



# ***PR 2023/19 - Fringe benefits tax consequences for employers under an Origin electric vehicle subscription agreement***

 This cover sheet is provided for information only. It does not form part of *PR 2023/19 - Fringe benefits tax consequences for employers under an Origin electric vehicle subscription agreement*

 This document has changed over time. This is a consolidated version of the ruling which was published on *20 September 2023*



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Status: **legally binding**

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## Product Ruling

# Fringe benefits tax consequences for employers under an Origin electric vehicle subscription agreement

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### **❗ 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 Project are advised to confirm with their taxation 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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<b>Table of Contents</b>	<b>Paragraph</b>
What this Ruling is about	1
Who this Ruling applies to	4
<b>Date of effect</b>	<b>6</b>
<b>Ruling</b>	<b>8</b>
Assumptions	9
<b>Scheme</b>	<b>10</b>
Overview of scheme	13
<b>Appendix – Explanation</b>	<b>19</b>

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### **What this Ruling is about**

1. This Ruling sets out the fringe benefits tax (FBT) consequences for an employer (Employer) that enters into an EV Subscription Master Agreement (Master Agreement) offered by Origin Energy Electricity Limited (Origin) pursuant to which Origin provides an Electric Vehicle (EV) to the employees of the Employer (Employees) on a subscription basis under the terms and conditions of an Electric Vehicle Subscription Agreement (Subscription Agreement).
2. All legislative references in this Ruling are to the *Fringe Benefits Tax Assessment Act 1986*. Terms which are defined in the scheme documents referred to in paragraph 10 of this Ruling have been capitalised.
3. This Ruling does not address:
  - the income tax consequences for the Employer in connection with the scheme, including the deductibility of Subscription Fees paid by the Employer
  - the FBT consequences for the Employer in connection with its entry into an effective salary sacrifice arrangement (as referred to in paragraph 18 of this Ruling)
  - the tax consequences for the Employee in connection with the scheme, including any consequences of entering into an effective salary sacrifice arrangement (as referred to in paragraph 18 of this Ruling)
  - the extent to which any car expenses paid in connection with the scheme may constitute a car expense payment benefit, car property benefit or car residual benefit for the purposes of section 53, and
  - an assignment or transfer of any rights and obligations under the Master Agreement or the Subscription Agreement.

### **Who this Ruling applies to**

4. This Ruling applies to you if you, as the Employer, enter into the scheme described in paragraphs 10 to 18 of this Ruling on or after 1 April 2023 and on or before 31 March 2026.
5. This Ruling does not apply to you if you either:
  - enter into the scheme described in paragraphs 10 to 18 of this Ruling before 1 April 2023 or after 31 March 2026
  - are a non-resident for Australian tax purposes, or
  - are the Employee subject to the Subscription Agreement.

### **Date of effect**

6. This Ruling applies from 1 April 2023 to the Employers specified in paragraph 4 of this Ruling that enter into the scheme from 1 April 2023 until 31 March 2026.

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7. 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 10 to 18 of this Ruling, this Ruling cannot be relied upon and may be withdrawn or modified.

## **Ruling**

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

- (a) Where the EV subscribed for by the Employer under the Subscription Agreement 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 EV will constitute a car benefit provided by Origin to the Employee in respect of the employment of the Employee pursuant to subsection 7(1).
- (b) Any car benefit provided by Origin to the Employee under the circumstances referred to in subparagraph 8(a) of this Ruling will be an exempt benefit in relation to a year of tax pursuant to subsection 8A(1).
- (c) Any associated benefit provided to the Employee in relation to the EV subscribed for under the Subscription Agreement (that is, a car expense payment benefit, a car property benefit or a car residual benefit in respect of the EV), being a benefit that is attributable to a period when a car fringe benefit would have been provided but for section 8A in relation to the EV, is an exempt benefit pursuant to subsection 53(1).
- (d) For the purposes of calculating the taxable value of any car fringe benefit provided to the Employee under section 9, the base value of the EV subscribed for is determined by reference to paragraph 9(2)(a), as explained in paragraphs 28 and 29 of this Ruling. For the purposes of calculating the taxable value of any car fringe benefit provided to the Employee under section 10 (using the cost basis), the operating costs will include the Subscription Fees and any operational costs incurred by the Employer.
- (e) The payment of the Subscription Fees by the Employer to Origin will not constitute an expense payment benefit under section 20.
- (f) Provided that the scheme ruled on is entered into and carried out as described in this Ruling, the anti-avoidance provision of section 67 will not apply to the Employer.

## **Assumptions**

9. This Ruling is made on the basis of the following necessary assumptions:

- (a) The Employer is an Australian resident for tax purposes.
- (b) The EV subscribed for under the Subscription Agreement
  - (i) falls within the definition of a 'car' under subsection 136(1)
  - (ii) is applied to a private use by the Employee or is taken to be available for the private use of the Employee
  - (iii) is not an exempt vehicle pursuant to subsection 8(2)

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- (iv) is provided in respect of the employment of a current employee
- (v) is a 'zero or low emissions vehicle' as defined in subsection 8A(2) at the time it is provided, and
- (vi) is either acquired by Origin on or after 1 July 2022 and first put to use on or after 1 July 2022, or leased by Origin under a long-term lease beginning on or after 1 July 2022 and first put to use on or after 1 July 2022.<sup>1</sup>
- (c) No amount of luxury car tax has or will become payable on a supply or importation of the EV before the EV is subscribed for under the Subscription Agreement.
- (d) Where Origin leases the EV under a long-term lease, the long-term lease commences at or about the time the lessor purchased the EV.
- (e) The scheme will be executed in the manner described in the Scheme section of this Ruling and scheme documentation referred to in paragraph 10 of this Ruling.
- (f) All dealings between the Employer, the Employee and Origin will be at arm's length.

## Scheme

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10. The scheme is identified and described in the following:

- application for a product ruling as constituted by documents and information received on 23 May 2023
- EV Subscription Master Agreement between Origin and the Employer received on 23 May 2023, and
- Electric Vehicle Subscription Agreement between Origin, the Employer and the Employee received on 23 May 2023, including the Electric Vehicle Subscription Terms of Use (Terms of Use) last updated 10 May 2023 and EV Subscription Salary Package – Order Proposal (Order Proposal).

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

11. For the purposes of describing the scheme, there are no other agreements (whether formal or informal, and whether or not legally enforceable) which an Employer, or any associate of an Employer, will be a party to which are a part of the scheme.

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

## Overview of scheme

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13. Origin holds a fleet of EVs (either owned by Origin or leased by Origin under long-term leases) which it is offering to the employees of Origin business customers (Employers) on a monthly subscription basis.

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<sup>1</sup> For the purposes of this Ruling, a long term lease to which Origin is a party, as lessee of an EV, is a lease of longer than 3 months such that the EV is not taken to be a car to which subsection 7(7) applies.

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14. Employers that wish to subscribe for one or more EVs from Origin enter into the Master Agreement with Origin. The Master Agreement is an overarching agreement whereby Origin agrees with the Employer to provide, at any time and from time to time during the term of the Master Agreement, an EV directly to an interested Employee on a subscription plan.

15. In order to give effect to the subscription of EVs under the Master Agreement between Origin and the Employer for each particular Employee:

- the Employee must accept and sign the Order Proposal provided to them by Origin setting out the terms on which the EV is offered to the Employee, and
- Origin, the Employer and each Employee that has accepted and signed the Order Proposal will enter into a separate, individual Subscription Agreement. The Subscription Agreement, of which the Terms of Use and the accepted Order Proposal form part, sets out the terms of the agreement between Origin, the Employer and the Employee, as well as the terms and conditions pursuant to which the EV is leased by Origin to the Employee on a subscription basis.

16. The terms of the Subscription Agreement:

- require Origin to provide, make available and deliver the EV directly to the Employee for the possession and personal use of the Employee, and not for any business use associated with the Employer
- explain that the Subscription Agreement, together with the Master Agreement, is intended as an arrangement between Origin (as the provider of the EV) and the Employer for the purposes of paragraph 7(1)(a) and subparagraph 7(1)(b)(ii)
- require Subscription Fees to be paid to Origin weekly and confirm that the liability for payment of all Subscription Fees falls to the Employer (subject to the Employer notifying Origin that the Employee has either ceased their employment with the Employer, suffered a total permanent disability, suffered a long-term serious illness, or died, in which case the Employer's obligation to pay Subscription Fees under the Terms of Use will immediately cease and the Employee will assume responsibility for payment of any Subscription Fees arising from that date until the Employee terminates the EV Subscription)
- confirm that the liability for payment of all Other Fees that are or become payable under the Terms of Use falls to the Employee, and
- provide that the Hire Term for the EV Subscription starts on the date the EV is delivered to the Employee and continues initially for the duration of the Hire Term (a minimum of 30 days) and thereafter is month-to-month until the EV Subscription is terminated, and the EV is returned.

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17. The Subscription Fee payable to Origin by the Employer covers the hire of the EV, registration, insurance, roadside assistance and servicing costs of the EV.

18. As contemplated by the Order Proposal, the Employer will enter into an effective salary sacrifice arrangement with the Employee under which the Employee's salary will be reduced by the amount of the GST-exclusive portion of the Subscription Fee the Employer is liable to pay Origin for the EV Subscription.

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**Commissioner of Taxation**

20 September 2023

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Status: **not legally binding**

## Appendix – Explanation

**❗** *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.*

<b>Table of Contents</b>	<b>Paragraph</b>
Fringe benefits tax consequences in respect of provision of Electric Vehicle	19
Further exemption of car expenses	24
Calculating the taxable value of car fringe benefits	26

### **Fringe benefits tax consequences in respect of provision of Electric Vehicle**

19. Subsection 7(1) 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) or (3)) 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.

20. Paragraphs 162(1)(a) and (b) respectively provide that a car is held by a person when the car is owned by that person or leased to that person. Origin is a 'person' for FBT purposes.

21. As Origin will either be the person that owns the EV or the person to whom the EV is leased, Origin will hold the EV (and be the provider) for the purposes of section 7.

22. Where the EV under the Subscription Agreement is subscribed for by the Employer and applied to a private use by the Employee or (pursuant to subsections 7(2) or (3)) is taken to be available for the private use of the Employee, the application or availability of the EV under an arrangement between Origin as the provider and the Employer will constitute a car benefit provided by Origin to the Employee in respect of the Employee's employment pursuant to subsection 7(1).

23. However, that car benefit will be an exempt benefit in relation to a year of tax pursuant to subsection 8A(1) where:

- it is provided in respect of the employment of a current employee (as assumed in sub-subparagraph 9(b)(iv) of this Ruling)
- the EV is a zero or low emissions vehicle when the car benefit is provided (as assumed in sub-subparagraph 9(b)(v) of this Ruling)<sup>2</sup>

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



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- no amount of luxury car tax has become payable on a supply or importation of the EV before the benefit is provided (as assumed in subparagraph 9(c) of this Ruling), and
- the EV is both held and used by Origin (as the provider) for the first time on or after 1 July 2022 (as assumed in sub-subparagraph 9(b)(vi) of this Ruling).

#### **Further exemption of car expenses**

24. Where the use of a car is exempted under section 8A, the exemption under subsection 53(1) extends to the provision of any car expense payment benefit, car property benefit and car residual benefit (defined in subsection 53(3)) provided in respect of that car during the same time as the exempted car benefit.

25. Therefore, any car expense payment benefit, car property benefit and car residual benefit provided to the Employee in relation to an EV subscribed for under the Subscription Agreement and attributable to a period during which a car benefit would have been provided to the Employee but for the application of section 8A to treat it as an exempt benefit, is also an exempt benefit in accordance with subsection 53(1).

#### **Calculating the taxable value of car fringe benefits**

26. Whilst the car benefit provided to the Employee under the circumstances referred to in subparagraph 8(a) of this Ruling will be exempt from FBT pursuant to section 8A, the application of section 8A 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)).

27. Therefore, where the provision of the EV to the Employee constitutes a car fringe benefit, defined in subsection 136(1) to mean a fringe benefit that is a car benefit, the taxable value of that car fringe benefit will be calculated by the Employer using the statutory formula method in section 9, unless the Employer elects to use the operating cost method in section 10.

28. The statutory formula method applies a statutory rate to the base value of a car. Where the car is owned by Origin (as the provider), the base value of the EV subscribed for under the Subscription Agreement is determined under paragraph 9(2)(a) by reference to the 'cost price' of the EV to Origin (excluding registration and stamp duty), the cost of any fitted non-business accessories and dealer delivery charges (including GST).

29. Where the car is leased by Origin (as the provider), the base value of the EV subscribed for under the Subscription Agreement is determined under paragraph 9(2)(a) by reference to the 'leased car value' of the EV. Where the EV leased by Origin commences at or about the time the lessor under that lease purchased the EV (as assumed in subparagraph 9(d) of this Ruling), the 'leased car value' will be the cost price of the EV to the lessor (inclusive of GST).

30. 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 EV determined under paragraph 10(3)(a) will include the Subscription Fees paid by the Employer to Origin and any other costs paid for by the Employer in relation to the operation of the Vehicle.

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Status: **not legally binding**


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## References

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### *Legislative references:*

- FBTA 1986 7
- FBTA 1986 7(1)
- FBTA 1986 7(1)(a)
- FBTA 1986 7(1)(b)(ii)
- FBTA 1986 7(2)
- FBTA 1986 7(3)
- FBTA 1986 7(7)
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- FBTA 1986 8A(1)
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- FBTA 1986 9
- FBTA 1986 9(2)(a)
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- FBTA 1986 10(3)(a)
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- FBTA 1986 135P(3)
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- FBTA 1986 162(1)(a)
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### ATO references

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