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THE PARLIAMENT OF THE COMMONWEALTH OF
AUSTRALIA

HOUSE OF REPRESENTATIVES

TAXATION LAWS AMENDMENT (CAR PARKING)
BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Treasurer,
the Hon. John Dawkins, M.P.)

General Outline and Financial Impact

The Taxation Laws Amendment (Car Parking) Bill 1992 will amend the *Fringe Benefits Tax Assessment Act 1986* and the *Income Tax Assessment Act 1936* by making the following changes:

Car Parking Benefits

Fringe Benefits Tax Assessment Act 1986 ("FBTAA")

- Imposes fringe benefits tax on the provision of certain car parking benefits to employees.

Date of effect: 1 July 1993

Proposal announced: 1992-93 Budget

<i>Financial impact:</i>	<i>93/94</i>	<i>94/95</i>	<i>95/96</i>
	\$m90	\$m 240	\$m 190

[The above figures have been calculated on the basis that, from 1 April 1994, fringe benefits tax will be levied on the tax-inclusive value of the benefit]

Income Tax Assessment Act 1936 ("ITAA")

- Denies the income tax deductibility of certain car parking expenses of employees.

Date of effect: 1 July 1993

Proposal announced: Not previously announced

<i>Financial impact:</i>	<i>94/95</i>
	\$m 13

Clauses involved in the proposed amendments

Clause 4: Inserts Division 10A into the FBTAA to define a car parking benefit and to value a car parking fringe benefit.

Clause 5: Amends section 58G of the FBTAA to remove certain car parking expense payment benefits from the fringe benefits tax exemption given to motor vehicle parking expense payment benefits.

Clause 6: Amends subsection 136(1) of the FBTAA to insert various definitions arising from the amendments in this Bill.

Clause 7: Commencement date for the amendments to the FBTAA.

Clause 9: Inserts section 51AGA into the ITAA to deny deductions to employees for certain car parking expenses.

Clause 10: Commencement date for the amendments to the ITAA.

Car Parking Benefits

Summary of proposed amendments

Purpose of amendments: To impose fringe benefits tax on certain car parking benefits provided to employees and to deny income tax deductibility to employees who incur certain car parking expenses.

Date of Effect: 1 July 1993

Background to the legislation

Under the FBTAA, the provision of a motor vehicle parking benefit by an employer to an employee is explicitly exempted from fringe benefits tax. This exemption applies to motor vehicle parking benefits provided by the employer either directly or by way of an expense payment benefit (section 58G of the FBTAA).

Explanation of proposed amendments

Car Parking Fringe Benefits

The Bill will include a new Division to deal with benefits provided by an employer to an employee in the form of car parking facilities. *[New Division 10A]*

The first part of the Division will describe what is a car parking benefit. *[New Subdivision A of Division 10A]*

Generally, a car parking benefit exists where an employer provides to an employee any car parking facilities on business premises which are owned, controlled or leased, in whole or in part, by the employer. However, no benefit will exist unless:

- i. a permanent commercial car parking facility available for all-day parking is within 1 kilometre of the employer provided car parking facilities. If there is no commercial parking station within a 1 kilometre radius, there will be no benefit;

- ii. the car:
 - a. is parked at, or in the vicinity of, the employee's primary place of employment; and
 - b. is parked at that place for more than four hours during the period between 7.00am and 7.00pm on that day;
- iii. the car which is being parked is owned or leased by the employee or an associate of the employee, or is provided to the employee by the employer or any other person;
- iv. the provision of car parking facilities is in respect of the employment of the employee;
- v. the provision of car parking facilities is not excluded by Regulation; and
- vi. the car is used on that day to commute between the employee's primary place of residence and the employee's place of employment.

[New section 39A]

The Bill specifically sets out that the 1 kilometre distance between the commercial parking station and the employer provided parking facility is measured by the shortest practicable route. This route can be travelled by foot, car, train, boat, etc., whichever produces the shortest route. The route starts from the car entry point at the employer provided car parking facility and extends to the car entry point at the commercial parking station. ***[New section 39B]***

Valuation

The second part of the Division will set out the mechanism by which the taxable value of a car parking fringe benefit will be determined. ***[New Subdivision B of Division 10A]***

The Bill prescribes that the taxable value of a car parking fringe benefit is the lowest fee for all-day parking charged by any commercial parking station operator within a 1 kilometre radius of the employer provided car parking

facilities. This value is reduced by any recipient's contribution towards the benefit. *[New section 39C]*

The Bill also provides a formula for converting longer term parking rates into daily rate equivalents for the purpose of determining the taxable value of the car parking fringe benefits. *[New subsection 39D(1)]*

Anti-avoidance

The Bill includes anti-avoidance provisions which will complement the existing anti-avoidance measures in section 67 of the FBTAA. These provisions will ensure that car parking fringe benefits will not be undervalued for the fringe benefits tax purposes. *[New subsection 39D(2)]*

Removal of previous exemption

The Bill will exclude from the motor vehicle parking exemption in paragraph 58G(a) of the FBTAA, expense payment benefits provided by an employer for an employee's car parking costs. Those car parking costs must be in respect of parking a car for a period of more than four hours between 7.00am and 7.00pm at or in the vicinity of the employee's primary place of employment. That car must also have been used on that day to travel between the employee's place of residence and the employee's primary place of employment. *[Clause 5.]*

These expense payment benefits, which are excluded from the exemption in paragraph 58G(a) of the FBTAA, will fall for consideration as an Expense Payment Fringe Benefit under Division 5 of Part III of the FBTAA, unless the employee's car parking costs are in respect of the provision of car parking facilities which are excluded from these provisions by Regulation.

It should be noted that the term "car" has a special meaning within the FBTAA (defined in subsection 136(1) of the FBTAA).

Minor Benefits

This Bill will not effect the operation of Section 58P of the FBTAA. Section 58P exempts from fringe benefits tax certain minor benefits which are provided on an infrequent basis.

Definitions

The Bill will amend subsection 136(1) of the FBTAA to insert various definitions arising from the amendments in this Bill. *[Clause 6.]*

"All-Day Parking"

The term "all-day parking" is defined to mean car parking which is available (at a commercial parking station) for a continuous period of at least 6 hours. This term is used in the definition of a commercial parking station. Whether a commercial parking station exists is important in determining if a car parking benefit exists and, subsequently, the taxable value of that benefit.

The "6 hour" period in the definition of "all-day parking" should not be confused with the separate and quite different "4 hour" requirement for determining whether a car parking benefit exists. That requirement calls for the car to be parked for a period exceeding 4 hours between 7.00am and 7.00pm at or in the vicinity of the employee's primary place of employment.

"Commercial Parking Station"

In relation to the definition of "commercial parking station", the words "permanent" and "commercial" have their normal dictionary meanings. For example, a car park set up for a short period to cater for a special function (like an Easter Show) would not be permanent. A car park which was not run with a view to making a profit (usually reflected in significantly lower car parking rates charged compared with the normal market value for that facility) would not be commercial.

Some car parking facilities have a primary purpose to provide short-term shopper parking. To discourage all-day parking, the operators of these facilities charge penalty rates for all-day parking. These rates are significantly greater than the rates that would be charged by a similar facility which encouraged all-day parking. For the purposes of these provisions, short-term shopper parking facilities using penalty rates for all-day parking will not be treated as a "commercial parking station".

"Primary Place of Employment"

The term "primary place of employment" is defined to mean the employer's business premises, or associated premises, on which the employee would normally carry out his or her employment duties. Where an employee carries out employment duties on more than one of the employer's business premises in a particular day, the primary place of employment on that day is the place where, in consideration of the time spent and the substance of the duties carried out, a reasonable person would conclude that place to be the primary place of employment.

Car Parking Deductions

The Bill includes a new section in the ITAA to ensure that deductions are not available for expenses incurred by employees in parking a car for a period of more than four hours between 7.00am and 7.00pm at or in the vicinity of the their primary place of employment where the car was used on that day in connection with travel between their place of residence and their primary place of employment.
[New section 51AGA]

The deduction will not be denied where the expense is incurred in respect of the provision of car parking facilities which are excluded from these provisions by Regulation.

The denial of a deduction will ensure that the overall tax effect of providing either a car parking benefit or an allowance to an employee to cover car parking expenses is substantially similar.

Examples of the effect of these amendments

Example 1

John is an employee of XYZ Ltd. For a period of 3 weeks (3 x 5 days) XYZ Ltd allowed John to park his privately owned car in the basement car park of the XYZ Ltd building. John drives his car from home to his place of employment each day. The car is parked in the basement of the XYZ Ltd building for more than 4 hours between 7.00am and 7.00pm each day. As there are 2 permanent all-day commercial parking stations within 1 kilometre of the vehicular access point to the XYZ Ltd building, a car parking benefit has been provided to John.

Parking station No. 1 charges \$4.50 per day. Parking station No. 2 charges \$5 per day or \$80 per month (the daily rate equivalent in this particular month is $\$80/20 = \4). Thus, the lowest fee charged for all-day parking during the relevant period is \$4.

The taxable value of the car parking fringe benefit provided to John is \$60 (15 days x \$4).

Example 2

Mary is also an employee of XYZ Ltd. XYZ Ltd provides Mary with a car for the full year. When at work, the car is parked in the basement of the XYZ Ltd Building. Although Mary normally only uses the car to go between home and work, she often allows other employees of XYZ Ltd to use her car during the day for business purposes. Nevertheless, during that year, the car had been parked in the basement of the XYZ Ltd Building for at least four hours between 7.00am and 7.00pm each working day.

Assuming the rates charged by the parking station operators in Example 1 have not changed and that Mary worked for 250 days this year, the taxable value of the car parking fringe benefit provided to Mary is \$1000 (250 days x \$4).

The fact that Mary allows employees of XYZ Ltd to use her car or that the car is being used for business purposes during the day does not alter the taxable value of the car parking

fringe benefit. However, if on a particular day, the car had not been parked in the basement of the XYZ Ltd Building for at least four hours between 7.00am and 7.00pm, no car parking benefit would have arisen on that day.

Example 3

Mike is another employee of XYZ Ltd. XYZ Ltd provides Mike with a car for the full year but only so that he can travel to and from work. Once the car is at work, XYZ has total control over the use of the car and Mike has no access to it until it is time to go home. When at work, the car is parked in the basement of the XYZ Ltd Building. The car is parked in the XYZ Ltd Building for more than four hours between 7.00am and 7.00pm each day.

Assuming the rates charged by the parking station operators in Example 1 have not changed and that Mike worked for 250 days this year, the taxable value of the car parking fringe benefit provided to Mike is \$1000 (250 days x \$4).

The fact that the car is controlled by XYZ Ltd during the day or that the car is being used for business purposes during the day does not alter the taxable value of the car parking fringe benefit, provided that the car is parked at the employer-provided car parking facility for more than four hours between 7.00am and 7.00pm each day.

Example 4

Jane is another employee of XYZ Ltd. Jane undertakes an interstate trip for XYZ Ltd. Jane does not own a car. She is given a car from the XYZ Ltd car pool to use on the trip. The car is normally parked in the basement car park of the XYZ Ltd Building. Jane takes the car home and travels interstate the next day. Four days later Jane returns home from the trip and returns the car to the pool on arrival at work the next morning.

Assuming that the car (when not interstate) was parked in the XYZ Ltd Building for more than four hours between 7.00am and 7.00pm, Jane received a car parking benefit on the day she left work and on the day she returned to work. However, as this was the only trip Jane had undertaken this

year and as the value of the benefit of \$8 (2 days x \$4) is small, the car parking benefit would be considered to be a minor benefit and, thus, exempt from fringe benefits tax under section 58P of the FBTAA.

Example 5

Robert is an employee. He travels between his home and work each day. He parks his car in an all-day pay car park across the street from his office. One day, Robert takes his car out at lunch time to visit friends in another suburb where he also parks in a pay car park. After lunch he returns his car to the car park across the road from the office. In total, the car was parked in the car park across the road from his office for 5 hours between 7.00am and 7.00pm. Robert's parking expenses for that day were \$4, \$2, \$3, respectively. Robert's employer fully reimburses Robert's total car parking expenses of \$9. The taxable value of the benefit received by Robert is only \$7 (\$4 + \$3) as the reimbursement of the cost of parking away from Robert's primary place of employment (\$2) is not a car parking benefit.

If, however, Robert had not received any reimbursement from his employer and Robert wished to claim his \$9 expense as an income tax deduction, only that part of the \$2 which was incurred in gaining or producing assessable income could be a deduction. The remaining \$7 would not be deductible by virtue of section 51AGA of the ITAA.



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