides that a car expense is a loss or outgoing to do with a car and includes a loss or outgoing to do with operating a car. The Subscription Fee payable by the Subscriber under the Subscription Agreement is a loss or outgoing to do with a car and fuel costs paid in respect of the Vehicle constitute a loss or outgoing to do with operating a car.

34. Subdivision 28-J sets out the situations where neither of the 2 methods can be used or need to be used. These situations involve either the nature of the car or the way it is used (section 28-160).

35. Certain types of car taken on hire are prohibited by subsection 28-165(1) from using either of the 2 methods of calculating deductions for car expenses. In particular, subsection 28-165(1) applies to subsection 28-165(4), which states:

It also applies to a motor vehicle taken on hire under an agreement of a kind ordinarily entered into by people who take motor vehicles on hire intermittently, as the occasion requires, on an hourly, daily, weekly or short term basis, except if the motor vehicle:

- (a) has been taken on hire under successive agreements of a kind that result in substantial continuity of the motor vehicle being taken on hire; or
- (b) it is reasonable to expect that the motor vehicle will be taken on hire under successive agreements of a kind that will so result.

36. Where either of the 2 methods to calculate deductions for car expenses cannot be used as result of the operation of subsection 28-165(4), the individual (or partnership) must instead calculate the deductions under the normal principles governing deductions, including the rules for apportioning a loss or outgoing that is only partly attributable to producing assessable income (subsection 28-165(2)).

37. Since the expression ‘short-term’ is not defined for the purposes of Division 28, it takes its ordinary meaning in the context of subsection 28-165(4).

38. Dictionary meanings of the expression short-term (as well as the words ‘short’ and ‘term’ separately) indicate a brief, low in amount, time or period through which something lasts, or to which limits have been set, such that it is limited in scope and having a comparatively short period of time, is contemplated.⁵

39. Further, the imposition of a limitation on the scope of the general expression short-term by the application of the *ejusdem generis* principle, presupposes the identification of a group of ‘like matters’. In the case of subsection 28-165(4), it is considered that a group of like matters has been created in the form of the words ‘hourly, daily, weekly’ which operate to limit the general expression short-term. Therefore, in considering the expression, ‘hourly, daily, weekly or short term basis’, short-term must be something of or as the same kind with the words that precede it.

40. Considering these points, the Commissioner is of the view that the expression short-term in subsection 28-165(4) means a period of up to one month.

⁵ Macmillan Publishers Australia, *The Macquarie Dictionary* online, www.macquariedictionary.com.au, accessed 31 July 2024.

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41. Where the Vehicle under the Subscription Agreement is subscribed for by the Individual Customer or the Individual Business Customer for a Subscription Period of one month or less (on a short-term basis), subject to the application of paragraphs 28-165(4)(a) or (b) that Vehicle will be taken to be a car to which subsection 28-165(4) applies and subsection 28-165(1) will apply to prohibit the use of the 2 methods to calculate their deductions for car expenses. The Individual Customer or the Individual Business Customer under these circumstances will have to calculate their deductions for car expenses under the normal principles governing deductions.

42. Where the Vehicle under the Subscription Agreement is subscribed for by the Individual Customer or the Individual Business Customer for a Subscription Period of longer than one month (such that it is hired on a longer than short-term basis), that Vehicle will not be taken to be a car to which subsection 28-165(4) applies and subsection 28-165(1) will not apply to prohibit the use of the 2 methods to calculate their deductions for car expenses.

43. Subsection 28-165(4) requires you to ascertain the true nature of the transaction by a consideration of the character of the agreement, so as to determine whether the agreement itself is of a kind ordinarily entered into by people who take cars on hire intermittently, as the occasion requires, on a short-term basis. This is a determination which would be made upon entry into the agreement.

44. Therefore, where the Individual Customer or the Individual Business Customer enters into a Subscription Agreement with Carly for a Subscription Period that is longer than a short-term basis, the option to Switch the Vehicle under that Subscription Agreement does not affect the characterisation of the agreement for the purposes of subsection 28-165(4). Similarly, where the Individual Customer or the Individual Business Customer enters into a Subscription Agreement with Carly for a Subscription Period that is longer than a short-term basis but Switches the Vehicle within one month of the Subscription Period commencing, the characterisation of the agreement will not be affected.

Fringe benefits tax consequences in respect of provision of Vehicle under the Business Customer Scenario and Salary Sacrifice Scenario

45. Subsection 7(1) of the FBTA provides that where, in respect of the employment of an employee, a car held by a person (referred to as the 'provider'):

- is applied to a private use by the employee, or (with regard to subsection 7(2) of the FBTA) is taken to be available for the private use of the employee, and
- either the provider is the employer of the employee, or the car is so applied or available under an arrangement between the provider and the employer,

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

46. Paragraphs 162(1)(a) and (b) of the FBTA respectively provide that a car is held by a person when the car is owned by that person or leased to that person. Pursuant to the assumption at subparagraph 10(c) of this Ruling, the Business Customer under the Business Customer Scenario and the Salary Sacrifice Scenario is a 'person' as defined in subsection 136(1) of the FBTA.

47. As the Business Customer under the Business Customer Scenario and the Salary Sacrifice Scenario will be the person to whom the Vehicle is leased, subject to

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subsection 7(7) of the FBTA the Business Customer will hold the Vehicle (and be the provider) for the purposes of section 7 of the FBTA.

48. Pursuant to paragraph 7(7)(b) of the FBTA, a reference in Division 2 of the FBTA to 'a car held by a person' does not include a reference to a car let on hire to the provider under an agreement of a kind ordinarily entered into by persons taking cars on hire intermittently as occasion requires on an hourly, daily, weekly or other short-term basis, unless the car has been or may reasonably be expected to be on hire under successive agreements of a kind that result in substantial continuity of the hiring of the car.

49. Chapter 7 – Car fringe benefits of [Fringe benefits tax – a guide for employers](#) (the Guide) provides that cars hired under an agreement for a period of less than 3 months are, for the purposes of administering subsection 7(7) of the FBTA, considered to be hired under an agreement of a kind ordinarily entered into by persons taking cars on hire intermittently as occasion requires on a short-term basis, and therefore not 'held' (subject to the exception for cars hired under successive agreements). Chapter 7.3.1 of the Guide sets out:

A car is held on a short-term basis where this is no 'substantial continuity' to the hire arrangement.

If you provide a hire car or taxi for a total period of less than 3 months for your employee to use, it will not be a car benefit but it may still be a residual fringe benefit.

50. Where the Vehicle under the Subscription Agreement is subscribed for by the Business Customer under the Business Customer Scenario for a Subscription Period of less than 3 months (on a short-term basis), unless the Vehicle has been or may reasonably be expected to be on hire under successive agreements of a kind that result in substantial continuity of the hiring of the Vehicle, that Vehicle will be taken to be a car to which subsection 7(7) of the FBTA applies. The Business Customer under these circumstances will not, for the purposes of section 7 of the FBTA, be taken to hold the Vehicle and its provision to the Business Customer's employee will not constitute a car benefit provided by the Business Customer.

51. Where the Vehicle under the Subscription Agreement is subscribed for by the Business Customer under the Business Customer Scenario for a Subscription Period of less than 3 months (on a short-term basis), and the Vehicle has not been and may not reasonably be expected to be on hire under successive agreements of a kind that result in substantial continuity of the hiring of the Vehicle, the provision of the Vehicle to the Business Customer's employee will constitute a residual benefit under section 45 of the FBTA (as provided for in the Guide).

52. Paragraphs 50 and 51 of this Ruling are not applicable to a Vehicle subscribed for by the Business Customer under the Salary Sacrifice Scenario (as a consequence of the novation of the Subscription Agreement) as a Vehicle under the Salary Sacrifice Scenario cannot have a Subscription Period of less than 3 months.

53. Where the Vehicle under the Subscription Agreement is either subscribed for by the Business Customer under the Business Customer Scenario for a Subscription Period of 3 months or longer or subscribed for by the Business Customer under the Salary Sacrifice Scenario (such that it is hired on a longer than short-term basis), that Vehicle will not be taken to be a car to which subsection 7(7) of the FBTA applies. Therefore, where the Vehicle subscribed for by the Business Customer under these circumstances is applied to a private use by the employee or (pursuant to subsection 7(2) of the FBTA) is taken to be available for the private use of the employee, the application or availability of the Vehicle will constitute a car benefit provided by the Business Customer to the employee in respect of the employee's employment pursuant to subsection 7(1) of the FBTA.

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54. As noted at paragraph 44 of this Ruling in the context of subsection 28-165(4), where the Business Customer enters into a Subscription Agreement with Carly for a Subscription Period that is longer than a short-term basis for the purposes of subsection 7(7) of the FBTAA, the option to Switch the Vehicle under that Subscription Agreement will not affect the characterisation of the agreement. Similarly, where the Business Customer enters into a Subscription Agreement with Carly for a Subscription Period that is longer than a short-term basis but Switches the Vehicle within 3 months of the Subscription Period commencing, the characterisation of the agreement for the purposes of subsection 7(7) of the FBTAA will not be affected.

Exempt car benefits

55. A car benefit will be an exempt benefit in relation to a year of tax pursuant to subsection 8A(1) of the FBTAA where:

- it is provided in respect of the employment of a current employee
- the Vehicle is a zero or low emissions vehicle when the car benefit is provided⁶
- no amount of luxury car tax has become payable on a supply or importation of the Vehicle before the benefit is provided, and
- the Vehicle was acquired by the Fleet Owner on or after 1 July 2022 and first put to use on or after 1 July 2022.

Calculating the taxable value of car fringe benefits

56. Where the provision of the Vehicle to the employee under the Business Customer Scenario and the Salary Sacrifice Scenario constitutes a car fringe benefit, defined in subsection 136(1) of the FBTAA to mean a fringe benefit that is a car benefit, the taxable value of that car fringe benefit will be calculated by the Business Customer using the statutory formula method in section 9 of the FBTAA, unless the Business Customer elects to use the operating cost method in section 10 of the FBTAA.⁷

57. The statutory formula method applies a statutory rate to the base value of a car. Where the car is subscribed for by the provider, as is the case in respect of the Business Customer under the Business Customer Scenario and the Salary Sacrifice Scenario, the base value of the Vehicle subscribed for under the Subscription Agreement is determined under paragraph 9(2)(a) of the FBTAA by reference to the 'leased car value' of the Vehicle and any non-business accessories added after the Fleet Owner purchased the Vehicle.

58. Where the Subscription Period under the Subscription Agreement commenced at or about the time the Fleet Owner purchased the Vehicle, the leased car value will be the cost price of the Vehicle to the Fleet Owner (inclusive of GST and any luxury car tax), and where the Fleet Owner purchased the Vehicle at some other time, the leased car value will be the market value of the Vehicle at the time the Subscription Period under the

⁶ A 'zero or low emissions vehicle' is defined in subsection 8A(2) of the FBTAA to mean a battery electric vehicle (defined in subsection 8A(3) of the FBTAA), a hydrogen fuel cell electric vehicle (defined in subsection 8A(4) of the FBTAA) and, until 31 March 2025, a plug-in hybrid electric vehicle (defined in subsection 8A(5) of the FBTAA).

⁷ Even where a car benefit provided to an employee is exempt from fringe benefits tax pursuant to section 8A of the FBTAA (in the circumstances referred to in paragraph 55 of this Ruling), the application of section 8A of the FBTAA is disregarded for the purposes of working out the employee's reportable fringe benefits amount (if any) for a year of income in respect of their employment by the employer (subsection 135P(3) of the FBTAA).

Status: **not legally binding**

Subscription Agreement commenced (that is, the amount a person could reasonably be expected to have paid to purchase the Vehicle under an arm's length transaction).

59. The taxable value of a car fringe benefit calculated under the operating cost method is a percentage (representing the extent of the business use percentage applicable to the car) of the total costs of operating the car during the year. The operating costs of the Vehicle determined under paragraph 10(3)(a) of the FBTAA in respect of both the Business Customer Scenario and the Salary Sacrifice Scenario will include the Subscription Fees paid by the Business Customer to Carly and any fuel costs paid for by the Business Customer.

Fringe benefits tax consequences under the Reimbursement Scenario

60. Expense payment benefit is defined in subsection 136(1) of the FBTAA by reference to a benefit referred to in section 20 of the FBTAA. Section 20 of the FBTAA provides that an expense payment benefit is a payment made by a person (the provider) in discharge of the whole or part of an obligation of another person (the recipient) to pay a third person in respect of an amount of expenditure incurred by the recipient, or the reimbursement by the provider of the recipient in whole or part in respect of an amount of expenditure incurred by the recipient.

61. The reimbursement of the employee (the recipient for the purposes of section 20 of the FBTAA) by the Business Customer (the provider for the purposes of section 20 of the FBTAA) for the Subscription Fees paid by the employee to Carly under the Reimbursement Scenario will constitute an expense payment benefit under section 20 of the FBTAA.

62. The requirements under section 7 of the FBTAA in relation to car benefits are not satisfied under the Reimbursement Scenario.

 Status: **not legally binding**

References

Legislative references:

- FBTA 1986 Div 2
- FBTA 1986 7
- FBTA 1986 7(1)
- FBTA 1986 7(2)
- FBTA 1986 7(3)
- FBTA 1986 7(7)
- FBTA 1986 7(7)(b)
- FBTA 1986 8(2)
- FBTA 1986 8A
- FBTA 1986 8A(1)
- FBTA 1986 8A(2)
- FBTA 1986 8A(3)
- FBTA 1986 8A(4)
- FBTA 1986 8A(5)
- FBTA 1986 9
- FBTA 1986 9(2)(a)
- FBTA 1986 10
- FBTA 1986 10(3)(a)
- FBTA 1986 20
- FBTA 1986 45
- FBTA 1986 53
- FBTA 1986 67
- FBTA 1986 135P(3)
- FBTA 1986 136(1)
- FBTA 1986 162(1)(a)
- FBTA 1986 162(1)(b)
- ITAA 1936 Pt IVA
- ITAA 1997 8-1
- ITAA 1997 Div 28
- ITAA 1997 28-1
- ITAA 1997 28-10
- ITAA 1997 28-12
- ITAA 1997 28-13
- ITAA 1997 Subdiv 28-C
- ITAA 1997 Subdiv 28-F
- ITAA 1997 Subdiv 28-J
- ITAA 1997 28-160
- ITAA 1997 28-165(1)
- ITAA 1997 28-165(2)
- ITAA 1997 28-165(4)
- ITAA 1997 28-165(4)(a)
- ITAA 1997 28-165(4)(b)
- ITAA 1997 28-170
- ITAA 1997 28-175
- ITAA 1997 28-180
- ITAA 1997 28-185
- ITAA 1997 Div 40
- ITAA 1997 Div 230
- ITAA 1997 Div 242
- ITAA 1997 995-1(1)
- Treasury Laws Amendment (Electric Car Discount) Act 2022 7

Other references:

- Fringe benefits tax – a guide for employers
- Macmillan Publishers Australia, The Macquarie Dictionary online, www.macquariedictionary.com.au

ATO references

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