

# ***TR 2021/2A1 - Addendum - Fringe benefits tax: car parking benefits***

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# Addendum

## Taxation Ruling

### Fringe benefits tax: car parking benefits

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Ruling TR 2021/2 to:

- incorporate changes which address the concept of ‘primary place of employment’ in light of the decision in *Commissioner of Taxation v Virgin Australia Regional Airlines Pty Ltd* [2021] FCAFC 209, and
- make stylistic changes.

TR 2021/2 is amended as follows:

#### 1. Preamble

Omit the third paragraph.

#### 2. Table of Contents

After ‘Example 1 – work car park is not ‘in the vicinity of’ the employee’s primary place of employment 12’, insert:

<i>Where is the employee’s ‘primary place of employment’?</i>	15A
<u>Example 1A – identifying an employee’s primary place of employment where the employee performs duties at multiple business premises on a particular day</u>	15F

#### 3. Paragraph 1

(a) Omit footnote 1.

(b) After paragraph 1, insert new paragraph 1A:

1A. All legislative references in this Ruling are to the *Fringe Benefits Tax Assessment Act 1986*, unless otherwise indicated.

#### 4. Paragraph 4

(a) In the first dot point, omit ‘six’; substitute ‘6’.

(b) In the first dot point, omit ‘7.00am–7.00pm’; substitute ‘7:00 am and 7:00 pm’.

(c) In the second dot point, omit ‘nine’; substitute ‘9’.

(d) In the second dot point, in footnote 9, omit ‘four’; substitute ‘4’.

(e) In the fourth dot point, after footnote 8, insert a comma.

- (f) In the fifth dot point, omit 'four'; substitute '4'.
- (g) Omit the eighth dot point; substitute:
- 'Primary place of employment', as referred to in paragraphs 15A to 15H of this Ruling.
- (h) In the eighth dot point, after 'employment', insert new footnote 10A:
- <sup>10A</sup> 'Primary place of employment' is defined in subsection 136(1).

## 5. Paragraph 6

- (a) In the first sentence, omit '7.00am–7.00pm'; substitute '7:00 am and 7:00 pm'.
- (b) In footnote 14, omit '7.00am–7.00pm'; substitute '7:00 am and 7:00 pm'.
- (c) In the third dot point, after 'employment', insert footnote 15A:
- <sup>15A</sup> See paragraphs 15A to 15H of this Ruling.
- (d) In the seventh dot point, omit 'excluded by the regulations<sup>19</sup>'; substitute 'excluded by the *Fringe Benefits Tax Assessment Regulations 2018*.<sup>19</sup>'.

## 6. Paragraph 8

Omit '7.00am–7.00pm'; substitute '7:00 am and 7:00 pm'.

## 7. Paragraphs 10, 14, and 22

Omit 'two'; substitute '2'.

## 8. Paragraph 15

After the paragraph,

- (a) insert new paragraphs 15A to 15H, including headings:

***Where is the employee's 'primary place of employment'?***

15A. An employee's 'primary place of employment', on a particular day<sup>26A</sup>, will be the business premises of an employer identified by the application of paragraph (c) or (d) of the definition set out in subsection 136(1). These paragraphs contain 2 different tests.<sup>26B</sup> The employee's primary place of employment will be the business premises which are, or were, the 'sole or primary place of employment of the employee' (paragraph (c) of the definition) or the business premises that are, or were, 'otherwise the sole or primary place from which, or at which, the employee performs duties of his or her employment' (paragraph (d) of the definition).

15B. In this context, 'primary' has its ordinary meaning of 'first or highest in rank or importance; chief; principal'.<sup>26C</sup>

15C. Paragraph (c) of the 'primary place of employment' definition provides a broad test which may consider, but is not limited to, the place from which, or at which, duties are performed.<sup>26D</sup> Other considerations include the place which is primary to the employee's conditions of employment (such as rostering, allowances and car parking entitlements) as contained in their employment contract or industrial instrument, or both.<sup>26E</sup>

15D. Where the employee's conditions of employment indicate that particular business premises are primary to their employment, those premises may satisfy paragraph (c) of the 'primary place of employment' definition on a day even if the employee performs duties principally at another place on that day.<sup>26F</sup>

15E. Paragraph (d) of the 'primary place of employment' definition focuses on the place the employee performs their duties.<sup>26G</sup> Where an employee performs duties from, or at, more than one business premises on a day, the employee's primary place of employment under paragraph (d) of the definition is the primary place from which, or at which, they perform their duties. This primary place is identified through a quantitative and qualitative analysis of the duties performed from, or at, the different business premises.<sup>26H</sup>

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***Example 1A – identifying an employee's primary place of employment where the employee performs duties at multiple business premises on a particular day***

15F. *Shirley is a pilot.<sup>26I</sup> Her employment is regulated by an enterprise agreement under which she was allocated a 'Home Base'. Various rights and obligations of her employment relate to Shirley's Home Base, such as her roster, rest periods, allowances and other entitlements (such as the provision of car parking).*

15G. *On a particular day, Shirley's employment duties commence when she signs on for duty at her Home Base and end when she signs off at her Home Base. During the course of that day, Shirley performs her employment duties at her Home Base by attending pre-flight briefings, reviewing operational notices and inspecting the aircraft she will command that day, among other things. She also performs her employment duties onboard that aircraft, by flying it between her Home Base and another airport terminal before returning it to her Home Base.*

15H. *On that day, Shirley's Home Base airport was her 'primary place of employment' per paragraph (c) of the definition in subsection 136(1).*

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- (b) In new paragraph 15A, after 'on a particular day', insert new footnote 26A:

<sup>26A</sup> This means the day being tested for car parking benefit purposes (per paragraph (a) of the definition of 'primary place of employment' in subsection 136(1)) or, if the employee did not perform any duties of their employment on that day, the most recent day they performed duties (per paragraph (b) of the definition of 'primary place of employment' in subsection 136(1)). Subsection 39A(1) uses the wording 'a particular day' and the definition of 'primary place of employment' in subsection 136(1) uses the wording 'in relation to a day' – see *Commissioner of Taxation v Virgin Australia Regional Airlines Pty Ltd* [2021] FCAFC 209 (*Virgin Australia Regional Airlines*) at [14].

- (c) In new paragraph 15A, after 'These paragraphs contain 2 different tests', insert new footnote 26B:

<sup>26B</sup> *Virgin Australia Regional Airlines* at [15]

- (d) In new paragraph 15B, at the end of the paragraph, insert new footnote 26C:

<sup>26C</sup> *Virgin Australia Regional Airlines* at [17].

- (e) In new paragraph 15C, after the first sentence, insert new footnote 26D:

<sup>26D</sup> *Virgin Australia Regional Airlines* at [16].

- (f) In new paragraph 15C, at the end of the paragraph, insert new footnote 26E:  
<sup>26E</sup> ‘Industrial instrument’ is defined in subsection 136(1) to mean ‘... a law of the Commonwealth or of a State or Territory or an award, order, determination or industrial agreement in force under any such law’.
- (g) In new paragraph 15D, at the end of the paragraph, insert new footnote 26F:  
<sup>26F</sup> *Virgin Australia Regional Airlines* at [23].
- (h) In new paragraph 15E, after the first sentence, insert new footnote 26G:  
<sup>26G</sup> *Virgin Australia Regional Airlines* at [16].
- (i) In new paragraph 15E, at the end of the paragraph, insert new footnote 26H:  
<sup>26H</sup> *Virgin Australia Regional Airlines* at [9], [11] and [26], referring to *Virgin Australia Airlines Pty Ltd v Commissioner of Taxation* [2021] FCA 523 at [91].
- (j) In new paragraph 15F, after the first sentence, insert new footnote 26I:  
<sup>26I</sup> Shirley’s occupation is significant, as it was in *Virgin Australia Regional Airlines*, because subsection 136(2) provides ‘[i]n the definition of **business premises** in subsection (1), **premises** includes a ship, vessel, floating structure, aircraft or train.’ As Shirley performs her duties on an ‘aircraft’, it is possible for it to be her ‘primary place of employment’ – refer to *Virgin Australia Regional Airlines* at [26].

## 9. Paragraph 21

Omit ‘characteristics,’; substitute ‘characteristics’.

## 10. Paragraph 24

- (a) In the first sentence, omit ‘each entrance and boom gates’; substitute ‘the entrance and boom gates’.
- (b) In the second sentence, omit ‘two’; substitute ‘2’.

## 11. Paragraph 25

Omit ‘three’; substitute ‘3’.

## 12. Paragraph 35

In the second dot point, omit ‘long-term parking,’; substitute ‘long-term parking’.

## 13. Paragraph 37

In the first sentence, omit the comma.

**14. Paragraphs 43, 50 and 51**

Omit all occurrences of 'four'; substitute '4'.

This Addendum applies both before and after its date of issue.

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**Commissioner of Taxation**

22 February 2023

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## ATO references

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