

TD 94/16 - Fringe benefits tax: where an employee is provided with a car by the employer and the car is kept in safe storage (e.g. in a commercial garage) while the employee is travelling, under what circumstances is that car taken to be available for private use under section 7 of the Fringe Benefits Tax Assessment Act 1986 ?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *16 March 2016*

Taxation Determination

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

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If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

[**Note:** This is a consolidated version of this document. Refer to the Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

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; and
- b. the employer's car is not at the employer's business premises; and
- 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. A prohibition against the private use of a car must be made in clear and unequivocal terms. A general instruction or understanding between an employer and employee would not be sufficient. Employees would need to be made aware that the prohibition is genuine and will be reinforced, for example with disciplinary measures if breached. Consistent enforcement is also required and may comprise of regular checks of odometer readings against business kilometres claimed to have been travelled by employees.

Examples

1. *An employee who is provided with a car by her employer leaves the car in a commercial storage facility (e.g. an airport parking station) 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.*

2. *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 Taxation

24/2/94

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