



FBT ON CAR PARKS

<u>CONTENTS:</u>	<u>Page No.</u>
(1) When a fringe benefit may arise: general rule	2
(2) Fringe benefit from allocated parking space	3
(3) Fringe benefit from unallocated parking space	4
(4) Value of fringe benefit arising from availability of parking space	5
- Determinations relating to value of fringe benefits from parking spaces	5
(5) Recording details for test period	6
(6) Attribution of fringe benefits to individual employees	7
(7) Attributed benefits provided to more than one employee	8
(8) Employee contribution	9
(9) GST on FBT on car parks: the rules	10
(10) GST on FBT on car parks: the implications	11
(11) Family scheme income implications for employees	12

FBT ON CAR PARKS

(1) WHEN A FRINGE BENEFIT MAY ARISE: GENERAL RULE

Parking for a motor vehicle is being removed from the category of “unclassified benefits” and will be a specified category arising in the way described in **s. CX 9B**.

The “on premises” FBT exclusion in **s. CX 23** will no longer apply to “parking for a motor vehicle”.

However, a benefit in the form of the availability of an area for parking a motor vehicle is not a fringe benefit except as specified under **s. CX 9B** as described below.

Under **s. CX 9B**, a fringe benefit may arise on a day when an employer makes a parking space (meaning “an area for parking 1 motor vehicle”) available to an employee if:

1. The parking space is in an urban area specified by **s. CX 9B(5)** or by the Governor-General by Order in Council under **s. CX 9B(6)**, being:
 - (a) The Central Area as defined in the Central Area Section of the Auckland Council District Plan—Operative Auckland City; and
 - (b) The Central Area as defined in the Wellington City District Plan; and
 - (c) An urban area added by the Governor-General by Order in Council; and
 - (d) An urban area removed by the Governor-General by Order in Council; and
 - (e) Any variation in the boundaries of an urban area by the Governor-General by Order in Council; or
2. The parking space is provided to the employer:
 - (a) By a commercial car park operator (defined as a person who carries on a business of providing, for a fee, areas available for use by a member of the public in parking a motor vehicle for a continuous period of 6 hours or more within the period from 7 am to 7 pm); and
 - (b) For consideration of more than \$210 per month, as specified by **s. CX 9B(5)**; or
 - (c) For a consideration set or varied by the Governor-General by Order in Council under **s. CX 9B(6)**; or
3. The employee would be entitled to a greater amount of employment income should the employee choose, or have chosen, not to receive the benefit of the parking space.

[**s. CX 9B(1), (5) & (6)** and the definitions in **(7)** as proposed in **cl. 12D**, and **s. CX 28B** as proposed in **cl. 13D**, and the proposed amendments to **s. CX 2(1)(b)(i)** by **cl. 12C** and **s. CX 23** by **cl. 13B** of the *Supplementary Order Paper* (11 December 2012) to the *Livestock Bill* coming into force on 1 April 2014]

FBT ON CAR PARKS

(2) FRINGE BENEFIT FROM ALLOCATED PARKING SPACE

A fringe benefit of 1 parking space (meaning an area for parking 1 motor vehicle) arises on a day when the employer makes available to the employee a parking space that is allocated to the sole use of the employee, if the use of the parking space is not restricted to a business or certificated vehicle.

Business or certificated vehicle means a motor vehicle that has a valid disabled parking permit, or is a work-related vehicle, or is a car that the employer:

- (a) Owns, or leases from a person other than an employee or person associated with an employee; and
- (b) Makes available to more than 1 employee for business purposes during business hours; and
- (c) Does not make available for the private use of the employee, other than for travel that arises incidentally to travel for business purposes and is not travel between the employee's work place and the employee's place of residence

Work-related vehicle, for an employer:

1. Means a motor vehicle that prominently and permanently displays on its exterior:
 - (a) If the employer owns the vehicle, the form of identification that the employer regularly uses in carrying on their undertaking or activity; or
 - (b) If the employer rents the vehicle, the form of identification:
 - (i) That the employer regularly uses in carrying on their undertaking or activity; or
 - (ii) That the person from whom it is rented regularly uses in carrying on their undertaking or activity.
2. Cannot be a **car**, which is defined for the purposes of FBT and the definition of 'work-related' vehicle, as:
 - (a) Meaning a motor vehicle designed exclusively or mainly to carry people; and
 - (b) Including such a motor vehicle that has rear doors or collapsible rear seats; and
 - (c) Not include a minibus, moped, motorcycle, or taxi.
3. Cannot be a motor vehicle on any day on which the vehicle is available for the employee's private use, except for private use that is:
 - (a) Travel to and from their home that is necessary in, and a condition of, their employment; or
 - (b) Other travel in the course of their employment during which the travel arises incidentally to the business use.

[s. CX 9B(2) & (7) as proposed in cl. 12D of the *Supplementary Order Paper* (11 December 2012) to the *Livestock Bill* coming into force on 1 April 2014, and the definition of 'work-related vehicle' in s. CX 38, and the definition of 'car' in s. YA 1]

FBT ON CAR PARKS

(3) FRINGE BENEFIT FROM UNALLOCATED PARKING SPACE

Pool parking space means a parking space that on the day is not allocated by the employer to:

- (a) The sole use of an employee; or
- (b) The sole use of persons other than an employee.

A fringe benefit arises on a day, from the availability of a pool parking space for an employee, of:

1. **s. CX 9B(3)(a)**: 1 parking space, if the number of pool parking spaces is equal to or greater than the total number of pool parking users; or
2. **s. CX 9B(3)(b)**: Zero, if the employee is restricted to the use of a pool parking space for parking outside the hours between 6 am and 10 pm; or
3. **s. CX 9B(3)(c)**: Zero, if:
 - (a) The number of pool parking spaces is equal to or greater than the number of **pool parking users** (defined as employees of the employer who on the day may park a motor vehicle in a pool parking space); and
 - (b) The employee is restricted to the use of a pool parking space for parking a business or certificated vehicle – see **page (3)**; or
4. **s. CX 9B(3)(d)**: A fraction of a parking space: If the number of pool parking spaces is less than the number of pool parking users and the employee's use of a pool parking space is not restricted to outside the hours between 6 am and 10 pm:
 - (a) The daily fringe benefit that arises is a fraction of a parking space; with
 - (b) The fraction calculated using the formula:

$$\frac{\text{Parking ratio} \times (\text{day users} - \text{business})}{(\text{Day users})}$$

Parking ratio means:

- (i) 1, if the item day users is less than or equal to the number of pool parking spaces on the day; or
- (ii) The number of pool parking spaces on the day divided by the item day users, if subparagraph (i) does not apply.

Day users means the number of pool users whose hours of employment on the day both begin and end in the period from 6 am to 10 pm.

Business means the number of pool parking users who, on the day, are restricted to the use of a pool parking space for parking a business or certificated vehicle in the period from 6 am to 10 pm.

[**s. CX 9B(3), (4)** and the definitions in **(7)** as proposed in **cl. 12D** of the *Supplementary Order Paper* (11 December 2012) to the *Livestock Bill* coming into force on 1 April 2014]

FBT ON CAR PARKS

(4) VALUE OF FRINGE BENEFIT ARISING FROM AVAILABILITY OF PARKING SPACE

1. The daily value of a fringe benefit arising under s. CX 9B from the **availability of a (whole) parking space** to an employee is:
 - (a) If the parking space is provided by a commercial car park operator, the part corresponding to 1 day, treating a month as having 30 days and a year as having 360 days, of the amount charged to the employer by the commercial car park operator for the parking space; or
 - (b) If **paragraph (a)** does not apply and a daily amount is set by a determination – see below - of the Commissioner under **s. 91AAT** of the *Tax Administration Act 1994* for the part of the city in which the parking space is provided, the amount set by the determination; or
 - (c) If **paragraphs (a) and (b)** do not apply and the employee would be, or would have been, entitled to an increase in the employee's employment income, should the employee choose, or have chosen, not to receive the benefit of the parking space, the amount of that increase for 1 day after deduction of tax at the person's highest marginal rate of tax for the income year.
2. The value of a fringe benefit arising from the **availability of a fraction of a parking space** to an employee, as determined under s. CX 9B(4)(c), is calculated by multiplying the fraction by the daily value if it had been a whole parking space, calculated as above.
3. An employer who chooses to have a parking test period under **s. RD 33C** – see **page 6** below - and obtain, for the application of **s. CX 9B(4)**, daily average figures for a term, for the number of pool parking spaces, the number of pool parking users, the number of business or certificated vehicles, and the value of the item **day users**, must use the results for each day in the term given by that section.
4. This section overrides the normal FBT rules relating to the provision of services by an employer in s. RD 41, except for an employer who is a commercial car park operator.

[**s. RD 33B** as proposed in **cl. 44B** of the *Supplementary Order Paper* (11 December 2012) to the *Livestock Bill* coming into force on 1 April 2014]

s. 91AAT: Determinations relating to value of fringe benefits from parking spaces

1. For the purposes of **s. CX 9B and RD 33B** of the *Income Tax Act 2007*, the Commissioner may determine the value of a fringe benefit arising from the availability to an employee of a parking space in an urban area defined in **s. CX 9B(5)** of that Act (currently the central areas of Auckland and Wellington) or by an Order in Council under that section.
2. In determining the value of a fringe benefit, the Commissioner must take into account the market rates of fees for hiring parking spaces in the urban area.
3. A determination may be made for a period specified in the determination.
4. A determination may provide for the extension, limitation, variation, cancellation, or revocation of an earlier determination.
5. Within 30 days of issuing or changing a determination under this section, the Commissioner must publish a notice in a publication chosen by the Commissioner that:
 - (a) Gives notice of the issue or change of the determination; and
 - (b) States where copies of the determination can be obtained."

[**s. 91AAT** of the *Tax Administration Act 1994* as proposed in **cl. 67C** of the *Supplementary Order Paper* (11 December 2012) to the *Livestock Bill* coming into force on 1 April 2014]

FBT ON CAR PARKS

(5) RECORDING DETAILS FOR TEST PERIOD

To obtain for the application of **s. CX 9B(4)** for a day, the average number of pool parking spaces, the average number of pool parking users, the average number of business or certificated vehicles, and the average value of the item **day users**, an employer may choose to record the details of the use of parking spaces by employees for a test period under **s. RD 33C**.

1. Under **s. RD 33C(2)**, the test period must be a continuous period of 2 months or more:
 - (a) Beginning on the first day of a quarter, if the employer pays FBT quarterly or annually; or
 - (b) In an income year, if the employer pays FBT on an income year basis.
2. Under **s. RD 33C(3)**, the employer must choose a test period that shows, or is likely to show, a pattern of use of the parking spaces that fairly represents the use over the whole of the term chosen under s. RD 33C(4) and keep a daily record for the test period of:
 - (a) The number of parking spaces; and
 - (b) The number of parking spaces allocated to individual employees who are entitled to use the allocated parking space for a motor vehicle other than a business or certificated vehicle; and
 - (c) The number of parking spaces allocated to individual employees who are restricted to using the allocated parking space for a business or certificated vehicle; and
 - (d) The number of parking spaces allocated to the sole use of persons other than an employee; and
 - (e) The number of pool parking users; and
 - (f) The number of pool parking users who are entitled to use a pool parking space for a motor vehicle other than a business or certificated vehicle, and whose hours of employment on the day both begin and end in the period from 6 am to 10 pm; and
 - (g) The number of pool parking users who are not entitled to use a pool parking space for a motor vehicle other than a business or certificated vehicle, and whose hours of employment on the day both begin and end in the period from 6 am to 10 pm.
3. Under **s. RD 33C(4)**, the quantities (the **test quantities**) obtained for the application of **s. CX 9B** from a test period apply for a term of 3 years, or for a shorter period chosen under s. RD 33C(5), starting:
 - (a) On the first day of the test period, if the employer pays FBT quarterly; or
 - (b) On the first day of the tax year in which the test period occurs, if the employer pays FBT annually; or
 - (c) On the first day of the income year in which the test period occurs, if the employer pays FBT on an income year basis.
4. Under **s. RD 33C(5)**, the employer may choose a term ending on a date that is the last day of a particular period (a return period) for which the employer makes a return for fringe benefit tax, and is before the end of the 3-year period referred to in **s. RD 33C(4)** for a test period, and the employer must not use the test quantities after that date.
5. Under **s. RD 33C(6)**, the employer must not continue to use the test quantities after:
 - (a) The end of a return period in which the value for the test period of the number of pool parking spaces or the number of pool parking users, whichever is the lesser for the test period, is exceeded for the return period by 10% of that value or more;
 - (b) A date specified by the Commissioner in a notice informing the employer that the Commissioner considers the test quantities do not fairly represent the use of parking spaces.

[**s. RD 33C** as proposed in **cl. 44B** of the *Supplementary Order Paper* (11 December 2012) to the *Livestock Bill* coming into force on 1 April 2014]

FBT ON CAR PARKS

(6) ATTRIBUTION OF FRINGE BENEFITS TO INDIVIDUAL EMPLOYEES

Making available an area for parking a motor vehicle for an employee's private use under s. CX 9B is included in the list of fringe benefits in s. RD 47 that **must be attributed** to an employee, **calculating the FBT liability under s. RD 50**.

Note that there is no threshold value: the fringe benefit must be attributed whatever the value.

The **general rule** in s. RD 50(2) is that the employer's FBT liability is calculated using the formula:

$$\text{(Tax on all-inclusive pay) - (tax on cash pay)}$$

Tax on cash pay is the tax calculated at the rate set in the Table in Schedule 1, Part A, clause 1 on the employee's cash pay (salary or wages, an extra pay, and a schedular payment):

- (a) If the employee is not a shareholder-employee, the employee's actual cash pay, plus income under the PSA rules attributed in the previous year, paid by the employer or a related employer; or
- (b) If the employee is a major shareholder, cash pay includes dividends and interest paid by the employer or a related employer, and income not subject to PAYE tax derived in the previous year.

Tax on all-inclusive pay is the tax calculated at the rate set in the Table in Schedule 1, Part C "Basic rates for attributed fringe benefits". The rates are:

- (a) For all-inclusive pay from \$0 - \$12,530: 11.73%
- (b) For all-inclusive pay from \$12,531 - \$40,580: 21.21%
- (c) For all-inclusive pay from \$40,581 - \$55,980: 42.86%
- (d) For all-inclusive pay from \$55,981 upwards: 49.25%.

All-inclusive pay is calculated, under s. RD 51, using the formula:

$$\text{(Cash pay) - (tax on cash pay) + (taxable value of all fringe benefits)}$$

The calculation differs depending on whether or not the employee is a major shareholder:

- (a) If the employee is not a major shareholder, cash pay is the cash pay of the employee paid by the employer or a related employer, tax on cash pay is calculated in the usual way using the standard marginal rates of tax in Schedule 1, Part A, clause 1, and the taxable value of fringe benefits includes all fringe benefits attributed to the employee in the tax year.
- (b) If the employee is a major shareholder, cash pay includes dividends and interest paid by the employer or a related employer, and taxable value of fringe benefits includes fringe benefits attributed to a person associated with the employee in the income year if the associated person does not receive the benefits as an employee of the employer.

Instead of calculating FBT using the above formula in s. RD 50(2), an employer may choose, under s. RD 50(5), to pay FBT at the top rate of 49.25% on the taxable value of attributed fringe benefits.

An employer has a third option when there is insufficient information to complete a calculation for a shareholder-employee who pays provisional tax or an employee who has income under the PSA rules: the employer either pays FBT at 42.86% and performs the above calculation in the next tax year, or pays FBT at 49.25%.

[s. RD 47 as amended by cl. 44D of the *Supplementary Order Paper* (11 December 2012) to the *Livestock Bill* coming into force on 1 April 2014, s. RD 50, RD 51 & RD 52]

FBT ON CAR PARKS

(7) ATTRIBUTED BENEFITS PROVIDED TO MORE THAN ONE EMPLOYEE

1. The general rule for the attribution of benefits provided to more than 1 employee is contained in **s. RD 48**:

If an employer provides a fringe benefit to which section RD 47 applies to more than 1 employee, the employer must attribute the benefit to the employee who mainly uses or receives it in a quarter or income year, as applicable. If the employer cannot determine which employee mainly uses or receives the benefit, they must pool the benefit under section RD 53.

2. A **new section RD 48(2)** is being inserted which states:

“Exception for parking spaces

(2) For a fringe benefit arising under **s. CX 9B** (some parking for motor vehicles):

(a) Subsection (1) does not apply:

(b) The employer may pool, under **s. RD 53**, a fringe benefit valued under **s. CX 9B(3)(d)** if all the employees have the same or a similar entitlement to the fringe benefit.”

3. A fringe benefit valued under s. CX 9B(3)(d) is a fraction of a parking space because the number of pool parking spaces is less than the number of pool parking users – see **(3)** on page **(4)**.

4. **Section RD 53 sets out the rules for pooling non-attributed fringe benefits** and, inter alia, applies when a benefit to which s. RD 48 applies cannot be attributed to a particular employee.

(a) The employer must pool the value of the benefits.

(b) For the final quarter of the tax year, the employer must create 2 pools, 1 for each of the following groups of persons:

(i) The first pool is for an employee who is a major shareholder, or a person associated with an employee who is a major shareholder (unless that person receives the fringe benefit as an employee of the employer):

(ii) The second pool is for all other employees.

(c) The employer must calculate FBT for the final quarter of the tax year on the annual taxable value of the pooled fringe benefits:

(i) At the rate of 49.25% for the first pool; and

(ii) At the rate of 42.86% for the second pool.

[**s. RD 48** as amended by **cl. 44E** of the *Supplementary Order Paper* (11 December 2012) to the *Livestock Bill* coming into force on 1 April 2014, & **s. RD 53**]

FBT ON CAR PARKS

(8) EMPLOYEE CONTRIBUTION

If an employee pays an amount for receiving a fringe benefit, the value of the benefit is reduced by the lesser of:

- (a) The value of the benefit; and
- (b) The amount paid.

[s. **RD 54(2)** as amended by **cl. 44F** of the *Supplementary Order Paper* (11 December 2012) to the *Livestock Bill* coming into force on 1 April 2014]

FBT ON CAR PARKS

(9) GST ON FBT ON CAR PARKS: THE RULES

1. For GST purposes, if a registered person has, or is deemed to have, provided or granted a fringe benefit to another person under the FBT rules of the Income Tax Act 2007, the providing or granting of the fringe benefit is treated as being a supply of goods and services made by the registered person in the course or furtherance of their taxable activity.

[s. 21I(1) of the GST Act]

2. This rule does not apply to the extent that:

- (a) The other person paid an amount for the receipt or enjoyment of the fringe benefit; or

- (b) The fringe benefit arose by virtue an exempt supply under s. 14 of the GST Act; or

- (c) The fringe benefit arose by virtue of a supply that is charged with tax at the rate of 0% under s. 11, 11A, 11AB, or 11B of the GST Act; or

- (d) The fringe benefit is, or is, deemed to be, provided or granted by a registered person in the course of making exempt supplies.

[s. 21I(2) of the GST Act]

3. The ordinary time of supply rules in s. 9 of the GST Act, and the apportionment adjustment comparisons required under s. 21C of the GST Act, do not apply. The supply of goods and services is treated as taking place at the time the fringe benefit is, or is deemed to be, provided or granted.

[s. 21I(3) of the GST Act]

4. A registered person who provides or grants a fringe benefit to another person under the Income Tax Act 2007 must pay the tax on the taxable value of the fringe benefit in the person's FBT return by the time specified in s. RA 15, and s. RD 59 to RD 62, of the Income Tax Act 2007, and s. 46B to 46D of the Tax Administration Act 1994, as appropriate.

[s. 23A(1) of the GST Act]

5. Payment of the tax on the taxable value of the fringe benefit is treated as a payment of FBT for the purposes of filing the fringe benefit return and Parts IVA, VI, VII, IX, X, and XI, of the Tax Administration Act 1994.

[s. 23A(2) of the GST Act]

6. If goods and services are treated by s. 21I(1) as being supplied by a person, the consideration in money for the supply is:

- (a) An amount equal to the taxable value of the fringe benefit as determined by s. CX 20, and RD 54 to RD 57 of the Income Tax Act 2007, if paragraph (b) does not apply; or

- (b) Nil, if the person would not have a deduction under s. 20(3) relating to the supply of the fringe benefit if the consideration in money for the supply were given by paragraph (a).

[s. 10(7) of the GST Act]

FBT ON CAR PARKS

(10) GST ON FBT ON CAR PARKS: THE IMPLICATIONS

Based on the rules as set out on page 10 above, it is possible that an employer would not have a deduction under s. 20(3) for the supply of the fringe benefit in the following circumstances:

- (a) It is possible that an employer acquired a car park that is provided as a fringe benefit as part of a zero-rated acquisition under s. 11(1)(mb) where the car park was acquired recently.
- (b) Alternatively, an employer could have acquired the car park as part of the acquisition of a going concern that was zero-rated.
- (c) It is also possible that a lease of a car park could fall within the zero-rating rules if the rules for zero-rating the assignment of a lease apply to the acquisition of the car park.

Under such circumstances, there would be no output GST payable upon the provision of a fringe benefit that is a car park.

FBT ON CAR PARKS

(11) FAMILY SCHEME INCOME IMPLICATIONS FOR EMPLOYEES WHO ARE NOT CONTROLLERS

1. Proposed new rules, in new s. MB 7B, will include the fringe benefit value of car parks in the family scheme income of employees who are not controlling shareholders, but only if the employee has the option of receiving a greater amount of income instead.
2. Employees who are controlling shareholders – i.e. who together with associated persons hold an ownership interest of at least 50% - already have included in their family scheme income, under s. MB 8, the taxable value of fringe benefits that are attributed to them plus the FBT payable on those fringe benefits.
3. For a person to whom s. MB 8 does not apply for an income year – i.e. an employee who is not a controlling shareholder – the person’s family scheme income will be affected when the person has an employer who makes available:
 - (a) An area for parking a motor vehicle for the person's private use when, under the terms of the person's employment, the employee would be entitled to a greater amount of employment income should the person choose, or have chosen, not to receive the benefit of the area for parking:
 - (b) A motor vehicle for the person's private use when, under the terms of the person's employment, the person would be entitled to a greater amount of employment income should the person choose, or have chosen, not to receive the benefit of the motor vehicle:
 - (c) A short-term charge facility as defined in section CX 25(3) (Benefits provided by charitable organisations).
4. The person's family scheme income for the income year includes an amount equal to the total for the person and the income year of amounts, each of which is:
 - (a) The amount by which the employment income of the person would be greater in the absence of a benefit referred to in paragraph (a) or (b) above; and
 - (b) The value, including fringe benefit tax, of a fringe benefit provided to the person under a short-term charge facility referred to in paragraph (c), if the total value of such fringe benefits, not including fringe benefit tax, provided in the income year is more than the lesser for the income year of:
 - (i) 5% of the employee's salary or wages:
 - (ii) \$1,200.
5. The heading of s. MB 8 is to be changed to make it clear that it applies only to an employee who is a “controlling shareholder” – i.e. who, together with associated persons owns at least 50% of the employing company.

[s. MB 7B as proposed by cl. 39B and amendment to the heading of s. MB 8 proposed in cl. 39C of the *Supplementary Order Paper* (11 December 2012) to the *Livestock Bill* coming into force on 1 April 2014]