



TAXATION LAWS AMENDMENT (CAR PARKING) ACT 1992

(No. 237 of 1992)

An Act to amend the law relating to taxation

[Assented to 24 *December* 1992]

PART 1-PRELIMINARY

1. Short title

This Act may be cited as the Taxation Laws Amendment (Car Parking) Act 1992.

2. Commencement

This Act commences on the day on which it receives the Royal Assent.

PART 2-AMENDMENT OF THE FRINGE BENEFITS TAX ASSESSMENT ACT 1986

Division 1-Principal Act

3. Principal Act

In this Part, "Principal Act" means the Fringe Benefits Tax Assessment Act 1986.

Division 2-Amendments relating to car parking

4. After section 39 of the Principal Act the following Division is inserted:

"Division 10A-Car Parking Fringe Benefits

"Subdivision A-Car Parking Benefits

Car parking benefits

"39A. If the following conditions are satisfied in relation to a daylight period, or a combination of daylight periods, on a particular day:

(a) during the period or periods, a car is parked on one or more premises of a person (the 'provider'), where:

(i) the premises, or each of the premises, on which the car is parked are business premises, or associated premises, of the provider; and

(ii) a commercial parking station is located within a 1 km radius of the premises, or each of the premises, on which the car is parked;

(b) the total duration of the period or periods exceeds 4 hours;

(c) any of the following applies:

(i) a car benefit relating to the car is provided on that day to an employee or an associate of an employee in respect of the employment of the employee;

(ii) the car is owned by, or leased to, an employee or an associate of an employee at any time during the period or periods;

(iii) the car is made available to an employee or an associate of an employee at any time during the period or periods by another person, where:

(A) the other person is neither the employer of the employee nor an associate of the employer of the employee; and

(B) the other person did not make the car available under an arrangement to which the employer of the employee, or an associate of the employer of the employee, is a party;

(d) the provision of parking facilities for the car during the period or periods is in respect of the employment of the employee;

(e) on that day, the employee has a primary place of employment;

(f) during the period or periods, the car is parked at, or in the vicinity of, that primary place of employment;

(g) on that day, the car is used in connection with travel by the employee between:

(i) the place of residence of the employee; and

(ii) that primary place of employment;

(h) the provision of parking facilities for the car during the period or periods is not taken, under the regulations, to be excluded from this section;

(i) the day is on or after 1 July 1993; the provision of parking facilities for the car during the period or periods is taken to constitute a benefit provided by the provider to the employee or the associate of the employee in respect of the employment of the employee.

When commercial parking stations are located within a 1 km radius of business premises or associated premises

"39B. For the purposes of this Division, a commercial parking station is taken to be located within a 1 km radius of particular business premises or particular associated premises if, and only if, a car entrance to the commercial parking station is situated less than 1 km, by the shortest practicable route, from a car entrance to those premises.

"Subdivision B-Taxable Value of Car Parking Fringe Benefits

Taxable value of car parking fringe benefits-"commercial parking station" method

"39C. Subject to this Part, the taxable value, in relation to a year of tax, of a car parking fringe benefit provided on a day in the year of tax in connection with one or more premises is equal to:

- (a) if, on that day, there is only one commercial parking station located within a 1 km radius of any of those premises-the lowest fee charged by the operator of the parking station in the ordinary course of business to members of the public for all-day parking on that day; or
- (b) if, on that day, there are 2 or more commercial parking stations located within a 1 km radius of any of those premises-the lowest fee charged by any of the operators of those parking stations in the ordinary course of business to members of the public for all-day parking on that day; reduced by the amount of the recipients contribution.

Taxable value of car parking fringe benefits-"market value" basis (Employer may choose market value basis)

"39D.(1) An employer may elect that this section apply in relation to any or all of the car parking fringe benefits in relation to the employer in relation to a particular year of tax.

(Market value basis of working out taxable value)

(2) Subject to this Part, if an election is made under subsection (1) in relation to a car parking fringe benefit provided on a day in a year of

tax, the taxable value, in relation to the year of tax, of the fringe benefit is:

- (a) the amount that the recipient could reasonably be expected to have been required to pay the provider in respect of the provision of the benefit if it were assumed that the provider and the recipient were dealing with each other at arm's length; reduced by:
- (b) the amount of the recipients contribution.

(Valuer's report must be given to employer)

"(3) An election purporting to be made under subsection (1) in relation to one or more car parking fringe benefits is of no effect unless:

- (a) a suitably qualified valuer gives to the employer, before the declaration date, a report, in a form approved by the Commissioner, about the valuation of the fringe benefits; and
- (b) the valuer is at arm's length in relation to the valuation; and
- (c) the return of the employer of the year of tax, in so far as it relates to the taxable values of the fringe benefits, is based on the report.

Fees charged by commercial parking stations for all-day parking (Daily rate equivalent for periodic parking arrangements)

"39E.(1) For the purposes of this Subdivision, if the operator of a commercial parking station provides all-day parking in the ordinary course of business to members of the public on a weekly, monthly, yearly or other periodic basis, the operator is taken to charge a fee for all-day parking on a particular day during the period equal to the amount worked out using the formula:

$$((\text{Total fee}) / (\text{Business days in period}))$$

where:

'Total fee' is the total fee charged by the operator in respect of all-day parking on days in that period;

'Business days in period' means the number of business days in that period.

(Anti-avoidance)

"(2) If either or both of the following apply:

- (a) a transaction between the operator of a commercial parking station and a customer is not at arm's length;
- (b) the operator of a commercial parking station sets the level of a fee for the sole or dominant purpose of enabling one or more employers to obtain reductions in the taxable values of car

parking fringe benefits; then, for the purposes of this Subdivision:

(c) if only paragraph (a) applies-it is to be assumed that the fee is the fee that would have been payable if the operator and the customer had been dealing with each other at arm's length in relation to the transaction; and

(d) if only paragraph (b) applies-it is to be assumed that the fee is the fee that would have been payable if it had been set without that purpose in mind; and

(e) if both paragraphs (a) and (b) apply-it is to be assumed that the fee is the fee that would have been payable if:

(i) the operator and the customer had been dealing with each other at arm's length in relation to the transaction; and

and

(ii) it had been set without that purpose in mind."

5. Exempt benefits-motor vehicle parking

5.(1) Section 58G of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

"(a) an expense payment benefit, where:

(i) the recipients expenditure is in respect of the provision of motor vehicle parking facilities; and

(ii) the benefit is not an eligible car parking expense payment benefit;"

(2) Section 58G of the Principal Act is amended by adding at the end the following subsection:

"(2) If the employer of an employee is:

(a) a scientific institution (other than an institution carried on by a company, society or association for the purposes of profit or gain to its individual shareholders or members); or

(b) a religious institution; or

(c) a charitable institution; or

(d) a public educational institution;

the following benefits provided in respect of the employment of the employee are exempt benefits:

(e) an eligible car parking expense payment benefit;

(f) a car parking benefit."

6. Interpretation

6. Section 136 of the Principal Act is amended:

- (a) by inserting "a car parking fringe benefit," after "airline transport fringe benefit," in paragraph (a) of the definition of "recipients contribution" in subsection (1);
- (b) by inserting "the recipients parking," after "recipients transport," in paragraph (a) of the definition of "recipients contribution" in subsection (1);
- (c) by inserting the following definitions in subsection (1):
 - "*all-day parking*" means parking of a single car for a continuous period of 6 hours or more; '*associated premises*', in relation to a person, means premises, or a part of premises:
 - (a) owned by the person; or
 - (b) leased by the person; or
 - (c) otherwise under the control of the person; but does not include:
 - (d) business premises of the person; or
 - (e) premises, or a part of premises, used as a place of residence of an employee of the person or an employee of an associate of the person;
 - '*business day*' means a day other than a Saturday, a Sunday or a public holiday in the place concerned;
 - '*car parking benefit*' means a benefit referred to in section 39A;
 - '*car parking fringe benefit*' means a fringe benefit that is a car parking benefit;
 - '*commercial parking station*', means a permanent commercial car parking facility where any or all of the car parking spaces are available in the ordinary course of business to members of the public for all-day parking on payment of a fee;
 - '*daylight period*', in relation to a day, means so much of a period on that day as occurs:
 - (a) after 7 a.m. on that day; and
 - (b) before 7 p.m. on that day;
 - '*eligible car parking expense payment benefit*' means an expense payment benefit where:
 - (a) the recipient is an employee or an associate of an employee; and

(b) the recipients expenditure is in respect of the provision of car parking facilities for a car on one or more days; and

(c) the following conditions are satisfied in relation to any of those days:

(i) on that day, the employee has a primary place of employment;

(ii) on that day, the car was parked for one or more daylight periods exceeding 4 hours in total at, or in the vicinity of, that primary place of employment;

(iii) the whole or a part of the recipients expenditure is in respect of the provision of the parking facilities to which that parking relates;

(iv) on that day, the car was used in connection with travel by the employee between the place of residence of the employee and that primary place of employment;

(v) the provision of parking facilities for the car during the period or periods is not taken, under the regulations, to be excluded from this definition;

(vi) the day is on or after 1 July 1993;

'primary place of employment', in relation to an employee in relation to a day, means business premises, or associated premises, of the employer of the employee, or of an associate of the employer, where:

(a) if the employee performed duties of his or her employment on that day-on that day; or

(b) in any other case-on the most recent day before that day on which the employee performed duties of his or her employment; those premises are or were:

(c) the sole or primary place of employment of the employee; or

(d) otherwise the sole or primary place from which or at which the employee performs duties of his or her employment;

'recipients parking', in relation to a car parking fringe benefit, means the provision of the parking facilities to which the benefit relates;".

7. Application

7. The amendments made by this Division apply to assessments of the fringe benefits taxable amount of an employer of the year of tax commencing on 1 April 1993 and of all later years of tax.

PART 3-AMENDMENT OF THE INCOME TAX ASSESSMENT ACT 1936

Division 1-Principal Act

8. Principal Act

8. In this Part, "Principal Act" means the Income Tax Assessment Act 1936

Division 2-Amendments to deny deductions to employees for certain car parking expenses

9. After section 51AG of the Principal Act the following section is inserted:

No deduction to employee for certain car parking expenses (No deduction)

"51AGA.(1) A deduction is not allowable to an employee under this Act in respect of expenditure to the extent to which it is incurred in respect of the provision of car parking facilities for a car on a day if:

- (a) on that day, the employee has a primary place of employment; and

- (b) on that day, the car is parked for one or more daylight periods exceeding 4 hours in total at, or in the vicinity of, that primary place of employment; and
- (c) the expenditure is in respect of the provision of the parking facilities to which that parking relates; and
- (d) on that day, the car was used in connection with travel by the employee between:
 - (i) the place of residence of the employee; and
 - (ii) that primary place of employment; and
- (e) the provision of parking facilities for the car during the period or periods is not taken, under the regulations, to be excluded from this section; and
- (f) the day is on or after 1 July 1993.

(Definitions)

"(2) In this section:

'*car*' has the same meaning as in the Fringe Benefits Tax Assessment Act 1986;

'*daylight period*' has the same meaning as in the Fringe Benefits Tax Assessment Act 1986;

'*employee*' has the same meaning as in the Fringe Benefits Tax Assessment Act 1986;

'*place of residence*' has the same meaning as in the Fringe Benefits Tax Assessment Act 1986;

'*primary place of employment*' has the same meaning as in the Fringe Benefits Tax Assessment Act 1986."

10. Application

10. Section 51AGA of the Principal Act as amended by this Act applies to expenditure incurred on or after 1 July 1993.

*(Minister's second reading speech made in-
House of Representatives on 4 November 1992
Senate on 12 November 1992)*