



# **Fringe Benefits Tax Assessment Act 1986**

**No. 39, 1986 as amended**

**Compilation start date:** 25 June 2014

**Includes amendments up to:** Act No. 48, 2014

This compilation has been split into 2 volumes

**Volume 1:** sections 1–78A  
Volume 2: sections 90–167  
Schedule  
Endnotes

Each volume has its own contents

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## About this compilation

### **This compilation**

This is a compilation of the *Fringe Benefits Tax Assessment Act 1986* as in force on 25 June 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 2 July 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

### **Uncommenced amendments**

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Modifications**

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

### **Provisions ceasing to have effect**

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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**An Act relating to the assessment and collection of the tax imposed by the *Fringe Benefits Tax Act 1986*, and for related purposes**

**Part I—Preliminary**

**1 Short title**

This Act may be cited as the *Fringe Benefits Tax Assessment Act 1986*.

**2 Commencement**

This Act shall come into operation on the day on which it receives the Royal Assent.

**2A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the Criminal Code sets out the general principles of criminal responsibility.

## Part II—Administration

### 3 General administration of Act

The Commissioner has the general administration of this Act.

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

### 4 Annual report

- (1) The Commissioner shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report on the working of this Act, including any breaches or evasions of this Act of which the Commissioner has notice.
- (2) The Minister shall cause a copy of a report furnished under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.
- (3) For the purposes of section 34C of the *Acts Interpretation Act 1901*, a report that is required by subsection (1) to be furnished as soon as practicable after 30 June in a year shall be taken to be a periodic report relating to the working of this Act during the year ending on that 30 June.

## **Part IIA—Core provisions**

### **Division 1—Working out an employer's fringe benefits taxable amount**

#### **5A Simplified outline of this Division**

The following is a simplified outline of this Division:

This Division explains how to work out an employer's fringe benefits taxable amount for a year of tax. This is the amount on which the employer must pay fringe benefits tax (see section 66).

#### **5B Working out an employer's *fringe benefits taxable amount***

*Years of tax before year of tax 2000-2001*

- (1) An employer's ***fringe benefits taxable amount*** for a year of tax earlier than the year of tax beginning on 1 April 2000 is the amount worked out using the formula:

$$\text{Employer's aggregate fringe benefits amount for the year of tax} \times \frac{1}{1 - \text{Rate of tax for the year of tax}}$$

Note: Other provisions affect the fringe benefits taxable amount. For example, see section 124 (about assessments).

*Year of tax 2000-2001 and later years*

- (1A) Subject to subsection (1D), an employer's ***fringe benefits taxable amount*** for the year of tax beginning on 1 April 2000 or a later year of tax is the sum of the subsection (1B) amount and the subsection (1C) amount.

Note: Other provisions affect the fringe benefits taxable amount. For example, see section 124 (about assessments).

**Part IIA** Core provisions

**Division 1** Working out an employer's fringe benefits taxable amount

Section 5B

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*Subsection (1B) amount*

- (1B) The **subsection (1B) amount** is the amount worked out using the formula:

$$\text{Type 1 aggregate fringe benefits amount} \times \frac{\text{FBT rate} + \text{GST rate}}{\left(1 - \text{FBT rate}\right) \times \left(1 + \text{GST rate}\right) \times \text{FBT rate}}$$

*Subsection (1C) amount*

- (1C) The **subsection (1C) amount** is the amount worked out using the formula:

$$\text{Type 2 aggregate fringe benefits amount} \times \frac{1}{1 - \text{FBT rate}}$$

*Increase in fringe benefits taxable amount for year of tax 2000-2001 and later years*

- (1D) If any benefits provided in respect of the employment of an employee of an employer are exempt benefits under section 57A, the employer's **fringe benefits taxable amount** for the year of tax beginning on 1 April 2000 or a later year of tax as worked out under subsection (1A) is increased by the employer's aggregate non-exempt amount for the year of tax concerned.

*How to work out aggregate non-exempt amount*

- (1E) An employer's **aggregate non-exempt amount** for the year of tax is worked out as follows.

*Method statement*

Step 1. For each employee, add:

- (a) the individual grossed-up type 1 non-exempt amount (see subsection (1F)) in relation to the employer for the year of tax; and
- (b) the individual grossed-up type 2 non-exempt amount (see subsection (1G)) in relation to the employer for the year of tax.

The result is the ***individual grossed-up non-exempt amount*** for the employee.

Step 2. If:

- (b) the employer is a government body and the duties of the employment of one or more employees are as described in paragraph 57A(2)(b) (which is about duties of employment being exclusively performed in or in connection with certain hospitals); or
- (c) the employer is a public hospital; or
- (ca) the employer provides public ambulance services or services that support those services and the employee is predominantly involved in connection with the provision of those services; or
- (d) the employer is a hospital described in subsection 57A(4) (which is about hospitals carried on by societies and associations that are rebatable employers);

**Part IIA** Core provisions

**Division 1** Working out an employer's fringe benefits taxable amount

Section 5B

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subtract \$17,000 from the individual grossed-up non-exempt amount for each employee of the employer referred to in paragraph (c), (ca) or (d), or each employee referred to in paragraph (b), for the year of tax. However, if the individual grossed-up non-exempt amount for such an employee is equal to or less than \$17,000, the amount calculated under this step for the employee is nil.

Step 3. If step 2 does not apply in respect of one or more employees of the employer:

- (a) reduce the individual grossed-up non-exempt amount for each such employee for the year of tax beginning on 1 April 2000 to zero; and
- (b) reduce the individual grossed-up non-exempt amount for each such employee for a later year of tax by \$30,000, but not below zero.

Step 4. Add together the amounts calculated under steps 2 and 3 in relation to the employees of the employer. The total amount is the employer's **aggregate non-exempt amount** for the year of tax.

*Individual grossed-up type 1 non-exempt amount*

(1F) For the purposes of step 1 in the method statement in subsection (1E), the **individual grossed-up type 1 non-exempt amount** of an employee in relation to the employer for the year of tax is:

$$\text{Type 1 individual base non-exempt amount} \times \frac{\text{FBT rate} + \text{GST rate}}{\left(1 - \text{FBT rate}\right) \times \left(1 + \text{GST rate}\right)} \times \frac{\text{FBT rate}}{\text{rate}}$$

*Individual grossed-up type 2 non-exempt amount*

- (1G) For the purposes of step 1 in the method statement in subsection (1E), the **individual grossed-up type 2 non-exempt amount** of an employee in relation to the employer for the year of tax is:

$$\text{Type 2 individual base non-exempt amount} \times \frac{1}{(1 - \text{FBT rate})}$$

*Working out the type 1 individual base non-exempt amount*

- (1H) An employee's **type 1 individual base non-exempt amount** in relation to the employer for the year of tax is worked out by adding the amounts worked out under step 3 of the method statement in subsection (1K) and step 3 of the method statement in subsection (1L).

*Working out the type 2 individual base non-exempt amount*

- (1J) An employee's **type 2 individual base non-exempt amount** in relation to the employer for the year of tax is worked out by adding the amounts worked out under step 4 of the method statement in subsection (1K) and step 4 of the method statement in subsection (1L).

*Working out the subsection (1K) amounts*

- (1K) An employee's subsection (1K) amounts for the year of tax are worked out as follows.

*Method statement*

- Step 1. Work out under subsection 135Q(3) for each of the employer's employees the amount that would be the employee's individual fringe benefit amount for the year of tax in respect of the employee's employment by the employer if subsection 135Q(1) were amended:

**Part IIA** Core provisions

**Division 1** Working out an employer's fringe benefits taxable amount

Section 5B

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- (a) by omitting "or 58"; and
  - (b) by omitting "one of those sections" from paragraph (b) and "those sections" from paragraph (c) and substituting in each case "that section".
- Step 2. Identify the benefits taken into account in step 1 that are GST-creditable benefits (see section 149A).
- Step 3. So much of the amount worked out under step 1 that relates to the benefits identified under step 2 is the **step 3 of subsection (1K) amount** for the individual.
- Step 4. The remainder of the amount is the **step 4 of subsection (1K) amount** for the individual.

*Working out the subsection (1L) amounts*

- (1L) An employee's subsection (1L) amounts for the year of tax are worked out as follows.

*Method statement*

- Step 1. Work out for each employee his or her share (if any) of the amounts that, if section 57A did not apply, would be the taxable values of the excluded fringe benefits for the year of tax in respect of the employee's employment by the employer if those benefits were not excluded fringe benefits, but disregarding benefits:
- (a) that constitute the provision of meal entertainment as defined in section 37AD (whether or not the employer made an election under section 37AA); or
  - (b) that are car parking fringe benefits; or

- (c) whose taxable values are wholly or partly attributable to entertainment facility leasing expenses.
- Step 2. Identify the benefits taken into account in step 1 that are GST-creditable benefits (see section 149A).
- Step 3. So much of the amount worked out under step 1 that relates to the benefits identified under step 2 is the **step 3 of subsection (1L) amount** for the individual.
- Step 4. The remainder of the amount is the **step 4 of subsection (1L) amount** for the individual.

*Using aggregate fringe benefits amount for most recent base year*

- (2) This section is subject to section 135G.

Note: Section 135G allows the fringe benefits taxable amount to be worked out using the employer's aggregate fringe benefits amount from an earlier year of tax in special cases.

*Definitions*

- (3) In this section:

**FBT rate** means the rate of fringe benefits tax for the year of tax.

**GST rate** means the rate of goods and services tax payable under the *A New Tax System (Goods and Services Tax) Act 1999* for the year of tax.

**type 1 aggregate fringe benefits amount** means the employer's type 1 aggregate fringe benefits amount for the year of tax worked out under subsection 5C(3).

**type 2 aggregate fringe benefits amount** means the employer's type 2 aggregate fringe benefits amount for the year of tax worked out under subsection 5C(4).

## Division 2—Working out an employer's aggregate fringe benefits amount

### 5C Aggregate fringe benefits amount

- (1) Work out an employer's *aggregate fringe benefits amount* for a year of tax earlier than the year of tax beginning on 1 April 2000 as follows:

*Method statement*

Step 1. Work out under Division 3 for each of the employer's employees the individual fringe benefits amount for the year of tax in respect of the employment of the employee by the employer.

Step 2. Add up all the individual fringe benefits amounts worked out under Step 1.

Step 3. Add up the taxable value of every excluded fringe benefit (other than an amortised fringe benefit) relating to an employee of the employer, the employer and the year of tax.

Note: Subsection 5E(3) explains what is an excluded fringe benefit.

Step 4. Add the total from Step 2 to the total from Step 3.

Note: The result of Step 4 is the employer's aggregate fringe benefits amount if there are no amortised fringe benefits or reducible fringe benefits in relation to the employer.

Step 5. Add to the total from Step 4 the amortised amount for the year of tax of each amortised fringe benefit (if any) relating to an employee of the employer, the employer and any year of tax.

Step 6. Subtract from the total from Step 5 the reduction amount for the year of tax of each reducible fringe benefit (if any) relating to an employee of the employer, the employer and the year of tax.

- (2) An employer's **aggregate fringe benefits amount** for the year of tax beginning on 1 April 2000 or a later year of tax is the sum of the employer's type 1 aggregate fringe benefits amount and the employer's type 2 aggregate fringe benefits amount for the year of tax.
- (3) Work out an employer's **type 1 aggregate fringe benefits amount** for a year of tax as follows.

*Method statement*

Step 1. Identify the fringe benefits in respect of each of the employer's employees that are GST-creditable benefits (see section 149A), and work out under Division 3 for each of those employees the individual fringe benefits amount for the year of tax in relation to those fringe benefits.

Step 2. Add up all the individual fringe benefits amounts worked out under step 1.

Step 3. Identify the excluded fringe benefits (other than an amortised fringe benefit) for the year of tax in respect of each of the employer's employees that are GST-creditable benefits, and add up the taxable values of all those excluded fringe benefits.

Note 1: Subsection 5E(3) explains what is an excluded fringe benefit.

Note 2: Section 149A explains what is a GST-creditable benefit.

Step 4. Add the total from step 2 to the total from step 3.

Note: The result of step 4 is the employer's type 1 aggregate fringe benefits amount if there are no amortised amounts in relation to the employer.

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Step 5. Add to the total from step 4 the amortised amount for the year of tax of each amortised fringe benefit (if any) relating to an employee of the employer, the employer and any year of tax that are GST-creditable benefits. The total amount is the employer's **type 1 aggregate fringe benefits amount** for the year of tax.

Note: Section 65CA explains what is an amortised fringe benefit.

- (4) Work out an employer's **type 2 aggregate fringe benefits amount** for a year of tax as follows.

*Method statement*

Step 1. Identify, in respect of each of the employer's employees, the fringe benefits that are not taken into account under step 1 of the method statement in subsection (3), and work out under Division 3 for each of those employees the individual fringe benefits amount for the year of tax in relation to those fringe benefits.

Step 2. Add up all the individual fringe benefits amounts worked out under step 1.

Step 3. Identify, in respect of each of the employer's employees, the excluded fringe benefits (other than an amortised fringe benefit) for the year of tax that are not taken into account under step 3 of the method statement in subsection (3), and add up the taxable values of all those excluded fringe benefits.

Note: Subsection 5E(3) explains what is an excluded fringe benefit.

Step 4. Add the total from step 2 to the total from step 3.

Note: The result of step 4 is the employer's type 2 aggregate fringe benefits amount if there are no amortised amounts or reducible fringe benefits in relation to the employer.

Step 5. Add to the total from step 4 the amortised amount for the year of tax of each amortised fringe benefit (if any) relating to an employee of the employer, the employer and any year of tax that is not taken into account under step 5 of the method statement in subsection (3).

Note 1: The result of step 5 is the employer's type 2 aggregate fringe benefits amount if there are no reducible fringe benefits in relation to the employer.

Note 2: Section 65CA explains what is an amortised fringe benefit.

Step 6. Subtract from the total from step 5 the reduction amount for the year of tax of each reducible fringe benefit (if any) relating to an employee of the employer, the employer and the year of tax. The total amount is the employer's ***type 2 aggregate fringe benefits amount*** for the year of tax.

Note: Other provisions may affect the aggregate fringe benefits amount. For example, see section 67 (about arrangements to avoid or reduce tax), section 135L (about reducing the aggregate fringe benefits amount of an employer who is in business for only part of a year of tax) and section 152B (about entertainment facility leasing expenses).

## Division 3—Employee's individual fringe benefits amount

### 5D Simplified outline

The following is a simplified outline of this Division:

An employee's individual fringe benefits amount is the employee's share of the taxable value of fringe benefits (with some exclusions) provided in respect of his or her employment.

### 5E Employee's individual fringe benefits amount

#### *Overview*

- (1) This section explains how to work out an employee's **individual fringe benefits amount** for a year of tax in respect of the employee's employment by an employer.

#### *General rule*

- (2) The **individual fringe benefits amount** is the sum of the employee's share of the taxable value of each fringe benefit that relates to the year of tax and is provided in respect of the employment other than an excluded fringe benefit.

#### *What is an excluded fringe benefit?*

- (3) An **excluded fringe benefit** is a fringe benefit:
  - (a) constituted by the provision of meal entertainment (as defined in section 37AD, whether or not the employer has elected that Division 9A of Part III apply to the employer); or
  - (b) that is a car parking fringe benefit (see subsection 136(1)); or
  - (c) whose taxable value is wholly or partly attributable to entertainment facility leasing expenses; or
  - (e) whose taxable value is worked out under section 59 (about remote area residential fuel); or
  - (f) whose taxable value is reduced under section 60 (about remote area housing); or

- (g) that is an amortised fringe benefit (see subsection 136(1)); or
- (h) that is a reducible fringe benefit (see subsection 136(1)); or
- (i) that is a benefit prescribed by the regulations for the purposes of this paragraph; or
- (j) that relates to occasional travel to a major population centre in Australia provided to employees and family members resident in a location that is not in or adjacent to an eligible urban area; or
- (k) that relates to freight costs for foodstuffs provided to employees resident in a location that is not in or adjacent to an eligible urban area; or
- (l) that is provided to address a security concern:
  - (i) relating to the personal safety of an employee, or an associate of an employee; and
  - (ii) that arises in respect of the employee's employment.

*If section 135G applies to the employer*

- (4) If:
  - (a) section 135G applies for working out the employer's liability to pay tax for the year of tax; and
  - (b) one or more fringe benefits are provided in relation to the year of tax in respect of the employee's employment by the employer;

the employee's ***individual fringe benefits amount*** is the amount determined by the employer in writing. This subsection has effect despite subsection (2).

Note: Section 135G allows use of the employer's aggregate fringe benefits amount for an earlier year of tax in working out the employer's liability for tax for the current year of tax.

*Determining individual fringe benefits amounts*

- (5) In making a determination under subsection (4), the employer must:
  - (a) ensure that the total of the amount or amounts determined by the employer under that subsection for the year of tax equals the aggregate fringe benefits amount used for working out the employer's liability to pay tax for the year of tax; and

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- (b) if that subsection applies to 2 or more of the employer's employees for the year of tax—act reasonably, having regard to the fringe benefit or fringe benefits provided in relation to the year of tax in respect of each employee's employment.

*Security concerns relating to employees or associates*

- (6) A fringe benefit referred to in paragraph (3)(1) is an **excluded fringe benefit** only to the extent that its provision is consistent with a threat assessment in relation to the employee or associate made by a person who is recognised by:
  - (a) a relevant industry body or government body; or
  - (b) the Commissioner;as competent to make threat assessments.

**5F Working out the *employee's share***

*Overview*

- (1) This section explains how to work out an **employee's share** of the taxable value of a fringe benefit relating to the employee, an employer and a year of tax.

*Individually-valued benefit provided in respect of one employee*

- (2) The **employee's share** is 100% of the taxable value if:
  - (a) the fringe benefit was provided in respect of the employment of the employee by the employer and was not provided in respect of the employment of anyone else; and
  - (b) the taxable value of the fringe benefit was worked out for that particular fringe benefit (not merely as part of the total taxable value of fringe benefits in a class including that particular benefit).

*Individually-valued benefit shared by 2 or more employees*

- (3) The **employee's share** is so much of the taxable value as is reasonably attributable to the provision of the fringe benefit in respect of the employee's employment by the employer, taking account of any relevant matters, if:

- (a) the fringe benefit was provided in respect of the employment of the employee by the employer and in respect of the employment of another employee; and
- (b) the taxable value of the fringe benefit was worked out for that particular fringe benefit (not merely as part of the total taxable value of fringe benefits in a class including that particular benefit).

*Benefits valued in aggregate*

- (4) If:
  - (a) the fringe benefit is one of a class of fringe benefits provided in respect of the employment of one or more employees by the employer; and
  - (b) the total taxable value of all the fringe benefits in the class is worked out by a single calculation;the **employee's share** of the taxable value of the fringe benefit is so much of the total taxable value as is reasonably attributable to the provision of the fringe benefit in respect of the employee's employment by the employer, taking account of any relevant matters.

*Shares of different employees must total 100% of taxable value*

- (5) If:
  - (a) the fringe benefit was provided in respect of the employment of 2 or more employees; and
  - (b) each of those employees has an employee's share of the taxable value of the fringe benefit;the sum of those shares must equal the taxable value of the fringe benefit.

*Single employee's shares must equal total taxable value*

- (6) If all the fringe benefits in a class described in subsection (4) are provided in respect of the employment of the same employee (and none of them is provided in respect of the employment of anyone else), the sum of the employee's shares of the taxable value of the

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fringe benefits must equal the total taxable value of the fringe benefits.

## **Part III—Fringe benefits**

### **Division 1—Preliminary**

#### **6 Part not to limit generality of *benefit***

The provisions of this Part do not limit the generality of the expression *benefit*.

## Division 2—Car fringe benefits

### Subdivision A—Car benefits

#### 7 Car benefits

- (1) Where:
- (a) at any time on a day, in respect of the employment of an employee, a car held by a person (in this subsection referred to as the *provider*):
    - (i) is applied to a private use by the employee or an associate of the employee; or
    - (ii) is taken to be available for the private use of the employee or an associate of the employee; and
  - (b) either of the following conditions is satisfied:
    - (i) the provider is the employer, or an associate of the employer, of the employee;
    - (ii) the car is so applied or available, as the case may be, under an arrangement between:
      - (A) the provider or another person; and
      - (B) the employer, or an associate of the employer, of the employee;
- that application or availability of the car shall be taken to constitute a benefit provided on that day by the provider to the employee or associate in respect of the employment of the employee.
- (2) Where, at a particular time, the following conditions are satisfied in relation to an employee of an employer:
- (a) a car is held by a person, being:
    - (i) the employer;
    - (ii) an associate of the employer; or
    - (iii) a person (other than the employer or an associate of the employer) with whom, or in respect of whom, the employer or an associate of the employer has an arrangement relating to the use or availability of the car;

- (b) the car is garaged or kept at or near a place of residence of the employee or of an associate of the employee;  
the car shall be taken, for the purposes of this Act, to be available at that time for the private use of the employee or associate, as the case may be.
- (2A) Subsection (2) does not apply to a car that:
- (a) is used by an ambulance service, a firefighting service or a police service; and
  - (b) is visibly marked on its exterior for that use; and
  - (c) is fitted with:
    - (i) a flashing warning light; and
    - (ii) a horn, bell or alarm that can give audible warning of the approach or position of the car by making sounds with different amplitude, tones or frequencies on a regular time cycle.
- (3) Where, at a particular time, the following conditions are satisfied in relation to an employee of an employer:
- (a) a car is held by a person, being:
    - (i) the employer;
    - (ii) an associate of the employer; or
    - (iii) a person (other than the employer or an associate of the employer) with whom, or in respect of whom, the employer or an associate of the employer has an arrangement relating to the use or availability of the car;
  - (b) the car is not at business premises of:
    - (i) the employer;
    - (ii) an associate of the employer; or
    - (iii) a person (other than the employer or an associate of the employer) with whom, or in respect of whom, the employer or an associate of the employer has an arrangement relating to the use or availability of the car;
  - (c) any of the following conditions is satisfied:
    - (i) the employee is entitled to apply the car to a private use;
    - (ii) the employee is not performing the duties of his or her employment and has custody or control of the car;
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- (iii) an associate of the employee is entitled to use, or has custody or control of, the car;  
the car shall be taken, for the purposes of this Act, to be available at that time for the private use of the employee or associate, as the case may be.
- (4) For the purposes of subsection (3), where a prohibition on the application of a car, or on the application of a car for a private use, by a person is not consistently enforced, the person shall be deemed to be entitled to use the car, or to apply the car to a private use, notwithstanding the prohibition.
- (5) For the purposes of this Act, a car shall be deemed to be applied by a person if it is applied in accordance with the directions, instructions or wishes of the person.
- (6) For the purposes of this Division, a car that is let on hire to a person under a hire-purchase agreement shall be deemed:
- (a) to have been purchased by the person at the time when the person first took the car on hire; and
  - (b) to have been owned by the person at all material times.
- (7) A reference in this Division to a car held by a person (in this subsection referred to as the *provider*) does not include a reference to:
- (a) a taxi let on hire to the provider; or
  - (b) a car let on hire to the provider under an agreement of a kind ordinarily entered into by persons taking cars on hire intermittently as occasion requires on an hourly, daily, weekly or other short-term basis unless the car has been or may reasonably be expected to be on hire under successive agreements of a kind that result in substantial continuity of the hiring of the car.

## 8 Exempt car benefits

- (1) Except insofar as section 7 provides that the application or availability of a car held by a person is a benefit, the application or availability of a car held by a person is an exempt benefit.

- (2) A car benefit provided in a year of tax in respect of the employment of a current employee is an exempt benefit in relation to the year of tax if:
- (a) the car is:
    - (i) a taxi, panel van or utility truck, designed to carry a load of less than 1 tonne; or
    - (ii) any other road vehicle designed to carry a load of less than 1 tonne (other than a vehicle designed for the principal purpose of carrying passengers); and
  - (b) there was no private use of the car during the year of tax and at a time when the benefit was provided other than:
    - (i) work-related travel of the employee; and
    - (ii) other private use by the employee or an associate of the employee, being other use that was minor, infrequent and irregular.
- (3) Where:
- (a) a car benefit relating to a particular car is provided by a particular person (in this subsection called the *provider*) in a year of tax in respect of the employment of a current employee of an employer;
  - (b) at all times during the year of tax when the car was held by the provider, the car was unregistered; and
  - (c) during the period in the year of tax when the car was held by the provider, the car was wholly or principally used directly in connection with business operations of:
    - (i) the employer; or
    - (ii) if the employer is a company—the employer or a company that is related to the employer;
- the car benefit is an exempt benefit in relation to the year of tax.
- (4) A car benefit is an exempt benefit in relation to a year of tax if:
- (a) the car benefit is provided in the year of tax in respect of the employment of a current employee; and
  - (b) the person providing the benefit cannot deduct an amount under the *Income Tax Assessment Act 1997* for providing the benefit because of section 86-60 of that Act.

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Note: Section 86-60 of the *Income Tax Assessment Act 1997* (read together with section 86-70 of that Act) limits the extent to which personal service entities can deduct car expenses. Deductions are not allowed for more than one car for private use.

**Subdivision B—Taxable value of car fringe benefits**

**9 Taxable value of car fringe benefits—statutory formula**

- (1) Subject to this Part, where one or more car fringe benefits in relation to an employer in relation to a year of tax relate to a particular car held by a particular person (in this section referred to as the *provider*), the taxable value of that fringe benefit, or the aggregate of the taxable values of those fringe benefits, as the case may be, in relation to that year of tax, is the amount calculated in accordance with the formula:

$$\left( 0.2 \times \text{Base value of the car} \times \frac{\text{Number of days during that year of tax on which the car fringe benefits were provided by the provider}}{\text{Number of days in that year of tax}} \right) - \text{Amount (if any) of the recipient's payment}$$

Note: For special rules for the years of tax starting on 1 April 2011, 1 April 2012 and 1 April 2013, see item 9 of Schedule 5 to the *Tax Laws Amendment (2011 Measures No. 5) Act 2011*.

- (2) For the purposes of this section:
- (a) the base value of the car is the sum of:
- (i) where, at the earliest holding time, the car was owned by the provider or an associate of the provider, the amount calculated in accordance with the formula AB, where:
- A* is the cost price of the car to the provider or associate, as the case may be; and
- B* is:

- (A) in a case where the commencement of the year of tax is later than the fourth anniversary of the earliest holding time— $\frac{2}{3}$ ; or
- (B) in any other case—1; and
- (ii) in a case to which subparagraph (i) does not apply—the amount calculated in accordance with the formula  $AB$ , where:
  - $A$  is the leased car value of the car at the earliest holding time; and
  - $B$  is:
    - (A) in a case where the commencement of the year of tax is later than the fourth anniversary of the earliest holding time— $\frac{2}{3}$ ; or
    - (B) in any other case—1; and
  - (iii) the cost price of each non-business accessory that:
    - (A) was fitted to the car after the earliest holding time and before the end of the year of tax; and
    - (B) remained fitted to the car at a time during the year of tax when the car was held by the provider;
- (b) the earliest holding time, in relation to a car held by the provider at a particular time (in this paragraph referred to as the *current time*), is the earliest time before the current time when the car was held by the provider or an associate of the provider; and
- (e) the amount of the recipient's payment is the sum of:
  - (i) in a case where expenses were incurred to the provider or employer during the holding period by recipients of the car fringe benefits by way of consideration for the provision of the car fringe benefits—the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses; and
  - (ia) in a case where car expenses in respect of fuel or oil for the car were incurred during the holding period by recipients of the car fringe benefits and:

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- (A) the persons incurring those expenses give to the employer, before the declaration date, declarations, in a form approved by the Commissioner, in respect of those expenses; or
  - (B) documentary evidence of those expenses is obtained by the persons incurring the expenses and given to the employer before the declaration date;
- the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses; and
- (ii) in a case where:
    - (A) car expenses in respect of the car (other than car expenses in respect of fuel or oil for the car) were incurred during the holding period by recipients of the car fringe benefits; and
    - (B) documentary evidence of those expenses is obtained by the persons incurring the expenses and given to the employer before the declaration date;
- the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses; and
- (f) the holding period is the period in the year of tax when the car was held by the provider.

**10 Taxable value of car fringe benefits—cost basis**

- (1) An employer may, in relation to a particular car, elect that this section apply in relation to all the car fringe benefits in relation to the employer in relation to a year of tax that relate to that car.
- (2) Subject to this Part, where an election is made under subsection (1), the taxable value, or the aggregate of the taxable values, as the case requires, of the car fringe benefits in relation to the employer in relation to the year of tax that relate to the car while it was held by a particular person (in this section referred to as the *provider*) during a particular period (in this section referred

to as the **holding period**) in the year of tax is the amount calculated in accordance with the formula:

$$(C \times (100\% - BP)) - R$$

where:

**C** is the operating cost of the car during the holding period;

**BP** is:

- (a) if, under section 10A or 10B, the employer is not entitled to a reduction in the operating cost of the car on account of business journeys undertaken in the car during the holding period—nil; or
- (c) in any other case—the business use percentage applicable to the car for the holding period; and

**R** is the amount (if any) of the recipient's payment.

(3) For the purposes of subsection (2):

- (a) the operating cost of the car during the holding period is the sum of:
  - (i) any car expenses (other than insured repair expenses or expenses in respect of registration and insurance) relating to the car incurred during the holding period (whether the expenses are incurred by the provider or by any other person), not including, in a case where the car is leased to the provider, any car expenses incurred by the lessor pursuant to the lease agreement; and
  - (ii) so much of any expense paid or payable in respect of the registration of, or insurance in respect of, the car as is attributable to the holding period (whether the expenses are incurred by the provider or by any other person), not including:
    - (A) in a case where the car is owned by the provider—any expense incurred before the provider became the owner of the car; or
    - (B) in a case where the car is leased to the provider—any expense incurred by the lessor pursuant to the lease agreement; and

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- (iii) in a case where the car is owned by the provider:
  - (A) the amount of depreciation that is deemed to have been incurred by the provider in respect of the car in respect of the holding period; and
  - (B) the amount of interest that is deemed to have been incurred by the provider in respect of the car in respect of the holding period; and
- (iv) in a case where the car is owned by the provider and a non-business accessory was fitted to the car during the period when the car was owned by the provider and remained fitted to the car at a time during the holding period:
  - (A) the amount of depreciation that would be deemed to have been incurred by the provider in respect of the accessory in respect of the holding period if the accessory were a car; and
  - (B) the amount of interest that would be deemed to have been incurred by the provider in respect of the accessory in respect of the holding period if the accessory were a car; and
- (v) in a case where the car is leased to the provider:
  - (A) where sub-subparagraph (B) does not apply—so much of the charges paid or payable under the lease agreement as are attributable to the holding period; or
  - (B) where the lessor was entitled to privileges or exemptions in relation to customs duty in respect of a transaction by which the lessor purchased the car—the amount that could reasonably be expected to have been applicable under sub-subparagraph (A) if the lessor had not been entitled to those privileges or exemptions; and
- (vi) in a case where the car is neither owned by, nor leased to, the provider—the amount of depreciation and interest that would be deemed to have been incurred by the provider in respect of the car in respect of the holding period if the car had been purchased by the

provider at the time when the provider commenced to hold the car for a consideration equal to the leased car value of the car at that time; and

(c) the amount of the recipient's payment is the sum of:

(i) in a case where expenses were incurred to the provider or employer during the holding period by recipients of the car fringe benefits by way of consideration for the provision of the car fringe benefits—the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses; and

(ia) in a case where car expenses in respect of fuel or oil for the car were incurred during the holding period by recipients of the car fringe benefits and:

(A) the persons incurring those expenses give to the employer, before the declaration date, declarations, in a form approved by the Commissioner, in respect of those expenses; or

(B) documentary evidence of those expenses is obtained by the persons incurring the expenses and given to the employer before the declaration date;

the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses; and

(ii) in a case where:

(A) car expenses in respect of the car (other than car expenses in respect of fuel or oil for the car) were incurred during the holding period by recipients of the car fringe benefits; and

(B) documentary evidence of those expenses is obtained by the persons incurring the expenses and given to the employer before the declaration date;

the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses.

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- (3A) A reference in subparagraph (3)(a)(i) to an insured repair expense relating to a car is a reference to:
- (a) so much of an expense incurred in respect of repairs to the car as does not exceed an amount:
    - (i) received by way of insurance in respect of the repairs by the person incurring the expense;
    - (ii) paid by way of insurance in respect of the repairs in discharge of the obligation of the insured to pay the expense;
    - (iii) received by way of compensation in respect of the repairs by the person incurring the expense from the person legally responsible for the damage to the car; or
    - (iv) paid by way of compensation in respect of the repairs by the person legally responsible for the damage to the car in discharge of the obligation of the person incurring the expense to pay the expense; or
  - (b) an expense incurred in respect of repairs to the car:
    - (i) by an insurer under a contract of insurance; or
    - (ii) by way of compensation by the person legally responsible for the damage to the car.
- (3B) Where, in accordance with subsection 162K(2), the identity of a car changes one or more times during the period (in this subsection called the **overall holding period**) that, apart from that subsection, would be the holding period, the operating cost of the car during each period (in this subsection called a **statutory holding period**) that is a holding period in relation to the car when the car had a separate identity is so much of the amount that would have been the operating cost of the car during the overall holding period (assuming that the identity of the car had not changed during the overall holding period) as is attributable to the statutory holding period.
- (3C) Where, in accordance with subsection 162K(2), the identity of a car changes one or more times during the period (in this subsection called the **overall holding period**) that, apart from that subsection, would be the holding period, the recipient's payment in relation to each period (in this subsection called a **statutory holding period**) that is a holding period in relation to the car when the car had a
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separate identity is so much of the amount that would have been the recipient's payment in relation to the overall holding period (assuming that the identity of the car had not changed during the overall holding period) as is attributable to the statutory holding period.

(3D) In determining, for the purposes of this section, whether:

- (a) an expense is paid or payable in respect of the registration of, or insurance in respect of, a car; or
- (b) a charge is paid or payable under a lease agreement in respect of a car; or
- (c) a lessor of a car is entitled to privileges or exemptions in relation to customs duty in respect of a transaction by which the lessor purchased the car;

a change, in accordance with subsection 162K(2), to the identity of the car shall be disregarded.

(4) An election by an employer under subsection (1) in relation to a year of tax:

- (a) shall be made by notice in writing to the Commissioner; and
- (b) shall be lodged with the Commissioner on or before the declaration date.

(5) Where:

- (a) an employer elects that this section apply in relation to all the car fringe benefits in relation to the employer in relation to a year of tax that relate to a particular car; and
- (b) the taxable value, or the aggregate of the taxable values, as the case requires, of the car fringe benefits that relate to the car ascertained under subsection (2) of this section exceeds the taxable value, or the aggregate of the taxable values, as the case requires, that would have been ascertained under section 9 if that election had not been made;

this Act (other than section 162G) applies, and shall be deemed always to have applied, for the purposes of ascertaining that taxable value, or the aggregate of those taxable values, as the case requires, as if that election had not been made.

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- (6) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to subsection (5).

**10A No reduction of operating cost in a log book year of tax unless log book records and odometer records are maintained**

Where one or more car fringe benefits in relation to an employer in relation to a year of tax relate to a car while it was held by a particular person (in this section called the *provider*) during a particular period (in this section called the *holding period*) in a year of tax that is a log book year of tax of the employer in relation to the car, the employer is entitled to a reduction in the operating cost of the car on account of business journeys undertaken in the car during the holding period if, and only if:

- (a) log book records and odometer records are maintained by or on behalf of the provider for an applicable log book period in relation to the car; and
- (b) odometer records are maintained by or on behalf of the provider for the holding period; and
- (c) if the provider is not the employer—those log book records and odometer records are given to the employer before the declaration date; and
- (d) the employer specifies the employer's estimate of the number of business kilometres travelled by the car during the holding period; and
- (e) the employer specifies a percentage as the business use percentage applicable to the car in relation to the provider for the holding period.

**10B No reduction of operating cost in a non-log book year of tax unless log book records and odometer records are maintained in log book year of tax**

Where one or more car fringe benefits in relation to an employer in relation to a year of tax relate to a car while it was held by a particular person (in this section called the *provider*) during a particular period (in this section called the *holding period*) in a year of tax that is not a log book year of tax of the employer in relation to the car, the employer is entitled to a reduction in the

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operating cost of the car on account of business journeys undertaken during the holding period in the car if, and only if:

- (a) odometer records are maintained by or on behalf of the provider in relation to the car for the holding period and, if the provider is not the employer, are given to the employer before the declaration date; and
- (b) the employer specifies the employer's estimate of the number of business kilometres travelled by the car in the holding period; and
- (c) the employer specifies the business use percentage applicable to the car in relation to the provider for the holding period.

## 11 Calculation of depreciation and interest

- (1A) For the purposes of this Subdivision, the amount of depreciation that is deemed to have been incurred by a person in respect of a car in respect of the period (in this subsection called the **holding period**) during a year of tax while the car was held by the person is the amount calculated in accordance with the formula:

$$\text{DEP} \times \frac{\text{DHP}}{\text{DCO}}$$

where:

**DEP** is the amount of depreciation that is deemed to have been incurred by the person in respect of the car in respect of the year of tax;

**DHP** is the number of days in the holding period during which the car was owned by the person; and

**DCO** is the number of days in the period in the year of tax during which the car was owned by the person.

- (1) For the purposes of this Subdivision, the amount of depreciation that is deemed to have been incurred by a person in respect of a car in respect of a year of tax is the amount calculated in accordance with the formula:

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$$\frac{ABC}{D}$$

where:

**A** is:

- (a) where the car was owned by the person at the beginning of the year of tax—the depreciated value of the car at that time;  
or
- (b) in any other case—the cost price of the car to the person;

**B** is the amount worked out for the person and the car using the formula in subsection (1AA).

**C** is the number of days in the period in the year of tax during which the car was owned by the person; and

**D** is the number of days in the year of tax.

- (1AA) The formula for working out the amount of **B** for the person and the car for subsection (1) is:

$$\frac{\text{DV percentage}}{\text{Effective life of the car}}$$

where:

**DV percentage** is the percentage applicable in using the diminishing value method (within the meaning of the *Income Tax Assessment Act 1997*) as at the start of the year of tax.

**effective life of the car** is the number of years in the period specified as the effective life of the car in a determination made by the Commissioner under section 40-100 of the *Income Tax Assessment Act 1997* and in effect at the most recent time (before the end of the year of tax) the person became the owner of the car.

- (1B) For the purposes of this Subdivision, the amount of interest that is deemed to have been incurred by a person in respect of a car in respect of the period (in this subsection called the **holding period**)

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during a year of tax while the car was held by the person is the amount calculated in accordance with the formula:

$$\text{INT} \times \frac{\text{DHP}}{\text{DCO}}$$

where:

**INT** is the amount of interest that is deemed to have been incurred by the person in respect of the car in respect of the year of tax;

**DHP** is the number of days in the holding period during which the car was owned by the person; and

**DCO** is the number of days in the period in the year of tax during which the car was owned by the person.

- (2) For the purposes of this Subdivision, the amount of interest that is deemed to have been incurred by a person in respect of a car in respect of a year of tax is the amount calculated in accordance with the formula:

$$\frac{\text{ABC}}{\text{D}}$$

where:

**A** is:

- (a) where the car was owned by the person at the beginning of the year of tax—the depreciated value of the car at that time;  
or
- (b) in any other case—the cost price of the car to the person;

**B** is the statutory interest rate in relation to the year of tax;

**C** is the number of days in the period in the year of tax during which the car was owned by the person; and

**D** is the number of days in the year of tax.

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**12 Depreciated value**

- (1) In this Subdivision, the *depreciated value* of a car at a particular time (the *relevant time*) is the amount worked out using the formula:

$$A - B$$

where:

*A* is:

- (a) if the car was owned by the person at the start of 1 July 1986—the depreciated value worked out under subsection (2); or  
(b) in any other case—the cost price of the car to the person.

*B* is the total amount of depreciation (if any) that would have been taken to have been incurred by the person in respect of the car for the period after the start of 1 July 1986 and before the relevant time when the person owned the car, if the depreciation taken to have been incurred for that period were calculated in accordance with subsection 11(1).

- (2) The *depreciated value* of a car owned by a person at the start of 1 July 1986 is the cost price of the car to that person, reduced by the total amount of depreciation that would have been taken to have been incurred by the person in respect of the car for the period before that time when it was owned by the person if:
- (a) the depreciation taken to have been incurred for that period were calculated in accordance with subsection 11(1); and  
(b) each year starting on 1 July were a year of tax.

**13 Expenditure to be increased in certain circumstances**

- (1) The following provisions apply for the purpose of determining the base value of a car for the purposes of section 9 or the operating cost of a car for the purposes of section 10.
- (2) Where the amount (if any) of expenditure incurred by a person under a transaction that is not an arm's length transaction is less than the amount (in this subsection referred to as the *increased*
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**amount**) of expenditure that could reasonably have been expected to have been incurred by the person under the transaction if it had been an arm's length transaction, the person shall be deemed, under the transaction, to have incurred the increased amount of expenditure.

- (3) The reference in subsection (2) to expenditure does not include a reference to expenditure by a recipient of a car benefit in relation to the car by way of reimbursement of expenditure incurred by another person.
- (4) Where, in a case to which subsection (2) does not apply:
- (a) a person acquires any property, or is provided with any benefit; and
  - (b) the person incurs no expenditure in respect of the acquisition of that property or the provision of that benefit;
- the person shall be deemed to have incurred, in respect of the acquisition of that property or the provision of that benefit, expenditure equal to the amount that the person could reasonably be expected to have been required to pay to purchase that property, or obtain the provision of that benefit, on the open market.

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**Division 3—Debt waiver fringe benefits**

**Subdivision A—Debt waiver benefits**

**14 Debt waiver benefits**

Where, at a particular time, a person (in this section referred to as the *provider*) waives the obligation of another person (in this section referred to as the *recipient*) to pay or repay to the provider an amount, the waiver shall be taken to constitute a benefit provided at that time by the provider to the recipient.

**Subdivision B—Taxable value of debt waiver fringe benefits**

**15 Taxable value of debt waiver fringe benefits**

Subject to this Part, the taxable value in relation to a year of tax of a debt waiver fringe benefit provided in the year of tax is the amount the payment or repayment of which is waived.

## **Division 4—Loan fringe benefits**

### **Subdivision A—Loan benefits**

#### **16 Loan benefits**

- (1) Where a person (in this subsection referred to as the *provider*) makes a loan to another person (in this subsection referred to as the *recipient*), the making of the loan shall be taken to constitute a benefit provided by the provider to the recipient and that benefit shall be taken to be provided in respect of each year of tax during the whole or a part of which the recipient is under an obligation to repay the whole or any part of the loan.

Note: A loan benefit that is taken under this subsection to be provided in respect of a year of tax may not be provided as a fringe benefit if:

- (a) the loan was made in that year of tax or a previous year of tax; and
- (b) a dividend is not taken to be paid under section 109D of the *Income Tax Assessment Act 1936* in relation to the loan, because of section 109N of that Act.

See paragraph (s) of the definition of *fringe benefit* in subsection 136(1) of this Act.

- (2) For the purposes of this Act, where:
- (a) a person (in this subsection referred to as the *debtor*) is under an obligation to pay or repay an amount (in this subsection referred to as the *principal amount*) to another person (in this subsection referred to as the *creditor*);
  - (b) the principal amount is not the whole or a part of the amount of a loan; and
  - (c) after the due date for payment or repayment of the principal amount, the whole or part of the principal amount remains unpaid;
- the following provisions have effect:
- (d) the creditor shall be deemed, immediately after the due date, to have made a loan (in this subsection referred to as the *deemed loan*) of the principal amount to the debtor;

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- (e) at any time when the debtor is under an obligation to repay any part of the principal amount, the debtor shall be deemed to be under an obligation to repay that part of the deemed loan;
  - (f) the deemed loan shall be deemed to have been made:
    - (i) if interest accrues on so much of the principal amount as remains from time to time unpaid—at the rate of interest at which that interest accrues; or
    - (ii) in any other case—at a nil rate of interest.
- (3) For the purposes of this Act, where a person (in this subsection referred to as the *provider*) makes a deferred interest loan (in this subsection referred to as the *principal loan*) to another person (in this subsection referred to as the *recipient*):
- (a) the provider shall be deemed, at the end of:
    - (i) the period of 6 months commencing on the day on which the principal loan was made; and
    - (ii) each subsequent period of 6 months;(being in either case a period ending on or after 1 July 1986 during the whole of which the recipient is under an obligation to repay the whole or any part of the principal loan) to have made a loan (in this subsection referred to as the *deemed loan*) to the recipient of an amount equal to the amount by which the interest (in this subsection referred to as the *accrued interest*) that has accrued on the principal loan in respect of that period exceeds the amount (if any) paid in respect of the accrued interest before the end of that period;
  - (b) where any part of the accrued interest becomes payable or is paid after the time when the deemed loan is deemed to have been made, the deemed loan shall be reduced accordingly; and
  - (c) the deemed loan shall be deemed to have been made at a nil rate of interest.
- (4) In subsection (3), *deferred interest loan* means a loan in respect of which interest is payable at a rate exceeding nil, other than:
- (a) a loan where the whole of the interest is due for payment within 6 months after the loan is made; or

- (b) a loan where:
  - (i) the interest is payable by instalments;
  - (ii) the intervals between instalments do not exceed 6 months; and
  - (iii) the first instalment is due for payment within 6 months after the loan is made.
- (5) For the purposes of this Act, where no interest is payable in respect of a loan, a nil rate of interest shall be taken to be payable in respect of the loan.

### **17 Exempt loan benefits**

- (1) Where:
  - (a) a loan is made by a person who carries on a business that consists of or includes making loans to members of the public; and
  - (b) the rate of interest payable in respect of the loan:
    - (i) is specified in a document in existence at the time the loan is made;
    - (ii) is not less than the rate of interest in respect of a similar arm's length loan made by the person, at or about that time, to a member of the public in the ordinary course of carrying on that business; and
    - (iii) cannot be varied;the making of the loan is an exempt benefit.
- (2) Where:
  - (a) a loan is made by a person who carries on a business that consists of or includes making loans to members of the public; and
  - (b) the rate of interest from time to time payable in respect of the loan in respect of a year of tax is not less than the rate of interest applicable at the time concerned in respect of a similar arm's length loan made by the person, at or about the time the loan referred to in paragraph (a) is made, to a member of the public in the ordinary course of carrying on that business;

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the making of the loan is an exempt benefit in relation to that year of tax.

(3) Where:

- (a) a loan consists of an advance by an employer to a current employee of the employer in respect of his or her employment;
- (b) the sole purpose of the making of the loan is to enable the employee to meet expenses incurred by the employee:
  - (i) in the course of performing the duties of that employment; and
  - (ii) not later than 6 months after the loan is made;
- (c) the amount of the loan does not substantially exceed the amount of those expenses that could reasonably be expected to be incurred by the employee; and
- (d) the employee is required:
  - (i) to account to the employer, not later than 6 months after the loan is made, for expenses met from the loan; and
  - (ii) to repay (whether by set-off or otherwise) any amount not so accounted for;

the making of the loan is an exempt benefit.

(4) Where:

- (a) the making of a loan consisting of an advance by an employer to an employee of the employer constitutes a benefit in respect of the employment of the employee in respect of a year of tax (in this subsection called the *current year of tax*);
- (b) the sole purpose of the making of the loan is to enable the employee to pay any of the following amounts payable by the employee in respect of accommodation:
  - (i) a rental bond;
  - (ii) a security deposit in respect of electricity, gas or telephone services;
  - (iii) any similar amount;
- (c) the employee is required to repay (whether by set-off or otherwise) the loan not later than 12 months after the loan is made;

- (d) any of the following benefits is provided in, or in respect of, any year of tax to the employee in respect of that employment:
    - (i) an expense payment benefit where the recipients expenditure is in respect of a lease or licence in respect of that accommodation;
    - (ii) a housing benefit where the housing right is in respect of that accommodation;
    - (iii) a residual benefit where the recipients benefit is constituted by the subsistence of a lease or licence in respect of that accommodation; and
  - (e) either of the following subparagraphs apply:
    - (i) by virtue of section 21 or subsection 47(5), the benefit referred to in paragraph (d) is an exempt benefit in relation to the year of tax referred to in that paragraph;
    - (ii) the benefit referred to in paragraph (d) is a fringe benefit in relation to the year of tax referred to in that paragraph and, under section 61C, the taxable value of the fringe benefit is reduced by the extent to which that taxable value is attributable to the subsistence of a lease or licence in respect of the accommodation during a particular period in that year of tax;
- the making of the loan is an exempt benefit in relation to the current year of tax.

### **Subdivision B—Taxable value of loan fringe benefits**

#### **18 Taxable value of loan fringe benefits**

- (1) Subject to this Part, the taxable value, in relation to a year of tax, of a loan fringe benefit provided in respect of the year of tax is the amount (if any) by which the notional amount of interest in relation to the loan in respect of the year of tax exceeds the amount of interest that has accrued on the loan in respect of the year of tax.

#### **19 Reduction of taxable value—*otherwise deductible* rule**

- (1) Where:
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- (a) the recipient of a loan fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and
- (b) if the recipient had, on the last day of the period (in this subsection called the **loan period**) during the year of tax when the recipient was under an obligation to repay the whole or any part of the loan, incurred and paid unreimbursed interest (in this subsection called the **gross interest**), in respect of the loan, in respect of the loan period, equal to the notional amount of interest in relation to the loan in relation to the year of tax—a once-only deduction (in this subsection called the **gross deduction**) would, or would if not for section 82A of the *Income Tax Assessment Act 1936*, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable to the recipient under either of those Acts in respect of the gross interest; and
- (ba) the amount (in this subsection called the **notional deduction**) calculated in accordance with the formula:

$$GD - RD$$

where:

**GD** is the gross deduction; and

**RD** is:

- (i) if no interest accrued on the loan in respect of the loan period—nil; or
  - (ii) if interest accrued on the loan in respect of the loan period—the amount (if any) that would, or that would but for section 82A of the *Income Tax Assessment Act 1936*, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable as a once-only deduction to the recipient under the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* in respect of that interest if that interest had been incurred and paid by the recipient on the last day of the loan period;
- exceeds nil; and

- (c) except where the fringe benefit is:
- (i) an employee credit loan benefit in relation to the year of tax; or
  - (ii) an employee share loan benefit in relation to the year of tax;
- the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the loan concerned; and
- (ca) where:
- (ii) the loan fringe benefit is a car loan benefit in respect of a car held by the recipient during a period (in this subsection also called the **holding period**) in the year of tax; and
  - (iii) the substantiation rules set out in Division 15 have been complied with in relation to the car in relation to the holding period;
- the following conditions are satisfied:
- (iv) the recipient gives to the employer, before the declaration date, a car substantiation declaration for the car for the year of tax;
  - (v) in a case where the substantiation rules require log book records or odometer records to be maintained by or on behalf of the recipient in relation to the car—the car substantiation declaration is accompanied by a copy of those documents; and
- (d) where paragraph (ca) does not apply and the loan fringe benefit is a car loan benefit in respect of a car held by the recipient during a period (in this subsection also called the **holding period**) in the year of tax, the recipient gives to the employer, before the declaration date:
- (i) a declaration, in a form approved by the Commissioner, that purports to set out:
    - (A) the holding period; and
    - (B) the number of whole business kilometres travelled by the car during the holding period;and

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- (C) the number of whole kilometres travelled by the car during the holding period; or
- (ii) where the average number of business kilometres per week travelled by the car during the holding period exceeded 96:
  - (A) a declaration referred to in subparagraph (i); or
  - (B) a declaration, in a form approved by the Commissioner, that purports to set out the holding period and includes a statement by the recipient that the average number of business kilometres per week travelled by the car during the holding period exceeded 96;

the taxable value, but for Division 14, of the loan fringe benefit in relation to the year of tax is the amount calculated in accordance with the formula:

$$TV - ND$$

where:

*TV* is the amount that, but for this subsection and Division 14, would be the taxable value of the loan fringe benefit in relation to the year of tax; and

*ND* is:

- (e) if neither paragraph (ca) nor (d) applies and paragraph (i) does not apply—the notional deduction; or
- (f) if paragraph (ca) applies and paragraph (i) does not apply—whichever of the following amounts is applicable:
  - (i) if it would be concluded that the amount of interest that has accrued on the loan in respect of the loan period would have been the same even if the loan fringe benefit were not applied or used in producing assessable income of the recipient—the business use percentage of the amount that, but for this subsection and Division 14, would be the taxable value of the loan fringe benefit in relation to the year of tax;

- (ii) if subparagraph (i) does not apply—the business use percentage of the notional amount of interest in relation to the loan in relation to the year of tax; or
- (g) where:
  - (i) paragraph (d) applies; and
  - (ii) a declaration referred to in subparagraph (d)(i) has been given to the employer; and
  - (iia) paragraph (i) does not apply;whichever of the following amounts is the least:
  - (iii) the notional deduction;
  - (iv) if it would be concluded that the amount of interest that has accrued on the loan in respect of the loan period would have been the same even if the loan fringe benefit were not applied or used in producing assessable income of the recipient— $33\frac{1}{3}\%$  of the amount that, but for this subsection and Division 14, would be the taxable value of the loan fringe benefit in relation to the year of tax;
  - (v) if subparagraph (iv) does not apply— $33\frac{1}{3}\%$  of the notional amount of interest in relation to the loan in relation to the year of tax; or
- (h) where:
  - (i) subparagraph (d)(ii) applies; and
  - (ii) a declaration referred to in subparagraph (d)(i) has not been given to the employer; and
  - (iia) paragraph (i) does not apply;whichever of the following amounts is applicable:
  - (iii) if it would be concluded that the amount of interest that has accrued on the loan in respect of the loan period would have been the same even if the loan fringe benefit were not applied or used in producing assessable income of the recipient— $33\frac{1}{3}\%$  of the amount that, but for this subsection and Division 14, would be the taxable value of the loan fringe benefit in relation to the year of tax;

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- (iv) if subparagraph (iii) does not apply— $33\frac{1}{3}\%$  of the notional amount of interest in relation to the loan in relation to the year of tax; or
  - (i) if, under subsection 138(3), the loan fringe benefit is deemed to have been provided to the recipient only—the amount calculated in accordance with subsection (5).
- (2) Where a part of a loan to which a loan fringe benefit relates is used by an employee to:
  - (a) purchase a particular car; or
  - (b) pay a Division 28 car expense;subsection (1) and the definition of *car loan benefit* in subsection 136(1) apply as if that part of the loan had been a separate loan.
- (3) Where:
  - (a) apart from this subsection, paragraph (1)(ca) applies in relation to a fringe benefit in relation to an employer in respect of a car held by the recipient during a period in the year of tax; and
  - (b) whichever of the following amounts is the greater exceeds the amount that, apart from this subsection, would be ascertained under paragraph (1)(f) as representing the component ND in the formula in subsection (1):
    - (i) in all cases—the amount that would have been ascertained under paragraph (1)(g) as representing that component if:
      - (A) paragraph (1)(d) had applied in relation to the fringe benefit; and
      - (B) a declaration of the kind referred to in subparagraph (1)(d)(i) had been given to the employer;
    - (ii) in a case where the average number of business kilometres per week travelled by the car during the holding period exceeded 96—the amount that would have been ascertained under paragraph (1)(h) as representing that component if:

- (A) subparagraph (1)(d)(ii) had applied in relation to that fringe benefit; and
- (B) a declaration of the kind referred to in subparagraph (1)(d)(i) had not been given to the employer; and
- (C) a declaration of the kind referred to in sub-subparagraph (1)(d)(ii)(B) had been given to the employer;

this Act applies, and shall be deemed always to have applied, as if the amount represented by that component had been calculated as mentioned in whichever of subparagraphs (b)(i) or (ii) of this subsection is applicable.

- (4) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to subsection (3).
- (5) For the purposes of paragraph (1)(i) (which applies to a loan fringe benefit that, under subsection 138(3), is deemed to have been provided to an employee only), the amount is calculated in accordance with the formula:

Unadjusted ND  $\times$  Employee's percentage of interest

where:

***employee's percentage of interest:***

- (a) is the percentage of the interest held by the employee, during a period (in this subsection called the ***holding period***) in the year of tax, in the asset or other thing that:
  - (i) is purchased or paid for using all or part of the loan to which the loan fringe benefit relates; and
  - (ii) is applied or used for the purpose of producing assessable income of the employee; and
- (b) does not include the percentage of the interest held in that asset or other thing by the employee's associate or associates during the holding period.

***unadjusted ND*** is the amount that would be ascertained as representing the component ND in the formula in subsection (1) if paragraph (1)(i) did not apply in relation to the loan fringe benefit.

## Division 5—Expense payment fringe benefits

### Subdivision A—Expense payment benefits

#### 20 Expense payment benefits

Where a person (in this section referred to as the *provider*):

- (a) makes a payment in discharge, in whole or in part, of an obligation of another person (in this section referred to as the *recipient*) to pay an amount to a third person in respect of expenditure incurred by the recipient; or
- (b) reimburses another person (in this section also referred to as the *recipient*), in whole or in part, in respect of an amount of expenditure incurred by the recipient;

the making of the payment referred to in paragraph (a), or the reimbursement referred to in paragraph (b), shall be taken to constitute the provision of a benefit by the provider to the recipient.

#### 20A Exemption—no-private-use declaration

- (1) An expense payment fringe benefit that is covered by a no-private-use declaration is an exempt benefit.
- (2) An employer may make a *no-private-use declaration* that covers all the employer's expense payment fringe benefits for an FBT year for which the employer will only pay or reimburse so much of the expense that is the subject of the benefit as would result in the taxable value of the benefit being nil.
- (3) The declaration must be in a form approved in writing by the Commissioner and be made by the declaration date.

#### 21 Exempt accommodation expense payment benefits

Where:

- (a) an expense payment benefit is provided in a year of tax to a current employee of an employer in respect of his or her employment; and

- (b) the recipients expenditure is in respect of accommodation for eligible family members; and
  - (ba) the accommodation is not provided while the employee is undertaking travel in the course of performing the duties of that employment; and
  - (c) the accommodation is required solely because the duties of that employment require the employee to live away from his or her normal residence; and
  - (d) the employee satisfies:
    - (i) sections 31C (about maintaining an Australian home) and 31D (about the first 12 months); or
    - (ii) section 31E (about fly-in fly-out and drive-in drive-out requirements); and
  - (e) the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out:
    - (i) if the employee satisfies sections 31C and 31D—the matters in subparagraphs 31F(1)(a)(i) to (iii); or
    - (ii) if the employee satisfies section 31E—the matters in subparagraphs 31F(1)(b)(i) to (iii);
- the benefit is an exempt benefit in relation to the year of tax.

## **22 Exempt car expense payment benefits**

Where:

- (a) an expense payment benefit provided to an employee of an employer in respect of his or her employment is constituted by the reimbursement of the employee, in whole or in part, in respect of an amount of a Division 28 car expense incurred by the employee in relation to a car owned by, or leased to, the employee;
- (b) in a case where the car is leased to the employee—the recipients expenditure is not attributable to a period when the lessor is the provider of a car benefit in relation to the car in relation to the employee;
- (c) the benefit is not in respect of relocation transport;
- (ca) the benefit is not in respect of an employment interview or selection test;

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- (cb) the benefit is not associated with:
    - (i) a work-related medical examination of the employee;
    - (ii) work-related medical screening of the employee;
    - (iii) work-related preventative health care of the employee;
    - (iv) work-related counselling of the employee or of an associate of the employee; or
    - (v) migrant language training of the employee or of an associate of the employee;
  - (cc) neither of the following subparagraphs applies in relation to the transport to which the benefit relates:
    - (i) the transport was provided wholly or partly to enable the employee, or an associate of the employee, to have a holiday;
    - (ii) the transport was provided at a time when the employee had ceased to perform the duties of that employment; and
  - (d) the reimbursement is calculated by reference to the distance travelled by the car;
- the expense payment benefit is an exempt benefit.

**Subdivision B—Taxable value of expense payment fringe benefits**

**22A Taxable value of in-house expense payment fringe benefits**

- (1) Subject to this Part, the taxable value in relation to a year of tax of an in-house property expense payment fringe benefit (in this subsection called the *actual fringe benefit*) provided during the year of tax is the amount that, if:
  - (a) the provision of property to which the actual fringe benefit relates were an in-house property fringe benefit (in this subsection called the *notional fringe benefit*); and
  - (b) the recipients contribution in relation to the notional fringe benefit were equal to the recipients expenditure reduced by whichever of the following amounts is applicable:

- (i) the amount of the payment referred to in paragraph 20(a) reduced by the amount of the recipients contribution in relation to the actual fringe benefit;
  - (ii) the amount of the reimbursement referred to in paragraph 20(b);

would have been calculated under section 42 as the taxable value, but for section 44 and Division 14, of the notional fringe benefit in relation to the year of tax.
- (2) Subject to this Part, the taxable value in relation to a year of tax of an in-house residual expense payment fringe benefit (in this subsection called the *actual fringe benefit*) provided during the year of tax is the amount that, if:
  - (a) the provision of the residual benefit to which the actual fringe benefit relates were an in-house residual fringe benefit (in this subsection called the *notional fringe benefit*); and
  - (b) the recipients contribution in relation to the notional fringe benefit were equal to the recipients expenditure reduced by whichever of the following amounts is applicable:
    - (i) the amount of the payment referred to in paragraph 20(a) reduced by the amount of the recipients contribution in relation to the actual fringe benefit;
    - (ii) the amount of the reimbursement referred to in paragraph 20(b);

would have been calculated under whichever of sections 48 and 49 is applicable as the taxable value, but for section 52 and Division 14, of the notional fringe benefit in relation to the year of tax.
- (3) For the purposes of subsection (2), section 49 has effect as if:
  - (a) “the current identical benefit in relation to” were omitted from paragraph 49(a);
  - (b) the reference in paragraph 49(b) to the recipients current benefit were a reference to the recipients overall benefit; and
  - (c) “insofar as it relates to the recipients current benefit” were omitted from section 49.
- (4) Where the recipients expenditure in relation to each of 2 or more in-house expense payment fringe benefits (whether or not in

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relation to the same year of tax) is the same expenditure, this Act applies, and shall be deemed to have applied, as if all the payments or reimbursements to which those fringe benefits relate had been made at the time when the first of those payments or reimbursements was made and not otherwise.

- (5) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to subsection (4).

**23 Taxable value of external expense payment fringe benefits**

Subject to this Part, the taxable value in relation to a year of tax of an external expense payment fringe benefit provided during the year of tax is the amount of the payment referred to in paragraph 20(a), or the reimbursement referred to in paragraph 20(b), as the case requires, reduced, in a case to which paragraph 20(a) applies, by the amount of the recipients contribution.

**24 Reduction of taxable value—*otherwise deductible* rule**

- (1) Where:
- (a) the recipient of an expense payment fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and
  - (b) if the recipient had, at the time when the recipients expenditure was incurred, incurred and paid unreimbursed expenditure (in this subsection called the ***gross expenditure***), in respect of the same matter in respect of which the recipients expenditure was incurred, equal to:
    - (i) in the case of an in-house expense payment fringe benefit—the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the expense payment fringe benefit in relation to the year of tax; or
    - (ii) in the case of an external expense payment fringe benefit—the amount of the recipients expenditure; a once-only deduction (in this subsection called the ***gross deduction***) would, or would if not for section 82A of the

*Income Tax Assessment Act 1936*, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable to the recipient under either of those Acts in respect of the gross expenditure; and

- (ba) the amount (in this subsection called the **notional deduction**) calculated in accordance with the formula:

$$GD - RD$$

where:

**GD** is the gross deduction; and

**RD** is:

- (i) if there is no recipients portion in relation to the expense payment fringe benefit—nil; or
  - (ii) if there is a recipients portion in relation to the expense payment fringe benefit—the amount (if any) that would, or that would but for section 82A of the *Income Tax Assessment Act 1936*, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable as a once-only deduction to the recipient under either of those Acts in respect of the recipients expenditure (assuming that any payment of that expenditure by the recipient had been paid by the recipient at the time when the recipients expenditure was incurred);  
exceeds nil; and
- (c) in the case of an expense payment fringe benefit that is not an eligible incidental travel expense payment benefit or an eligible overtime meal expense payment benefit:
- (ia) where the recipients expenditure is in respect of fuel or oil for a motor vehicle owned by, or leased to, the recipient:
    - (A) where the fringe benefit is an eligible small expense payment fringe benefit or an undocumentable expense payment fringe benefit—substitute documentary evidence of the recipients expenditure is maintained by or on behalf of the provider and, if the provider is

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- not the employer, that documentary evidence, or a copy, is given to the employer before the declaration date; or
- (B) in any case—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; or
  - (C) in any case—the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients expenditure; or
- (i) where subparagraph (ia) does not apply and the fringe benefit is an undocumentable expense payment fringe benefit or an eligible small expense payment fringe benefit:
- (A) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; or
  - (B) substitute documentary evidence of the recipients expenditure is maintained by or on behalf of the provider and, if the provider is not the employer, that documentary evidence, or a copy, is given to the employer before the declaration date; or
- (ii) in any other case—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; and
- (d) where the expense payment fringe benefit is an extended travel expense payment benefit (other than an international aircrew expense payment benefit)—the recipient gives to the employer, before the declaration date, a travel diary in relation to the travel undertaken by the recipient to which the fringe benefit relates; and
- (e) except where the expense payment fringe benefit is:
-

- (i) an exclusive employee expense payment benefit; or
- (ia) covered by a recurring fringe benefit declaration (see section 152A); or
- (ii) an eligible overtime meal expense payment benefit; or
- (iii) an eligible incidental travel expense payment benefit; or
- (iv) an extended travel expense payment benefit; or
- (v) a car expense payment benefit;

the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients expenditure; and

(ea) where:

- (i) the expense payment fringe benefit is a car expense payment benefit in respect of a car held by the recipient during a period (in this section called the ***holding period***) in the year of tax; and
- (ii) the substantiation rules set out in Division 15 have been complied with in relation to the car in relation to the holding period;

the following conditions are satisfied:

- (iii) the recipient gives to the employer, before the declaration date, a car substantiation declaration for the car for the year of tax;
  - (iv) in a case where the substantiation rules require log book records or odometer records to be maintained by or on behalf of the recipient in relation to the car—the car substantiation declaration is accompanied by a copy of those documents; and
- (f) where paragraph (ea) does not apply and the expense payment fringe benefit is a car expense payment benefit in respect of a car held by the recipient during a period (in this subsection also called the ***holding period***) in the year of tax—the recipient gives to the employer, before the declaration date:
- (i) a declaration, in a form approved by the Commissioner, that purports to set out:
    - (A) the holding period; and

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- (B) the number of whole business kilometres travelled by the car during the holding period; and
  - (C) the number of whole kilometres travelled by the car during the holding period; or
- (ii) where the average number of business kilometres per week travelled by the car during the holding period exceeded 96:
- (A) a declaration referred to in subparagraph (i); or
  - (B) a declaration, in a form approved by the Commissioner, that purports to set out the holding period and includes a statement by the recipient that the average number of business kilometres per week travelled by the car during the holding period exceeded 96;

the taxable value, but for Division 14, of the expense payment fringe benefit in relation to the year of tax is the amount calculated in accordance with the formula:

$$TV - ND$$

where:

*TV* is the amount that, but for this subsection and Division 14, would be the taxable value of the expense payment fringe benefit in relation to the year of tax; and

*ND* is:

- (g) if neither paragraph (ea) nor paragraph (f) applies and paragraph (l) does not apply—the notional deduction; or
- (h) if paragraph (ea) applies and paragraph (l) does not apply—whichever of the following amounts is applicable:
  - (i) if it would be concluded that the amount of the providers portion would have been the same even if the recipients expenditure were not incurred in producing assessable income of the recipient—the business use percentage of the amount that, but for this subsection and Division 14, would be the taxable value of the

expense payment fringe benefit in relation to the year of tax;

- (ii) if subparagraph (i) does not apply:
  - (A) in the case of an in-house expense payment fringe benefit—the business use percentage of the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the expense payment fringe benefit in relation to the year of tax; or
  - (B) in the case of an external expense payment fringe benefit—the business use percentage of the recipients expenditure; or
- (j) where:
  - (i) paragraph (f) applies; and
  - (ii) a declaration referred to in subparagraph (f)(i) has been given to the employer; and
  - (iia) paragraph (l) does not apply;whichever of the following amounts is the least:
  - (iii) the notional deduction;
  - (iv) if it would be concluded that the amount of the providers portion would have been the same even if the recipients expenditure were not incurred in producing assessable income of the recipient— $33\frac{1}{3}\%$  of the amount that, but for this subsection and Division 14, would be the taxable value of the expense payment fringe benefit in relation to the year of tax;
  - (v) if subparagraph (iv) does not apply:
    - (A) in the case of an in-house expense payment fringe benefit— $33\frac{1}{3}\%$  of the amount that but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the expense payment fringe benefit in relation to the year of tax; or
    - (B) in the case of an external expense payment fringe benefit— $33\frac{1}{3}\%$  of the recipients expenditure; or

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- (k) where:
- (i) subparagraph (f)(ii) applies; and
  - (ii) a declaration referred to in subparagraph (f)(i) has not been given to the employer; and
  - (ia) paragraph (l) does not apply;
- whichever of the following amounts is applicable:
- (iii) if it would be concluded the amount of the providers portion would have been the same even if the recipients expenditure were not incurred in producing assessable income of the recipient— $33\frac{1}{3}\%$  of the amount that, but for this subsection and Division 14, would be the taxable value of the expense payment fringe benefit in relation to the year of tax;
  - (iv) if subparagraph (iii) does not apply:
    - (A) in the case of an in-house expense payment fringe benefit— $33\frac{1}{3}\%$  of the amount that, but for this Subdivision and Division 14 and the recipients contribution, would be the taxable value of the expense payment fringe benefit in relation to the year of tax; or
    - (B) in the case of an external expense payment fringe benefit— $33\frac{1}{3}\%$  of the recipients expenditure; or
  - (l) if, under subsection 138(3), the expense payment fringe benefit is deemed to have been provided to the recipient only—the amount calculated in accordance with subsection (9).
- (2) For the purposes of the application of this section in relation to a fringe benefit, where the recipient:
- (a) while undertaking travel referred to in paragraph (1)(d), engages in an activity in the course of producing assessable income of the recipient; and
  - (b) does not make, as mentioned in the definition of *travel diary* in subsection 136(1), an entry relating to the activity, being an entry of the kind referred to in that definition;

the activity shall be deemed not to have been engaged in by the recipient in the course of producing assessable income.

- (3) Where the sum of:
- (a) the recipients expenditure in respect of a small expense payment fringe benefit in relation to an employee in relation to an employer in relation to a year of tax; and
  - (b) the total of the recipients expenditure in respect of all other small expense payment fringe benefits in relation to the employer in relation to the employee in relation to the year of tax, being fringe benefits provided before the fringe benefit referred to in paragraph (a);
- does not exceed \$200, the fringe benefit referred to in paragraph (a) is an eligible small expense payment fringe benefit.
- (3A) For the purposes of this section, where the Commissioner is satisfied, having regard to the nature of the recipients expenditure in respect of an expense payment fringe benefit, that it would be unreasonable to expect the recipient to have obtained documentary evidence of the recipients expenditure, the expense payment fringe benefit shall be deemed to be, and always to have been, an undocumentable expense payment fringe benefit.
- (4) For the purposes of paragraph (1)(c), the part of a petty cash book or similar document that sets out the particulars that would be set out in documentary evidence of the recipients expenditure (other than particulars of the date on which the documentary evidence was made out) is taken to be substitute documentary evidence of the recipients expenditure. The entry must be in English.
- (5) Where:
- (a) the recipients expenditure in relation to each of 2 or more expense payment fringe benefits (whether or not in relation to the same year of tax) is the same expenditure; and
  - (b) paragraph (1)(b) applies in relation to the recipients expenditure;
- this Act applies, and shall be deemed always to have applied, as if all the payments or reimbursements to which those fringe benefits relate had been made at the time when the first of those payments or reimbursements was made and not otherwise, and nothing in

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section 74 prevents the amendment of an assessment for the purpose of giving effect to this subsection.

- (6) For the purposes of the application of this section to an in-house expense payment fringe benefit, a reference to the recipients contribution in relation to the fringe benefit is a reference to the amount ascertained under whichever of paragraphs 22A(1)(b) or (2)(b) is applicable.
- (7) Where:
- (a) apart from this subsection, paragraph (1)(ea) applies in relation to a fringe benefit in relation to an employer in respect of a car held by the recipient during a period in a year of tax; and
  - (b) whichever of the following amounts is the greater exceeds the amount that, apart from this subsection, would be ascertained under paragraph (1)(h) as representing the component ND in the formula in subsection (1):
    - (i) in all cases—the amount that would have been ascertained under paragraph (1)(j) as representing that component if:
      - (A) paragraph (1)(f) had applied in relation to the fringe benefit; and
      - (B) a declaration of the kind referred to in subparagraph (1)(f)(i) had been given to the employer;
    - (ii) in a case where the average number of business kilometres per week travelled by the car during the holding period exceeded 96—the amount that would have been ascertained under paragraph (1)(k) as representing that component if:
      - (A) subparagraph (1)(f)(ii) had applied in relation to that fringe benefit; and
      - (B) a declaration of the kind referred to in subparagraph (1)(f)(i) had not been given to the employer; and
      - (C) a declaration of the kind referred to in sub-subparagraph (1)(f)(ii)(B) had been given to the employer;

this Act applies, and shall be deemed always to have applied, as if the amount represented by that component had been calculated as mentioned in whichever of subparagraphs (b)(i) or (ii) of this subsection is applicable.

- (8) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to subsection (7).
- (9) For the purposes of paragraph (1)(l) (which applies to an expense payment fringe benefit that, under subsection 138(3), is deemed to have been provided to an employee only), the amount is calculated in accordance with the formula:

Unadjusted ND  $\times$  Employee's percentage of interest

where:

***employee's percentage of interest:***

- (a) is the percentage of the interest held by the employee, during a period (in this subsection called the ***holding period***) in the year of tax, in the asset or other thing that:
  - (i) relates to the matter in respect of which the expense payment fringe benefit is provided; and
  - (ii) is applied or used for the purpose of producing assessable income of the employee; and
- (b) does not include the percentage of the interest held in that asset or other thing by the employee's associate or associates during the holding period.

***unadjusted ND*** is the amount that would be ascertained as representing the component ND in the formula in subsection (1) if paragraph (1)(l) did not apply in relation to the expense payment fringe benefit.

## Division 6—Housing fringe benefits

### Subdivision A—Housing benefits

#### 25 Housing benefits

The subsistence during the whole or a part of a year of tax of a housing right granted by a person (in this section referred to as the *provider*) to another person (in this section referred to as the *recipient*) shall be taken to constitute a benefit provided by the provider to the recipient in respect of the year of tax.

### Subdivision B—Taxable value of housing fringe benefits

#### 26 Taxable value of non-remote housing fringe benefits

- (1) Subject to this Part, the taxable value of a housing fringe benefit provided in respect of the employment of an employee in relation to a year of tax is:
  - (a) where the recipients unit of accommodation is not located in a State or internal Territory—so much of the market value of the recipients current housing right as exceeds the recipients rent;
  - (b) where:
    - (i) paragraph (a) does not apply;
    - (ii) the recipients unit of accommodation is a caravan or mobile home or is in a hotel, motel, hostel or guesthouse; and
    - (iii) during the whole or a part of the tenancy period, the provider carried on a business consisting of or including the provision to outsiders, in respect of identical or similar caravans or mobile homes or in respect of identical or similar units of accommodation in the hotel, motel, hostel or guesthouse, of leases or licences that are identical or similar to the recipients overall housing right;

the amount calculated in accordance with the formula AB,  
where:

*A* is the market value of the recipients current housing right;  
and

*B* is:

(iv) in a case where, if the fringe benefit were not a housing  
fringe benefit, it would be an in-house residual fringe  
benefit—0.75; and

(v) in any other case—1;

reduced by the recipients rent; and

(c) in any other case—the amount calculated in accordance with  
the formula:

$$\frac{AB}{C}$$

where:

*A* is the statutory annual value of the recipients current  
housing right;

*B* is the number of whole days in the tenancy period; and

*C* is the number of days in the year of tax;  
reduced by the recipients rent.

(2) For the purposes of the application of subsection (1) in relation to a  
housing fringe benefit in relation to an employer in relation to a  
year of tax (in this subsection referred to as the **current year of  
tax**), the statutory annual value of the recipients current housing  
right is:

(a) if the current year of tax is a base year of tax in relation to the  
recipients current housing right—the amount calculated in  
accordance with the formula:

$$\frac{AB}{C}$$

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where:

*A* is the market value of the recipients current housing right;

*B* is the number of days in the current year of tax; and

*C* is the number of whole days in the tenancy period; and

(b) in any other case—the amount ascertained in accordance with the formula  $\frac{AC}{B}$ , where:

*A* is:

(i) if the year of tax immediately preceding the current year of tax was a base year of tax for the purpose of calculating the taxable value of:

(A) a housing fringe benefit in relation to the employer in respect of the recipients overall housing right or in respect of an equivalent housing right; or

(B) each of 2 or more such housing fringe benefits; the statutory annual value for the purposes of calculating the taxable value of the fringe benefit referred to in sub-subparagraph (A) or the weighted average of the statutory annual values for the purpose of calculating the taxable values of the housing fringe benefits referred to in sub-subparagraph (B) (those statutory annual values being weighted on the basis of the lengths of the respective periods during that preceding year of tax during which the housing rights to which those housing fringe benefits relate subsisted), as the case may be; and

(ii) in any other case—the statutory annual value for the purpose of calculating the taxable values of housing fringe benefits in relation to the employer in relation to the year of tax immediately preceding the current year of tax, being housing fringe benefits in respect of the recipients overall housing right or equivalent housing rights; and

**B** is the indexation factor in respect of the current year of tax in respect of the State or Territory in which the recipients unit of accommodation is situated.

- (3) For the purposes of the application of subsection (2) in relation to a housing fringe benefit in relation to an employer in relation to a year of tax (in this subsection referred to as the **current year of tax**), the current year of tax is a base year of tax in relation to the recipients current housing right if:
- (aa) the employer elects that the current year of tax be treated as a base year of tax in relation to the recipients overall housing right or an equivalent housing right;
  - (b) there was no housing fringe benefit, in relation to the employer in relation to the year of tax immediately preceding the current year of tax, in respect of the recipients overall housing right or in respect of an equivalent housing right; or
  - (c) the following conditions are satisfied:
    - (i) in relation to each of the 9 years of tax immediately preceding the current year of tax there was a housing fringe benefit in relation to the employer in respect of the recipients overall housing right or an equivalent housing right;
    - (ii) none of those 9 years of tax was a base year of tax for the purpose of calculating the taxable value of a housing fringe benefit to which subparagraph (i) applies.
- (4) For the purposes of this section:
- (a) 2 or more housing rights shall be taken to be included in the same class of housing rights if:
    - (i) the housing rights are in respect of the same unit of accommodation; and
    - (ii) the conditions (other than as to duration or consideration) of the housing rights are the same or substantially the same; and
  - (b) a housing right shall be taken to be equivalent to another housing right if each of those housing rights is included in the same class of housing rights.

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- (5) For the purposes of this section, where a material alteration to a unit of accommodation results in an increase or decrease of not less than 10% in the market value of the right to occupy or use the unit:
- (a) the unit of accommodation after the alteration shall be deemed to be a different unit of accommodation from the unit of accommodation before the alteration; and
  - (b) if the alteration occurs during the subsistence of a housing right granted to a person in respect of the unit of accommodation, that housing right, as it subsists after the alteration, shall be deemed to have been granted to the person in respect of the unit of accommodation as it existed after the alteration and to have been so granted in the same circumstances as the first-mentioned housing right.
- (6) A reference in subsection (5) to a material alteration to a unit of accommodation is a reference to:
- (a) additions or improvements made to, or other work carried out in relation to;
  - (b) any damage to; or
  - (c) the addition of facilities to, or the removal of facilities from; the unit of accommodation or any building, place or facility associated with the occupation or use of the unit of accommodation.
- (7) An election by an employer under paragraph (3)(aa) in relation to a year of tax:
- (a) shall be made by notice in writing to the Commissioner; and
  - (b) shall be lodged with the Commissioner on or before the declaration date in relation to the year of tax.

**27 Determination of market value of housing right**

- (1) For the purposes of determining the market value of the recipients current housing right in relation to a housing fringe benefit, where the recipient is entitled, pursuant to the housing right, to require a second person to:
- (a) make a payment in discharge, in whole or in part, of an obligation of the recipient to pay an amount to a third person in respect of expenditure incurred by the recipient; or

- (b) to reimburse the recipient, in whole or in part, in respect of an amount of expenditure incurred by the recipient; that entitlement shall be disregarded.
- (2) For the purposes of determining the market value of the recipients current housing right in relation to a housing fringe benefit provided in respect of the employment of an employee, any onerous conditions that are attached to the housing right and that relate to his or her employment shall be disregarded.

## **28 Indexation factor for valuation purposes—non-remote housing**

- (1) For the purposes of section 26, the indexation factor in respect of a year of tax (in this subsection referred to as the *current year of tax*) in respect of a State or Territory is the number (calculated to 3 decimal places) ascertained, as at the date on which the rent index number in respect of the State or Territory for the December quarter immediately preceding the current year of tax was first published, by dividing the sum of:
- (a) the rent index number in respect of the State or Territory in respect of the December quarter immediately preceding the current year of tax; and
  - (b) the rent index numbers in respect of the State or Territory in respect of the 3 quarters that immediately preceded that quarter;
- by the sum of:
- (c) the rent index number in respect of the State or Territory in respect of the December quarter immediately preceding the year of tax that next preceded the current year of tax; and
  - (d) the rent index numbers in respect of the State or Territory in respect of the 3 quarters that immediately preceded the last-mentioned quarter.
- (2) Subject to subsection (3), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes a rent index number in respect of a State or Territory in respect of a quarter in substitution for a rent index number in respect of the State or Territory previously published in

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respect of that quarter, the publication of the later rent index number shall be disregarded for the purposes of this section.

- (3) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for the rent sub-group of the Consumer Price Index, then, for the purposes of the application of this section after the change took place or takes place, regard shall be had only to the index numbers published in terms of the new reference base.
- (4) Where the factor ascertained in accordance with subsection (1) in relation to a year of tax would, if it were calculated to 4 decimal places, end with a number greater than 4, the factor ascertained in accordance with that subsection in relation to that year of tax shall be taken to be the factor calculated to 3 decimal places in accordance with that subsection and increased by 0.001.
- (5) For the purposes of this Subdivision:
  - (a) the Jervis Bay Territory shall be deemed to be part of the State of New South Wales; and
  - (b) the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands shall be deemed to be part of the Northern Territory.

## **Division 7—Living-away-from-home allowance fringe benefits**

### **Subdivision A—Living-away-from-home allowance benefits**

#### **30 Living-away-from-home allowance benefits**

(1) Where:

- (a) at a particular time, in respect of the employment of an employee of an employer, the employer pays an allowance to the employee; and
- (b) it would be concluded that the whole or a part of the allowance is in the nature of compensation to the employee for:
  - (i) additional expenses (not being deductible expenses) incurred by the employee during a period; or
  - (ii) additional expenses (not being deductible expenses) incurred by the employee, and other additional disadvantages to which the employee is subject, during a period;

by reason that the duties of that employment require the employee to live away from his or her normal residence; the payment of the whole, or of the part, as the case may be, of the allowance constitutes a benefit provided by the employer to the employee at that time.

(2) If:

- (a) at a particular time after 10 October 1991, in respect of the employment of an employee of an employer, the employer pays an allowance to the employee; and
- (b) the employee's usual place of employment is on an oil rig, or other petroleum or gas installation, at sea; and
- (c) the employee is provided with residential accommodation at or near that usual place of employment; and
- (d) the allowance is expressed to be paid as a living-away-from-home allowance; and
- (e) no part of the allowance is covered by subsection (1); and

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- (f) it would be concluded that the whole or a part of the allowance is in the nature of compensation to the employee for disadvantages to which the employee is subject, during a period, by reason that the duties of that employment require the employee to live away from his or her usual place of residence;

the payment of the whole of the allowance constitutes a benefit provided by the employer to the employee at that time.

**Subdivision B—Taxable value of living-away-from-home allowance fringe benefits**

**31 Taxable value—employee maintains a home in Australia**

- (1) This section applies to a living-away-from-home allowance fringe benefit covered by subsection 30(1) in relation to a year of tax to the extent that the employee satisfies all of the following for the fringe benefit and the period to which it relates:
- (a) section 31C (about maintaining an Australian home);
  - (b) section 31D (about the first 12 months);
  - (c) section 31F (about declarations).
- (2) Subject to this Part, the taxable value of the fringe benefit in relation to the year of tax is the amount of the fringe benefit reduced by:
- (a) any exempt accommodation component; and
  - (b) any exempt food component.
- (3) Paragraph (2)(b) does not apply to the extent that the fringe benefit relates to a period during which the employee resumes living at his or her normal residence.
- (4) Neither paragraph (2)(a) nor (b) applies to the extent that the period to which the fringe benefit relates happens while the 12-month period referred to in subsection 31D(1) is paused.

Note: The employer may pause that 12-month period (see paragraph 31D(2)(a)).

### **31A Taxable value—fly-in fly-out and drive-in drive-out employees**

- (1) This section applies to a living-away-from-home allowance fringe benefit covered by subsection 30(1) in relation to a year of tax to the extent that the employee satisfies all of the following for the fringe benefit and the period to which it relates:
  - (a) the requirement that the employee has residential accommodation at or near his or her usual place of employment;
  - (b) section 31E (about extra requirements for these employees);
  - (c) section 31F (about declarations).
- (2) Subject to this Part, the taxable value of the fringe benefit in relation to the year of tax is the amount of the fringe benefit reduced by:
  - (a) any exempt accommodation component; and
  - (b) any exempt food component.

### **31B Taxable value—any other case**

- (1) This section applies to a living-away-from-home allowance fringe benefit in relation to a year of tax to the extent that neither section 31 nor 31A applies to the fringe benefit and the period to which it relates.
- (2) Subject to this Part, the taxable value of the fringe benefit in relation to the year of tax is the amount of the fringe benefit.

## **Subdivision C—Related provisions**

### **31C Maintaining a home in Australia**

The employee satisfies this section if:

- (a) the place in Australia where the employee usually resides when in Australia:
  - (i) is a unit of accommodation in which the employee or the employee's spouse has an ownership interest (within the meaning of the *Income Tax Assessment Act 1997*); and

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- (ii) continues to be available for the employee's immediate use and enjoyment during the period that the duties of that employment require the employee to live away from it; and
- (b) it is reasonable to expect that the employee will resume living at that place when that period ends.

**31D First 12 months employee is required to live away from home**

- (1) The employee satisfies this section if the fringe benefit relates only to all or part of the first 12 months that the duties of that employment require the employee to live away from the place in Australia where he or she usually resides when in Australia.
- (2) Each of the following paragraphs applies for the purposes of subsection (1):
  - (a) the employer may pause the 12-month period;
  - (b) start a separate 12-month period if:
    - (i) the employer later requires the employee to live at another location for the purposes of that employment; and
    - (ii) it would be unreasonable to expect the employee to commute to that other location from an earlier location for which the employer provided a benefit of the same kind to the employee;
  - (c) other changes in the nature of that employment are irrelevant;
  - (d) treat as one employer any of the employee's earlier employers that is or has been an associate of the current employer.

**31E Fly-in fly-out and drive-in drive-out requirements**

The employee satisfies this section if:

- (a) the employee, on a regular and rotational basis:
  - (i) works for a number of days and has a number of days off (but not the same days in consecutive weeks); and
  - (ii) on completion of the working days, travels from his or her usual place of employment to his or her normal

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- residence and, on completion of the days off, returns to that usual place of employment; and
- (b) the basis of work described in paragraph (a) is customary for employees performing similar duties in that industry; and
  - (c) it would be unreasonable to expect the employee to travel on a daily basis on work days between:
    - (i) his or her usual place of employment; and
    - (ii) his or her normal residence;having regard to the location of those places; and
  - (d) it is reasonable to expect that the employee will resume living in his or her normal residence when the duties of that employment no longer require him or her to live away from it.

### **31F Declarations**

- (1) The employee satisfies this section if the employee gives the employer a declaration, in a form approved by the Commissioner, purporting to set out:
    - (a) for a fringe benefit to which section 31 (about employees who maintain an Australian home) applies:
      - (i) the address of the place in Australia where the employee usually resides when in Australia; and
      - (ii) that section 31C is satisfied for that place; and
      - (iii) the address of each place where the employee actually resided during the period to which the benefit relates; or
    - (b) for a fringe benefit to which section 31A (about employees who fly-in fly-out or drive-in drive-out) applies:
      - (i) the address of the employee's usual place of residence; and
      - (ii) that paragraph 31E(d) is satisfied for the employee's normal residence; and
      - (iii) the address of each place where the employee actually resided during the period to which the benefit relates.
  - (2) The employee must give the employer the declaration before the declaration date for the year of tax during which the benefit was provided.
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**31G Substantiating related expenses**

- (1) This section applies to the following expenses incurred by the employee:
  - (a) an expense for the accommodation of eligible family members during the period to which a living-away-from-home allowance fringe benefit relates;
  - (b) an expense for food or drink for eligible family members during the period to which a living-away-from-home allowance fringe benefit relates, if the total of those food or drink expenses for that period exceeds the amount the Commissioner considers reasonable.
- (2) The employee substantiates the expense if the employee:
  - (a) before the declaration date for the year of tax during which the fringe benefit was provided, gives the employer:
    - (i) documentary evidence of the expense, or a copy; or
    - (ii) a declaration, in a form approved by the Commissioner, purporting to set out information about the expense; and
  - (b) if the employee gives a declaration under subparagraph (a)(ii)—retains documentary evidence of the expense for a period of 5 years starting at that declaration date.

Note: Substantiating expenses increases the exempt accommodation component, and exempt food component, for working out the taxable value of the relevant fringe benefit.

**31H Exempt food component**

- (1) The *exempt food component*, in relation to a living-away-from-home allowance fringe benefit, is so much of the result of subsection (2) as is equal to the total of the expenses that:
  - (a) are incurred by the employee for food or drink for eligible family members during the period to which the fringe benefit relates; and
  - (b) if section 31G applies to the expenses—are substantiated under that section.
- (2) Work out the result of the following:

Food component – Applicable statutory food total

where:

***applicable statutory food total*** means the total of the statutory food amounts for eligible family members for the period to which the fringe benefit relates, reduced (but not below zero) by any amount that:

- (a) might reasonably be expected to be the total normal food or drink expenses for those eligible family members had they remained living in their normal residence during that period; and
- (b) was taken into account in working out the food component.

## Division 9—Board fringe benefits

### Subdivision A—Board benefits

#### 35 Board benefits

Where, at a particular time, a person (in this section referred to as the *provider*) provides a board meal to another person (in this section referred to as the *recipient*), the provision of the meal shall be taken to constitute a benefit provided by the provider to the recipient at that time.

### Subdivision B—Taxable value of board fringe benefits

#### 36 Taxable value of board fringe benefits

Subject to this Part, the taxable value of a board fringe benefit in relation to a year of tax is:

- (a) in a case where the recipient had attained the age of 12 years before the beginning of the year of tax—\$2.00; or
  - (b) in any other case—\$1.00;
- reduced by the amount of the recipients contribution.

#### 37 Reduction of taxable value—*otherwise deductible rule*

Where:

- (a) the recipient of a board fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;
- (b) if the recipient had, at the time when the benefit was provided, incurred and paid unreimbursed expenditure (in this section called the *gross expenditure*), in respect of the provision of the recipients meal, equal to the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the board fringe benefit in relation to the year of tax—a deduction (in this section called the *gross deduction*) would, or would but for section 82A of the *Income Tax Assessment Act 1936*, and

Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable to the recipient section 8-1 of the *Income Tax Assessment Act 1997* in respect of the whole or a part of the gross expenditure; and

- (c) the amount (in this section called the **notional deduction**) calculated in accordance with the formula:

$$GD - RD$$

where:

**GD** is the gross deduction; and

**RD** is:

- (i) if there is no recipients contribution in relation to the board fringe benefit—nil; or
- (ii) if there is a recipients contribution in relation to the board fringe benefit equal to, or calculated by reference to, an amount of consideration paid by the recipient to the provider or to the employer in respect of the provision of the recipients meal—the amount (if any) that would, or that would but for section 82A of the *Income Tax Assessment Act 1936*, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable to the recipient section 8-1 of the *Income Tax Assessment Act 1997* in respect of the whole or a part of that consideration if that consideration had been incurred and paid by the recipient at the time when the benefit was provided;

exceeds nil;

the amount that, but for this section and Division 14, would be the taxable value of that fringe benefit in relation to the year of tax shall be reduced by the notional deduction.

## **Division 9A—Meal entertainment**

### **Subdivision A—Meal entertainment**

#### **37A Key principle**

An employer may elect that this Division will apply to the employer for an FBT year. If the employer does this, the taxable value of meal entertainment fringe benefits provided to the employer's employees and associates of those employees by the employer will either be half the expenses incurred for the FBT year by the employer in providing meal entertainment benefits or, if the employer makes a further election, an amount worked out based on a 12 week register kept by the employer.

#### **37AA Division only applies if election made**

An employer may elect that this Division applies to the employer for an FBT year.

#### **37AB Employee contributions to be excluded**

For the purposes of this Division any reference to expenses or expenditure in relation to meal entertainment or meal entertainment benefits excludes any contribution from an employee or an associate of an employee that is not subject to reimbursement by the employer.

#### **37AC Meal entertainment benefits**

Where at a particular time an employer (the *provider*) to whom this Division applies provides meal entertainment to another person (the *recipient*) the provision of the meal entertainment is taken to constitute a meal entertainment benefit provided by the provider to the recipient at that time.

**37AD Meaning of *provision of meal entertainment***

A reference to the *provision of meal entertainment* is a reference to the provision of:

- (a) entertainment by way of food or drink; or
- (b) accommodation or travel in connection with, or for the purpose of facilitating, entertainment to which paragraph (a) applies; or
- (c) the payment or reimbursement of expenses incurred in providing something covered by paragraph (a) or (b); whether or not:
  - (d) business discussions or business transactions occur; or
  - (e) in connection with the working of overtime or otherwise in connection with the performance of the duties of any office or employment; or
  - (f) for the purposes of promotion or advertising; or
  - (g) at or in connection with a seminar.

**37AE Fringe benefits only arise if employer is provider**

No meal entertainment fringe benefit arises where the employer in relation to whom the benefit would otherwise arise is not the provider of the benefit.

**37AF No other fringe benefits arise if election made**

If a meal entertainment fringe benefit arises in respect of the provision of meal entertainment, no other fringe benefit arises in relation to any person in respect of the provision of the meal entertainment.

**37AG Some benefits still arise**

To avoid doubt, sections 37AE and 37AF do not prevent a fringe benefit in relation to an employer arising under any provision of this Act where the employer is not the provider of the benefit.

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**Subdivision B—50/50 split method of valuing meal entertainment**

**37B Key principle**

If an employer elects that this Division applies, then (unless the employer elects that Subdivision C applies) the taxable value of meal entertainment fringe benefits provided to the employer's employees and associates of those employees by the employer is half the expenses incurred for the FBT year by the employer in providing meal entertainment benefits.

**37BA Taxable value using 50/50 split method**

If this Division applies to an employer for an FBT year then, unless the employer elects that Subdivision C applies, the total taxable value of meal entertainment fringe benefits of the employer for the FBT year is 50% of the expenses incurred by the employer in providing meal entertainment for the FBT year.

Note: This means that the employer's *aggregate fringe benefits amount* (see section 5C) for the FBT year will include 50% of the total expenses incurred by the employer for the provision of meal entertainment to all persons in the FBT year.

**Subdivision C—12 week register method**

**37C Key principle**

If an employer elects that this Subdivision applies, the taxable value of meal entertainment fringe benefits is to be calculated by reference to a 12 week register kept by the employer.

**37CA Election by employer**

An employer who elects that this Division applies may elect also that this Subdivision applies to meal entertainment provided by the

employer for an FBT year if the employer has a valid meal entertainment register for that year.

**37CB Taxable value using 12 week register method**

- (1) If the employer elects that this Subdivision applies for an FBT year then, despite any other provision of this Act, the taxable value of meal entertainment fringe benefits for the employer for the FBT year is worked out using the formula:

Total meal entertainment expenditure × Register percentage

Note: This means that the employer's *aggregate fringe benefits amount* (see section 5C) for the FBT year will include a proportion of the expenses incurred by the employer for the provision of meal entertainment for all persons in the FBT year. The proportion is worked out on the basis of the 12 week register.

- (2) The *register percentage* is the percentage worked out using the formula:

$$\frac{\text{Total value of meal entertainment fringe benefits}}{\text{Total value of meal entertainment}} \times 100\%$$

where:

*total value of meal entertainment fringe benefits* means the total value of meal entertainment fringe benefits that are provided by the employer in the 12 week period covered by the employer's register.

*total value of meal entertainment* means the total value of meal entertainment provided by the employer during the 12 week period covered by the register.

- (3) The *total meal entertainment expenditure* is the total of expenses incurred by the employer in providing meal entertainment for the FBT year.

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**37CC Choosing the 12 week period for a register**

- (1) The register must be kept for a continuous period of at least 12 weeks throughout which meal entertainment is provided by the employer.
- (2) The period for which the register is kept must be representative of the first FBT year for which it is valid.
- (3) If the register does not meet these conditions it is not valid.

**37CD FBT years for which register is valid**

*12 week period in one FBT year*

- (1) If the 12 week period begins and ends in the same FBT year, the register is valid for that FBT year and, subject to subsection (3), for each of the 4 FBT years immediately following that year.

*12 week period over 2 FBT years*

- (2) If the 12 week period begins in one FBT year and ends in another FBT year, the register is only valid for the second FBT year and, subject to subsection (3), for each of the 4 FBT years immediately following that year.

*When register ceases to be valid*

- (3) A register that is valid for an FBT year ceases to be valid at the end of that FBT year if the total of expenses incurred by the employer in providing meal entertainment for that FBT year is more than 20% higher than the corresponding total for the first FBT year for which the register was valid. A register also ceases to be valid for an FBT year if there is a later valid register for that FBT year.

**37CE Matters to be included in register**

- (1) The register must include the details of the following:
  - (a) the date the employer provided meal entertainment;

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- (b) for each recipient of meal entertainment—whether the recipient is an employee of the employer or an associate of an employee of the employer;
  - (c) the cost of the meal entertainment;
  - (d) the kind of meal entertainment provided;
  - (e) where the meal entertainment is provided;
  - (f) if the meal entertainment is provided on the employer's premises—whether it is provided in an ***in-house dining facility*** within the meaning of section 32-55 of the *Income Tax Assessment Act 1997*.
- (2) A person responsible for making entries in the register must make the entry as soon as practicable after he or she knows the details required by subsection (1).

**37CF False or misleading entries invalidate register**

For the purposes of this Act, a register is not valid if the register contains an entry that is false or misleading in a material particular.

**Division 10—Tax-exempt body entertainment fringe benefits**

**Subdivision A—Tax-exempt body entertainment benefits**

**38 Tax-exempt body entertainment benefits**

Where, at a particular time, a person (in this section referred to as the *provider*) incurs non-deductible exempt entertainment expenditure that is wholly or partly in respect of the provision, in respect of the employment of an employee, of entertainment to a person (in this section referred to as the *recipient*) being the employee or an associate of the employee, the incurring of the expenditure shall be taken to constitute a benefit provided by the provider to the recipient at that time in respect of that employment.

**Subdivision B—Taxable value of tax-exempt body entertainment fringe benefits**

**39 Taxable value of tax-exempt body entertainment fringe benefits**

Subject to this Part, the taxable value of a tax-exempt body entertainment fringe benefit in relation to an employer in relation to a year of tax is so much of the expenditure referred to in section 38 as is attributable to the provision of the entertainment referred to in that section.

## **Division 10A—Car parking fringe benefits**

### **Subdivision A—Car parking benefits**

#### **39A Car parking benefits**

- (1) 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; and
    - (iii) the lowest fee charged by the operator of any such commercial parking station in the ordinary course of business to members of the public for all-day parking on the first business day of the FBT year is more than the car parking threshold;
  - (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

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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.

- (2) For the purposes of this section:
    - (a) the carparking threshold for the FBT year beginning on 1 April 1995 is \$5.00; and
    - (b) for later years the carparking threshold is the threshold for the previous FBT year as adjusted on the first business day of the later FBT year by a factor equivalent to the movement in the preceding twelve months in the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Statistician.
  - (2A) However, the factor mentioned in paragraph (2)(b) is taken to be 1 if the movement described in that paragraph is down.
  - (3) Subject to subsection (4), if at any time, whether before or after the commencement of this Act, the Australian Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by the
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Australian Statistician in respect of that quarter, the publication of the later index number is to be disregarded for the purposes of this section.

- (4) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this section after the change, regard is to be had only to the index numbers published in terms of the new reference base.

**39AA Anti-avoidance—fee on first business day not representative**

For the purposes of subparagraph 39A(1)(a)(iii), any fee charged on the first business day of an FBT year that is not representative is to be disregarded.

**39AB When fees are *not representative***

A fee charged by an operator of a commercial parking station on a particular day is ***not representative*** if the fee is substantially greater or less than the average of the lowest fee charged by the operator in the ordinary course of business to members of the public for all-day parking on each of the days in whichever of the following periods is chosen by the employer:

- (a) the 4 week period beginning on the day; or
- (b) the 4 week period ending on the day.

**39B When commercial parking stations are located within a 1 km radius of business premises or associated premises**

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.

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**Subdivision B—Taxable value of car parking fringe benefits**

**39C Taxable value of car parking fringe benefits—*commercial parking station method***

Subject to this Part, the taxable value, in relation to an FBT year, of a car parking fringe benefit provided on a day in the FBT year 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.

**39D Taxable value of car parking fringe benefits—*market value basis***

*[Employer may choose market value basis]*

- (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 FBT year.

*[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 an FBT year, the taxable value, in relation to the FBT year, 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

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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 FBT year, in so far as it relates to the taxable values of the fringe benefits, is based on the report.

**39DA Taxable value of car parking fringe benefits—*average cost method***

*Election*

- (1) An employer may elect that this section applies to any or all of the employer's car parking fringe benefits for a particular FBT year.

*Taxable value*

- (2) Subject to this Part, if an election covers a car parking fringe benefit, the taxable value of the fringe benefit is the average cost worked out under subsection (3) reduced by the recipients contribution.

*Method of working out average cost*

- (3) The *average cost* is:

$$\frac{A + B}{2}$$

where:

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*A* is the lowest fee charged in the ordinary course of business to members of the public for all-day parking by any operator of a commercial parking station located within a 1 km radius of any of the relevant parking premises on the day on which a car parking benefit is first provided in that FBT year in relation to the employer in connection with any of those premises.

*B* is the lowest fee charged in the ordinary course of business to members of the public for all-day parking by any operator of a commercial parking station located within a 1 km radius of any of the relevant parking premises on the day on which a car parking benefit is last provided in that FBT year in relation to the employer in connection with any of those premises.

*relevant parking premises* means the premises referred to in paragraph 39A(1)(a).

*Fees must be representative*

- (4) An election is of no effect if the fees referred to in subsection (3) are **not representative** (see section 39AB).

**39E Fees charged by commercial parking stations for all-day parking**

*[Daily rate equivalent for periodic parking arrangements]*

- (1) For the purposes of this Division, 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:

$$\frac{\text{Total fee}}{\text{Business days in period}}$$

where:

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

**Subdivision C—Statutory formula method—spaces**

**39F The key principle**

Under this Subdivision, an employer may elect to calculate the value of certain car parking fringe benefits by using a statutory formula based on the number and value of spaces available to employees covered by the election.

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**39FA Spaces method of calculating total taxable value of car parking fringe benefits**

*Election*

- (1) If a provider provides one or more car parking benefits in respect of one or more employees of an employer in a particular FBT year, the employer may elect that this Subdivision applies to the employer's car parking fringe benefits for some or all of the employees for that FBT year.

*Employer must specify employees covered by election*

- (2) The employer must specify that the election covers:
- (a) all the employees; or
  - (b) all employees of a particular class; or
  - (c) particular employees.

*Total value of car parking fringe benefits*

- (3) Despite any other provision of this Act (other than section 39FB) the total taxable value of the employer's car parking fringe benefits for employees covered by the election for the FBT year is the amount worked out using the spaces method under subsection (4).

Note: Section 39FB covers the situation where the number of spaces available to employees exceeds the number of employees.

*Method*

- (4) The spaces method is:

*Step 1:* Work out an amount using the following formula, for each space for which there is, in the FBT year, at least one car parking benefit for an employee covered by the election:

$$\text{Daily rate amount} \times \frac{\text{Number of days in availability periods in relation to the space}}{366} \times 228$$

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*Step 2:* Work out the total of all the amounts calculated under Step 1 (the **total statutory benefit**).

*Step 3:* Subtract from the total statutory benefit the sum of all relevant recipients contributions.

Note 1: Section 39FC defines **daily rate amount**.

Note 2: Section 39FD defines **availability period**.

Note 3: Section 39FE defines **relevant recipients contribution**.

- (5) The election is of no effect if, in working out the daily rate for a space, the fees referred to in subsection 39DA(3) are **not representative** (see section 39AB).

### **39FB Number of spaces exceeds number of employees**

- (1) This section applies if, throughout the parking period (see subsection (5)), the average number of employees covered by the election is less than the average number of spaces (**eligible spaces**) for which there is an availability period.

*Formula to reduce total statutory benefits*

- (2) If this section applies, the total statutory benefit (see Step 2 in subsection 39FA(4)) is multiplied by the following fraction:

$$\frac{\text{Average number of employees}}{\text{Average number of eligible spaces}}$$

- (3) The **average number of employees** is:

$$\frac{\text{Number of employees covered by election at the beginning of the parking period} + \text{Number of employees covered by election at the end of the parking period}}{2}$$

- (4) The **average number of eligible spaces** is:

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$$\frac{\text{Number of eligible spaces at the beginning of the parking period} + \text{Number of eligible spaces at the end of the parking period}}{2}$$

- (5) The ***parking period*** is the period:
- (a) beginning on the first day in the FBT year on which the parking of a car in any space referred to in subsection 39FA(4) gives rise to a car parking fringe benefit of the employer for an employee covered by the election; and
  - (b) ending on the last day in the FBT year on which the parking of a car in any space referred to in subsection 39FA(4) gives rise to a car parking fringe benefit of the employer for an employee covered by the election.

*Number of employees and number of spaces must be representative*

- (6) This section does not apply if the number of employees or the number of eligible spaces referred to in subsections (3) and (4) are ***not representative*** (see subsection (7)).

*Meaning of not representative*

- (7) A number of employees, or a number of eligible spaces, as the case requires, is ***not representative*** if the number of employees, or eligible spaces, as the case requires, is substantially greater or less than the average number throughout whichever of the following periods is chosen by the employer:
- (a) the 4 week period ending on the first day of the parking period; or
  - (b) the 4 week period beginning on the last day of the parking period.

**39FC Meaning of *daily rate amount***

The ***daily rate amount*** for a space is the amount that would be worked out using whichever of the following methods that the taxpayer chooses:

- (a) the commercial parking station method;

- (b) the market value method;
  - (c) the average cost method;
- as the taxable value of the car parking fringe benefit for the space, if there were no recipients contribution.

### **39FD Meaning of *availability period***

An *availability period* for a space begins on the first day in the FBT year on which there is a car parking benefit for the space for an employee covered by the election and ends on the last day in the FBT year on which there is a car parking benefit for the space for an employee covered by the election.

### **39FE Meaning of *relevant recipients contribution***

A *relevant recipients contribution* is a recipients contribution in respect of any car parking fringe benefit provided in respect of the employment of an employee covered by the election for the FBT year.

## **Subdivision D—12 week record keeping method**

### **39G The key principle**

Under this Subdivision, an employer may keep a 12 week register of car parking provided to employees. An employer who keeps such a register may elect that the total value of certain car parking fringe benefits for an FBT year for which the register is valid is to be determined in accordance with the register.

### **39GA Employer may elect to use 12 week record keeping method**

- (1) An employer may elect that this Subdivision applies to the employer's car parking fringe benefits for some or all of the employer's employees for that FBT year if the employer has a valid register for that FBT year covering those employees.
- (2) The employer must specify that the election covers:
  - (a) all the employees; or

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- (b) all employees of a particular class; or
- (c) particular employees.

**39GB Value of fringe benefits for year**

Despite any other provision of this Act (other than this section), the total taxable value of the employer's car parking fringe benefits for employees covered by the election for the FBT year is the amount worked out using the formula:

$$\left[ \frac{\text{Total value of car parking benefits (register)}}{\text{Total value of car parking benefits (register)}} \times \frac{52}{12} \right] \times \frac{\text{Number of days in car parking availability periods}}{366}$$

**39GC Meaning of *total value of car parking benefits (register)***

The *total value of car parking benefits (register)*, in relation to the FBT year, means the amount that would be the total taxable value of car parking fringe benefits for employees covered by the election for the 12 week period for which a register is kept, assuming that:

- (a) the register had been kept in that FBT year; and
- (b) the value of the benefits were calculated in accordance with the information in the register; and
- (c) the value of the benefits were calculated using whichever of the following methods that the taxpayer chooses:
  - (i) the commercial parking station method;
  - (ii) the market value method;
  - (iii) the average cost method.

**39GD Meaning of *car parking availability period***

The *car parking availability period* is the period:

- (a) beginning on the first day in the FBT year on which there is a car parking benefit for an employee covered by the election; and
- (b) ending on the last day in the FBT year on which there is a car parking benefit for an employee covered by the election.

### **39GE Choosing the 12 week period for a register**

- (1) The register must be kept for a continuous period of at least 12 weeks throughout which car parking benefits are provided to employees covered by the election.
- (2) The period for which the register is kept must be representative of usage for the first FBT year for which it is valid.
- (3) If subsection (1) or (2) is not satisfied, the register is not valid.

### **39GF FBT years for which register is valid**

#### *12 week period in one FBT year*

- (1) If the 12 week period begins and ends in the one FBT year, the register is valid for that FBT year and, subject to subsections (3) and (4), for each of the 4 FBT years immediately following that year.

#### *12 week period over 2 FBT years*

- (2) If the 12 week period begins in one FBT year and ends in another FBT year, the register is only valid for the second FBT year and, subject to subsections (3) and (4), for each of the 4 years immediately following that year.

#### *When register ceases to be valid—increase in benefits*

- (3) A register that is valid for an FBT year ceases to be valid at the end of that FBT year if the number of car parking fringe benefits for the employer for employees covered by the election increases by more than 10% on any day in that FBT year.

Note: This means that if the number of car parking fringe benefits increases by more than 10%, the employer will have to keep a new register in the FBT year following the year of the increase if the employer wants to use the method in this Subdivision for that following year.

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*When a register ceases to be valid—later register*

- (4) A register that is valid for an FBT year ceases to be valid if there is a later valid register for that FBT year that covers the same employee.

**39GG Matters to be included in register**

- (1) The register must include details of the following:
- (a) the date on which each car covered by subsection (4) was parked;
  - (b) whether the car was parked for a total that exceeds 4 hours;
  - (c) whether the car travelled between the place of residence of an employee covered by the election and his or her primary place of employment on that day;
  - (d) the place where the car was parked.
- (2) The person responsible for making entries in the register must make the entry as soon as practicable after he or she knows the details required by subsection (1).
- (3) If subsection (1) or (2) is not satisfied, the register is not valid.
- (4) A car is covered by this subsection if:
- (a) a car benefit relating to the car is provided on a day during the 12 week period to an employee covered by the election in respect of the employee's employment; or
  - (b) the car is owned by, or leased to, an employee covered by the election at any time during the 12 week period; or
  - (c) the car is made available by another person to an employee covered by the election at any time during the 12 week period where:
    - (i) the other person is not the employee's employer; and
    - (ii) the other person did not make the car available under an arrangement to which the employee's employer is a party.

**39GH Fraudulent entries invalidate register**

For the purposes of this Act, a register is not valid if the register contains an entry that is false or misleading in a material particular.

## **Division 11—Property fringe benefits**

### **Subdivision A—Property benefits**

#### **40 Property benefits**

Where, at a particular time, a person (in this section referred to as the *provider*) provides property to another person (in this section referred to as the *recipient*), the provision of the property shall be taken to constitute a benefit provided by the provider to the recipient at that time.

#### **41 Exempt property benefits**

- (1) Where:
  - (a) a property benefit is provided to a current employee of an employer in respect of his or her employment; and
  - (b) the property is provided to, and consumed by, the employee on a working day and on business premises of:
    - (i) the employer; or
    - (ii) if the employer is a company, of the employer or of a company that is related to the employer;the benefit is an exempt benefit.
- (2) This section does not apply to food or drink provided to, and consumed by, an employee if the food or drink is provided under a salary packaging arrangement.

### **Subdivision B—Taxable value of property fringe benefits**

#### **42 Taxable value of in-house property fringe benefits**

- (1) Subject to this Part, the taxable value of an in-house property fringe benefit in relation to an employer in relation to a year of tax is:
  - (aa) if the recipient's property was provided to the recipient under a salary packaging arrangement—an amount equal to the

notional value of the recipient's property at the provision time; or

- (ab) if paragraph (aa) does not apply and the benefit is an airline transport fringe benefit—an amount equal to 75% of the stand-by airline travel value of the benefit at the time the transport starts; or
- (a) if neither paragraph (aa) nor (ab) applies and the recipient's property was manufactured, produced, processed or treated by the provider:
  - (i) if identical property that was manufactured, produced, processed or treated, as the case may be, by the provider was, at or about the provision time, sold by the provider in the ordinary course of business to purchasers being manufacturers, wholesalers or retailers—an amount equal to:
    - (A) if any of that identical property was, at or about the provision time, sold by the provider under an arm's length transaction or arm's length transactions—the lowest price at which it was sold under such a transaction; or
    - (B) if sub-subparagraph (A) does not apply—the lowest price at which any of that identical property could reasonably be expected to have been sold by the provider at or about the provision time under an arm's length transaction; or
  - (ii) if subparagraph (i) does not apply but identical property that was manufactured, produced, processed or treated, as the case may be, by the provider was, at or about the provision time, sold by the provider:
    - (A) in the ordinary course of business to members of the public under an arm's length transaction or arm's length transactions; and
    - (B) in similar circumstances and subject to identical terms and conditions (other than as to price) as those that applied in relation to the provision of the recipient's property to the recipient;

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- an amount equal to 75% of the lowest price at which that property was so sold to a member of the public; or
- (iii) in any other case—an amount equal to 75% of the notional value of the recipient's property at the provision time; or
  - (b) if none of the above paragraphs applies and the property was acquired by the provider—an amount equal to the lesser of:
    - (i) the arm's length price in respect of the acquisition of the recipient's property by the provider; or
    - (ii) the notional value of the recipient's property at the provision time; or
  - (c) in any other case—an amount equal to 75% of the notional value of the recipient's property at the provision time; reduced by the amount of the recipient's contribution.
- (2) In subsection (1), *arm's length price*, in respect of the acquisition of the recipients property by the provider, means:
- (a) if the recipients property was acquired by the provider in the ordinary course of business under an arm's length transaction—the cost price of the recipients property to the provider; or
  - (b) in any other case—the amount that the provider could reasonably be expected to have been required to pay to acquire the recipients property under an arm's length transaction in the ordinary course of business.

**43 Taxable value of external property fringe benefits**

Subject to this Part, the taxable value of an external property fringe benefit in relation to an employer in relation to a year of tax is:

- (a) where the provider was the employer or an associate of the employer and the recipients property was purchased by the provider under an arm's length transaction at or about the provision time—the cost price of the recipients property to the provider;
- (b) where the provider was not the employer or an associate of the employer and the employer, or an associate of the employer, incurred expenditure to the provider under an

- arm's length transaction in respect of the provision of the property—the amount of that expenditure; or
- (c) in any other case—the notional value of the recipients property at the provision time;  
reduced by the amount of the recipients contribution.

#### **44 Reduction of taxable value—*otherwise deductible* rule**

- (1) Where:
- (a) the recipient of a property fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and
- (b) if the recipient had, at the provision time, incurred and paid unreimbursed expenditure (in this subsection called the **gross expenditure**), in respect of the purchase of the recipients property, equal to the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the property fringe benefit in relation to the year of tax—a once-only deduction (in this subsection called the **gross deduction**) would, or would if not for section 82A of the *Income Tax Assessment Act 1936*, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable to the recipient under either of those Acts in respect of the gross expenditure; and
- (ba) the amount (in this subsection called the **notional deduction**) calculated in accordance with the formula:

$$GD - RD$$

where:

**GD** is the gross deduction; and

**RD** is:

- (i) if there is no recipients contribution in relation to the property fringe benefit—nil; or
- (ii) if there is a recipients contribution in relation to the property fringe benefit equal to, or calculated by reference to, an amount of consideration paid by the

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recipient to the provider or to the employer in respect of the provision of the recipients property—the amount (if any) that would, or that would but for section 82A of the *Income Tax Assessment Act 1936*, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable as a once-only deduction to the recipient under either of those Acts in respect of that consideration if that consideration had been incurred and paid by the recipient at the provision time;

exceeds nil; and

(c) except where the property fringe benefit is:

(i) an exclusive employee property benefit; or

(ia) covered by a recurring fringe benefit declaration (see section 152A); or

(ii) an extended travel property benefit; or

(iii) a car property benefit;

the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients property; and

(d) where the property fringe benefit is an extended travel property benefit (other than an international aircrew property benefit)—the recipient gives to the employer, before the declaration date, a travel diary in relation to the travel undertaken by the recipient to which the fringe benefit relates; and

(da) where:

(i) the property fringe benefit is a car property benefit in respect of a car held by the recipient during a period (in this section called the ***holding period***) in the year of tax; and

(ii) the substantiation rules set out in Division 15 have been complied with in relation to the car in relation to the holding period;

the following conditions are satisfied:

(iii) the recipient gives to the employer, before the declaration date, a car substantiation declaration for the car for the year of tax;

- (iv) in a case where the substantiation rules require log book records or odometer records to be maintained by or on behalf of the recipient in relation to the car—the car substantiation declaration is accompanied by a copy of those documents; and
- (e) where paragraph (da) does not apply and the property fringe benefit is a car property benefit in respect of a car held by the recipient during a period (in this section also called the **holding period**) in the year of tax—the recipient gives to the employer, before the declaration date:
  - (i) a declaration, in a form approved by the Commissioner, that purports to set out:
    - (A) the holding period; and
    - (B) the number of whole business kilometres travelled by the car during the holding period; and
    - (C) the number of whole kilometres travelled by the car during the holding period; or
  - (ii) where the average number of business kilometres per week travelled by the car during the holding period exceeded 96:
    - (A) a declaration referred to in subparagraph (i); or
    - (B) a declaration, in a form approved by the Commissioner, that purports to set out the holding period and includes a statement by the recipient that the average number of business kilometres per week travelled by the car during the holding period exceeded 96;

the taxable value, but for Division 14, of the property fringe benefit in relation to the year of tax is the amount calculated in accordance with the formula:

$TV - ND$

where:

**TV** is the amount that, but for this subsection and Division 14, would be the taxable value of the property fringe benefit in relation to the year of tax; and

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**ND** is:

- (f) if neither paragraph (da) nor paragraph (e) applies and paragraph (k) does not apply—the notional deduction; or
- (g) where paragraph (da) applies and paragraph (k) does not apply—whichever of the following amounts is applicable:
  - (i) if it would be concluded that the amount of the recipients contribution would have been the same even if the property fringe benefit were not applied or used in producing assessable income of the recipient—the business use percentage of the amount that, but for this subsection and Division 14, would be the taxable value of the property fringe benefit in relation to the year of tax;
  - (ii) if subparagraph (i) does not apply—the business use percentage of the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the property fringe benefit in relation to the year of tax; or
- (h) where:
  - (i) paragraph (e) applies; and
  - (ii) a declaration referred to in subparagraph (e)(i) has been given to the employer; and
- (ia) paragraph (k) does not apply;  
whichever of the following amounts is the least:
  - (iii) the notional deduction;
  - (iv) if it would be concluded that the amount of the recipients contribution would have been the same even if the property fringe benefit were not applied or used in producing assessable income of the recipient— $33\frac{1}{3}\%$  of the amount that, but for this subsection and Division 14, would be the taxable value of the property fringe benefit in relation to the year of tax;
  - (v) if subparagraph (iv) does not apply— $33\frac{1}{3}\%$  of the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the property fringe benefit in relation to the year of tax; or

- (j) where:
- (i) subparagraph (e)(ii) applies; and
  - (ii) a declaration referred to in subparagraph (e)(i) has not been given to the employer; and
  - (iia) paragraph (k) does not apply;
- whichever of the following amounts is applicable:
- (iii) if it would be concluded that the amount of the recipients contribution would have been the same even if the property fringe benefit were not applied or used in producing assessable income of the recipient— $33\frac{1}{3}\%$  of the amount that, but for this subsection and Division 14, would be the taxable value of the property fringe benefit in relation to the year of tax;
  - (iv) if subparagraph (iii) does not apply— $33\frac{1}{3}\%$  of the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the property fringe benefit in relation to the year of tax; or
- (k) if, under subsection 138(3), the property fringe benefit is deemed to have been provided to the recipient only—the amount calculated in accordance with subsection (5).
- (2) For the purposes of the application of this section in relation to a fringe benefit, where the recipient:
- (a) while undertaking travel referred to in paragraph (1)(d), engages in an activity in the course of producing assessable income of the recipient; and
  - (b) does not make, as mentioned in the definition of *travel diary* in subsection 136(1), an entry relating to the activity, being an entry of the kind referred to in that definition;
- the activity shall be deemed not to have been engaged in by the recipient in the course of producing assessable income.
- (3) Where:
- (a) apart from this subsection, paragraph (1)(da) applies in relation to a fringe benefit in relation to an employer in respect of a car held by the recipient during a period in a year of tax; and

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- (b) whichever of the following amounts is the greater exceeds the amount that, apart from this subsection, would be ascertained under paragraph (1)(g) as representing the component ND in the formula in subsection (1):
  - (i) in all cases—the amount that would have been ascertained under paragraph (1)(h) as representing that component if:
    - (A) paragraph (1)(e) had applied in relation to the fringe benefit; and
    - (B) a declaration of the kind referred to in subparagraph (1)(e)(i) had been given to the employer;
  - (ii) in a case where the average number of business kilometres per week travelled by the car during the holding period exceeded 96—the amount that would have been ascertained under paragraph (1)(j) as representing that component if:
    - (A) subparagraph (1)(e)(ii) had applied in relation to that fringe benefit; and
    - (B) a declaration of the kind referred to in subparagraph (1)(e)(i) had not been given to the employer; and
    - (C) a declaration of the kind referred to in sub-subparagraph (1)(e)(ii)(B) had been given to the employer;

this Act applies, and shall be deemed always to have applied, as if the amount represented by that component had been calculated as mentioned in whichever of subparagraphs (b)(i) or (ii) of this subsection is applicable.

- (4) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to subsection (3).
- (5) For the purposes of paragraph (1)(k) (which applies to a property fringe benefit that, under subsection 138(3), is deemed to have been provided to an employee only), the amount is calculated in accordance with the formula:

$$\text{Unadjusted ND} \times \text{Employee's percentage of interest}$$

where:

***employee's percentage of interest:***

- (a) is the percentage of the interest held by the employee, during a period (in this subsection called the ***holding period***) in the year of tax, in the asset or other thing that:
  - (i) is the property to which the property fringe benefit relates; and
  - (ii) is applied or used for the purpose of producing assessable income of the employee; and
- (b) does not include the percentage of the interest held in that asset or other thing by the employee's associate or associates during the holding period.

***unadjusted ND*** is the amount that would be ascertained as representing the component ND in the formula in subsection (1) if paragraph (1)(k) did not apply in relation to the property fringe benefit.

## Division 12—Residual fringe benefits

### Subdivision A—Residual benefits

#### 45 Residual benefits

A benefit is a residual benefit for the purposes of this Act if the benefit is not a benefit by virtue of a provision of Subdivision A of Divisions 2 to 11 (inclusive).

#### 46 Year of tax in which residual benefits taxed

- (1) Subject to this section, a residual benefit that is provided during a period shall be deemed to have been provided in respect of each year of tax during which any part of that period occurred.
- (2) Where:
  - (a) a residual benefit (in this subsection referred to as the *eligible benefit*), not being a residual benefit constituted by a lease or licence in respect of property, is provided on the basis that, in respect of each of a number of regular periods (in this subsection referred to as a *billing period*) commencing on or after 1 July 1986 (whether or not there were any such periods before that date), a payment is to be made in respect of the provision of the benefit during the billing period; and
  - (b) identical benefits are provided to members of the public on the same basis and in the ordinary course of a business carried on by the person providing the eligible benefit;the following provisions have effect:
  - (c) the provision of the eligible benefit during each billing period shall be taken to constitute a separate benefit;
  - (d) each such separate residual benefit shall be deemed to have been provided at the time at which the payment in respect of the billing period concerned is due and payable, and not otherwise.

#### **47 Exempt residual benefits**

(1) Where:

- (a) in respect of the employment of a current employee, the employer, or an associate of the employer, provides a residual benefit to the employee that consists of transport of the employee, otherwise than in an aircraft:
  - (i) between:
    - (A) the place of residence of the employee; and
    - (B) the place of employment of the employee or any other place from which or at which the employee performs duties of that employment;or
  - (ii) in a case where the place referred to in sub-subparagraph (i)(B) is in a metropolitan area—on a regular and scheduled service over a route wholly within that metropolitan area; and
- (b) where the provider is the employer—the employer carries on a business of providing transport to members of the public; and
- (c) where the provider is an associate of the employer—the employer and the associate each carries on a business of providing transport to members of the public; and
- (d) the transport referred to in paragraph (a) is provided in the same, or substantially the same, circumstances as transport provided to members of the public in the ordinary course of carrying on a business of providing transport to members of the public; and
- (e) the employee is employed in the business of providing transport to members of the public; and
- (f) the benefit is not provided under a salary packaging arrangement;

the benefit is an exempt benefit.

(1A) Where:

- (a) a person is an employee of a government body; and
- (b) the person's duties of employment are performed in a police service; and

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- (c) the person is provided with a residual benefit consisting of the provision of travel on public transport; and
  - (d) the benefit is provided for the purpose of travel between:
    - (i) the person's place of residence; and
    - (ii) the person's primary place of employment;the benefit is an *exempt benefit*.
- (2) Where:
- (a) a residual benefit provided to a current employee in respect of his or her employment consists of:
    - (i) the provision, or use, of a recreational facility; or
    - (ii) the care of children of the employee in a child care facility; and
  - (b) the recreational facility or child care facility, as the case may be, is located on business premises of:
    - (i) the employer; or
    - (ii) if the employer is a company, of the employer or of a company that is related to the employer;the benefit is an exempt benefit.
- (3) Where a residual benefit provided to a current employee in respect of his or her employment consists of the use of property (other than a motor vehicle) that is ordinarily located on business premises of, and is wholly or principally used directly in connection with business operations of:
- (a) the employer; or
  - (b) if the employer is a company—the employer or a company that is related to the employer;
- the benefit is an exempt benefit.
- (4) For the purposes of subsection (3), toilets, bathroom facilities, food or drink vending machines, tea or coffee making facilities, water dispensers or other amenities (not being facilities for drinking or dining) for the use of employees of an employer shall be taken to be principally used directly in connection with business operations of the employer.

- (4A) For the purposes of subsection (3), a building site, construction site or any similar place where a person carries on business operations shall be taken to be business premises of the person.
- (5) Where:
- (a) a residual benefit consisting of the subsistence, during a year of tax, of a lease or licence in respect of a unit of accommodation is provided to an employee of an employer in respect of his or her employment; and
  - (b) the unit of accommodation is for the accommodation of eligible family members and is provided solely because the duties of that employment require the employee to live away from his or her normal residence; and
  - (ba) the employee satisfies:
    - (i) sections 31C (about maintaining an Australian home) and 31D (about the first 12 months); or
    - (ii) section 31E (about fly-in fly-out and drive-in drive-out requirements); and
  - (c) the accommodation is not provided while the employee is undertaking travel in the course of performing the duties of that employment; and
  - (d) any of the following conditions is satisfied:
    - (i) subsection (7) applies in relation to the provision of transport for the employee in connection with travel in the period in the year of tax when the lease or licence subsisted, being travel between the employee's usual place of residence and the employee's usual place of employment;
    - (ii) if the employee satisfies sections 31C and 31D—the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out the matters in subparagraphs 31F(1)(a)(i) to (iii);
    - (iii) if the employee satisfies section 31E—the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out the matters in subparagraphs 31F(1)(b)(i) to (iii);

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the benefit is an exempt benefit in relation to the year of tax.

(6) Where:

- (a) a residual benefit consisting of the provision or use of a motor vehicle is provided in a year of tax in respect of the employment of a current employee;
- (aa) the motor vehicle is not:
  - (i) a taxi let on hire to the provider; or
  - (ii) a car, not being:
    - (A) a panel van or utility truck; or
    - (B) any other road vehicle designed to carry a load of less than 1 tonne (other than a vehicle designed for the principal purpose of carrying passengers); and
- (b) there was no private use of the motor vehicle during the year of tax and at a time when the benefit was provided other than:
  - (i) work-related travel of the employee; and
  - (ii) other private use of the motor vehicle by the employee or an associate of the employee, being other use that was minor, infrequent and irregular;

the benefit is an exempt benefit in relation to the year of tax.

(6A) Where:

- (a) a residual benefit consisting of the provision or use of a motor vehicle is provided by a particular person (in this subsection called the *provider*) in a year of tax in respect of the employment of a current employee of an employer;
- (b) at all times during the year of tax when the motor vehicle was held by the provider, the motor vehicle was unregistered; and
- (c) during the period in the year of tax when the motor vehicle was held by the provider, the motor vehicle was wholly or principally used directly in connection with business operations of:
  - (i) the employer; or
  - (ii) if the employer is a company—the employer or a company that is related to the employer;

the benefit is an exempt benefit in relation to the year of tax.

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- (6B) A reference in subsection (6A) to a motor vehicle held by a provider is a reference to:
- (a) a motor vehicle owned by the provider;
  - (b) a motor vehicle leased to the provider; or
  - (c) a motor vehicle otherwise made available to the provider by another person.
- (7) Where, during a period of employment with an employer:
- (a) an employee's usual place of employment is:
    - (i) on an oil rig, or other installation, at sea; or
    - (ii) at a location in a State or internal Territory but not in, or adjacent to, an eligible urban area; or
    - (iii) at a remote location that is not in a State or internal Territory; and
- Note: For the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, see section 157.
- (b) the employee is provided with residential accommodation, at or near that usual place of employment, by:
    - (i) the employer; or
    - (ii) an associate of the employer; or
    - (iii) a person (in this subparagraph referred to as the **arranger**) other than the employer or an associate of the employer under an arrangement between:
      - (A) the employer or an associate of the employer; and
      - (B) the arranger or another person; and
  - (c) the employee, on a regular basis:
    - (i) works for a number of days and has a number of days off; and
    - (ii) on completion of the working days, travels from that usual place of employment to his or her usual place of residence and, on completion of the days off, returns from his or her usual place of residence to that usual place of employment; and
  - (d) the employee is provided with transport on a regular basis in connection with the travel referred to in subparagraph (c)(ii) and that transport is provided by:

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- (i) the employer; or
  - (ii) an associate of the employer; or
  - (iii) a person (in this subparagraph referred to as the **arranger**) other than the employer or an associate of the employer under an arrangement between:
    - (A) the employer or an associate of the employer; and
    - (B) the arranger or another person; and
  - (e) it would be unreasonable to expect the employee to travel on a daily basis on work days between:
    - (i) that usual place of employment; and
    - (ii) the location of the employee's usual place of residence;having regard to the location of those places;
- the residual benefit constituted by the provision of the transport referred to in paragraph (d) is an exempt benefit.

(8) If:

- (a) a residual benefit provided in respect of the employment of an employee arose out of priority of access, for a child or children of the employee, to:
  - (i) a place that is an eligible child care centre for the purposes of any provision of the *Child Care Act 1972*; or
  - (ii) family day care provided before the commencement of item 1 of Schedule 10 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*; or
  - (iii) care outside school hours provided before the commencement of item 1 of Schedule 10 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*; or
  - (iv) care in school vacations provided before the commencement of item 1 of Schedule 10 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*; or

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- (v) an approved centre based long day care service within the meaning of the *A New Tax System (Family Assistance) (Administration) Act 1999*; or
  - (vi) an approved family day care service within the meaning of the *A New Tax System (Family Assistance) (Administration) Act 1999*; or
  - (vii) an approved outside school hours care service within the meaning of the *A New Tax System (Family Assistance) (Administration) Act 1999*; or
  - (viii) an approved in-home care service within the meaning of the *A New Tax System (Family Assistance) (Administration) Act 1999*; and
- (b) in order to obtain that priority of access, the employer of the employee, or an associate of the employer, made a contribution under a program administered by the Families Department;
- the residual benefit is an exempt benefit.

**47A Exemption—no-private-use declaration**

- (1) A residual fringe benefit that is covered by a no-private-use declaration is an exempt benefit.
- (2) An employer may make a ***no-private-use declaration*** that covers all the employer's residual fringe benefits for an FBT year that are covered by a consistently enforced policy in relation to the use of the property that is the subject of the benefit that would result in the taxable value of the benefit being nil.
- (3) The declaration must be in a form approved in writing by the Commissioner and be made by the declaration date.

**Subdivision B—Taxable value of residual fringe benefits**

**48 Taxable value of in-house non-period residual fringe benefits**

Subject to this Part, the taxable value of an in-house non-period residual fringe benefit in relation to an employer in relation to a year of tax is:

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- (aa) if the benefit was provided to the recipient under a salary packaging arrangement—an amount equal to the notional value of the benefit at the comparison time; or
- (ab) if paragraph (aa) does not apply and the benefit is an airline transport fringe benefit—an amount equal to 75% of the stand-by airline travel value of the benefit at the comparison time; or
- (a) if neither paragraph (aa) nor (ab) applies and, at or about the comparison time, identical benefits were provided by the provider:
  - (i) in the ordinary course of business to members of the public under an arm's length transaction or arm's length transactions; and
  - (ii) in similar circumstances and subject to identical terms and conditions (other than as to price) as those that applied in relation to the provision of the recipients benefit to the recipient;  
an amount equal to 75% of the lowest price at which an identical benefit was so sold to a member of the public; or
- (b) in any other case—an amount equal to 75% of the notional value of the benefit at the comparison time;  
reduced by the amount of the recipients contribution.

**49 Taxable value of in-house period residual fringe benefits**

Subject to this Part, the taxable value of an in-house period residual fringe benefit in relation to a year of tax is:

- (aa) if the benefit was provided to the recipient under a salary packaging arrangement—an amount equal to the notional value of the benefit at the comparison time; or
- (ab) if paragraph (aa) does not apply and the benefit is an airline transport fringe benefit—an amount equal to 75% of the stand-by airline travel value of the benefit at the comparison time; or
- (a) if neither paragraph (aa) nor (ab) applies and, at or about the comparison time, identical overall benefits were provided by the provider:

- (i) in the ordinary course of business to members of the public under an arm's length transaction or arm's length transactions; and
- (ii) in similar circumstances and subject to identical terms and conditions (other than as to price) as those that applied in relation to the provision of the recipients overall benefit;  
an amount equal to 75% of the lowest amount paid or payable by any such member of the public in respect of the current identical benefit in relation to an identical overall benefit so provided; or
- (b) in any other case—an amount equal to 75% of the notional value of the recipients current benefit;  
reduced by the amount of the recipients contribution insofar as it relates to the recipients current benefit.

#### **50 Taxable value of external non-period residual fringe benefits**

Subject to this Part, the taxable value of an external non-period residual fringe benefit in relation to an employer in relation to a year of tax is:

- (a) where the provider was the employer or an associate of the employer and the benefit was purchased by the provider under an arm's length transaction—the amount paid or payable by the provider for the benefit;
- (b) where the provider was not the employer or an associate of the employer and the employer, or an associate of the employer, incurred expenditure to the provider under an arm's length transaction in respect of the provision of the benefit—the amount of that expenditure; or
- (c) in any other case—the notional value of the benefit at the comparison time;  
reduced by the amount of the recipients contribution.

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**51 Taxable value of external period residual fringe benefits**

Subject to this Part, the taxable value of an external period residual fringe benefit in relation to an employer in relation to a year of tax is:

- (a) where the provider was the employer or an associate of the employer and the recipients overall benefit was purchased by the provider under an arm's length transaction—the amount paid or payable by the provider in respect of the recipients current benefit;
- (b) where the provider was not the employer or an associate of the employer and the employer, or an associate of the employer, incurred expenditure to the provider under an arm's length transaction in respect of the provision of the recipients current benefit—the amount of that expenditure; or
- (c) in any other case—the notional value of the recipients current benefit;

reduced by the amount of the recipients contribution insofar as it relates to the recipients current benefit.

**52 Reduction of taxable value—*otherwise deductible* rule**

(1) Where:

- (a) the recipient of a residual fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and
- (b) if the recipient had, at the comparison time, incurred and paid unreimbursed expenditure (in this subsection called the **gross expenditure**), in respect of the provision of the recipients benefit, equal to the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the residual fringe benefit in relation to the year of tax—a once-only deduction (in this subsection called the **gross deduction**) would, or would if not for section 82A of the *Income Tax Assessment Act 1936*, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable to the recipient under either of those Acts in respect of the gross expenditure; and

- (ba) the amount (in this subsection called the *notional deduction*) calculated in accordance with the formula:

$$GD - RD$$

where:

**GD** is the gross deduction; and

**RD** is:

- (i) if there is no recipients contribution in relation to the residual fringe benefit—nil; or
  - (ii) if there is a recipients contribution in relation to the residual fringe benefit equal to, or calculated by reference to, an amount of consideration paid by the recipient to the provider or to the employer in respect of the provision of the recipients benefit—the amount (if any) that would, or that would but for section 82A of the *Income Tax Assessment Act 1936*, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997* have been allowable as a once-only deduction to the recipient under either of those Acts in respect of so much of that consideration as was taken into account for the purposes of section 4-15 or 8-1 of the *Income Tax Assessment Act 1997*, if that consideration had been incurred and paid by the recipient at the comparison time; exceeds nil; and
- (c) except where the fringe benefit is:
- (i) an exclusive employee residual benefit; or
  - (ia) covered by a recurring fringe benefit declaration (see section 152A); or
  - (ii) an extended travel residual benefit; or
  - (iii) a car residual benefit;
- the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients benefit; and
- (d) where the fringe benefit is an extended travel residual benefit (other than an international aircrew residual benefit)—the recipient gives to the employer, before the declaration date, a

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travel diary in relation to the travel undertaken by the recipient to which the fringe benefit relates; and

(da) where:

- (i) the fringe benefit is a car residual benefit in respect of a car held by the recipient during a period (in this section called the *holding period*) in the year of tax; and
- (ii) the substantiation rules set out in Division 15 have been complied with in relation to the car in relation to the holding period;

the following conditions are satisfied:

- (iii) the recipient gives to the employer, before the declaration date, a car substantiation declaration for the car for the year of tax;
  - (iv) in a case where the substantiation rules require log book records or odometer records to be maintained by or on behalf of the recipient in relation to the car—the car substantiation declaration is accompanied by a copy of those documents; and
- (e) where paragraph (da) does not apply and the fringe benefit is a car residual benefit in respect of a car held by the recipient during a period (in this section also called the *holding period*) in the year of tax—the recipient gives to the employer, before the declaration date:
- (i) a declaration, in a form approved by the Commissioner, that purports to set out:
    - (A) the holding period; and
    - (B) the number of whole business kilometres travelled by the car during the holding period; and
    - (C) the number of whole kilometres travelled by the car during the holding period; or
  - (ii) where the average number of business kilometres per week travelled by the car during the holding period exceeded 96:
    - (A) a declaration referred to in subparagraph (i); or
    - (B) a declaration, in a form approved by the Commissioner, that purports to set out the

holding period and includes a statement by the recipient that the average number of business kilometres per week travelled by the car during the holding period exceeded 96;

the taxable value, but for Division 14, of the residual fringe benefit in relation to the year of tax is the amount calculated in accordance with the formula:

$$TV - ND$$

where:

*TV* is the amount that, but for this subsection and Division 14, would be the taxable value of the residual fringe benefit in relation to the year of tax; and

*ND* is:

- (f) if neither paragraph (da) nor paragraph (e) applies and paragraph (k) does not apply—the notional deduction; or
- (g) where paragraph (da) applies and paragraph (k) does not apply—whichever of the following amounts is applicable:
  - (i) if it would be concluded that the amount of the recipients contribution would have been the same even if the residual fringe benefit were not applied or used in producing assessable income of the recipient—the business use percentage of the amount that, but for this subsection and Division 14, would be the taxable value of the residual fringe benefit in relation to the year of tax;
  - (ii) if subparagraph (i) does not apply—the business use percentage of the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the residual fringe benefit in relation to the year of tax; or
- (h) where:
  - (i) paragraph (e) applies; and
  - (ii) a declaration referred to in subparagraph (e)(i) has been given to the employer; and
  - (ia) paragraph (k) does not apply;

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whichever of the following amounts is the least:

- (iii) the notional deduction;
  - (iv) if it would be concluded that the amount of the recipients contribution would have been the same even if the residual fringe benefit were not applied or used in producing assessable income of the recipient— $33\frac{1}{3}\%$  of the amount that, but for this subsection and Division 14, would be the taxable value of the residual fringe benefit in relation to the year of tax;
  - (v) if subparagraph (iv) does not apply— $33\frac{1}{3}\%$  of the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the residual fringe benefit in relation to the year of tax; or
- (j) where:
- (i) subparagraph (e)(ii) applies; and
  - (ii) a declaration referred to in subparagraph (e)(i) has not been given to the employer; and
  - (ia) paragraph (k) does not apply;
- whichever of the following amounts is applicable:
- (iii) if it would be concluded that the amount of the recipients contribution would have been the same even if the residual fringe benefit were not applied or used in producing assessable income of the recipient— $33\frac{1}{3}\%$  of the amount that, but for this subsection and Division 14, would be the taxable value of the residual fringe benefit in relation to the year of tax;
  - (iv) if subparagraph (iii) does not apply— $33\frac{1}{3}\%$  of the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the residual fringe benefit in relation to the year of tax; or
- (k) if, under subsection 138(3), the residual fringe benefit is deemed to have been provided to the recipient only—the amount calculated in accordance with subsection (5).

- (2) For the purposes of the application of this section in relation to a fringe benefit, where the recipient:
- (a) while undertaking travel referred to in paragraph (1)(d), engages in an activity in the course of producing assessable income of the recipient; and
  - (b) does not make, as mentioned in the definition of *travel diary* in subsection 136(1), an entry relating to the activity, being an entry of the kind referred to in that definition;
- the activity shall be deemed not to have been engaged in by the recipient in the course of producing assessable income.
- (3) Where:
- (a) apart from this subsection, paragraph (1)(da) applies in relation to a fringe benefit in relation to an employer in respect of a car held by the recipient during a period in a year of tax; and
  - (b) whichever of the following amounts is the greater exceeds the amount that, apart from this subsection, would be ascertained under paragraph (1)(g) as representing the component ND in the formula in subsection (1):
    - (i) in all cases—the amount that would have been ascertained under paragraph (1)(h) as representing that component if:
      - (A) paragraph (1)(e) had applied in relation to the fringe benefit; and
      - (B) a declaration of the kind referred to in subparagraph (1)(e)(i) had been given to the employer;
    - (ii) in a case where the average number of business kilometres per week travelled by the car during the holding period exceeded 96—the amount that would have been ascertained under paragraph (1)(j) as representing that component if:
      - (A) subparagraph (1)(e)(ii) had applied in relation to that fringe benefit; and
      - (B) a declaration of the kind referred to in subparagraph (1)(e)(i) had not been given to the employer; and

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(C) a declaration of the kind referred to in sub-subparagraph (1)(e)(ii)(B) had been given to the employer;

this Act applies, and shall be deemed always to have applied, as if the amount represented by that component had been calculated as mentioned in whichever of subparagraphs (b)(i) or (ii) of this subsection is applicable.

- (4) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to subsection (3).
- (5) For the purposes of paragraph (1)(k) (which applies to a residual fringe benefit that, under subsection 138(3), is deemed to have been provided to an employee only), the amount is calculated in accordance with the formula:

Unadjusted ND × Employee's percentage of interest

where:

***employee's percentage of interest:***

- (a) is the percentage of the interest held by the employee, during a period (in this subsection called the ***holding period***) in the year of tax, in the asset or other thing:
- (i) to which the residual fringe benefit relates; and
  - (ii) that is applied or used for the purpose of producing assessable income of the employee; and
- (b) does not include the percentage of the interest held in that asset or other thing by the employee's associate or associates during the holding period.

***unadjusted ND*** is the amount that would be ascertained as representing the component ND in the formula in subsection (1) if paragraph (1)(k) did not apply in relation to the residual fringe benefit.

## **Division 13—Miscellaneous exempt benefits**

### **53 Motor vehicle fringe benefit fuel etc. to be exempt in certain cases**

- (1) For the purposes of this Act:
  - (a) a car expense payment benefit;
  - (b) a car property benefit; or
  - (c) a car residual benefit;in respect of a car, being a benefit that is attributable to a period when a car fringe benefit was provided, or would but for subsection 8(2) have been provided, in relation to the car, is an exempt benefit.
- (2) Where the provision or use of a motor vehicle would, but for subsection 47(6), be a residual fringe benefit in relation to a period in a year of tax, subsection (1) applies in relation to the motor vehicle as if:
  - (a) the motor vehicle were a car; and
  - (b) a car fringe benefit were provided during that period in relation to the motor vehicle.
- (3) In this section:

***car expense payment benefit*** means an expense payment benefit where the recipients expenditure is a car expense.

***car property benefit*** means a property benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients property, that expenditure would have been a car expense.

***car residual benefit*** means a residual benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients benefit, that expenditure would have been a car expense.

### **54 Provision of food or drink to be exempt benefit in certain cases**

Where:

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- (a) a board fringe benefit in relation to an employer is provided on a particular day;
- (b) on that day, the provider of the fringe benefit also provides food or drink (not being a meal) to the recipient of the fringe benefit; and
- (c) the food or drink:
  - (i) is provided to, and consumed by, the recipient on that day on eligible premises of the employer; and
  - (ii) is not provided at a party, reception or other social function;

the provision of the food or drink is an exempt benefit.

**55 Benefits provided by certain international organisations to be exempt**

A benefit provided in respect of the employment of an employee of an employer is an exempt benefit if:

- (a) the employer is an organisation that, but for subsections 66(2) and (3), would be exempt from a liability to pay tax in respect of the benefit by virtue of the operation of the *International Organisations (Privileges and Immunities) Act 1963*; or
- (b) the employer is an organisation established by an agreement to which Australia is a party and which obliges Australia to grant the employer an exemption from a liability to pay tax in respect of the benefit.

**56 Preservation of diplomatic and consular immunities**

A benefit that, but for subsections 66(2) and (3), would be exempt from tax by virtue of the *Consular Privileges and Immunities Act 1972* or the *Diplomatic Privileges and Immunities Act 1967* is an exempt benefit.

**57 Exempt benefits—employees of religious institutions**

Where:

- (a) the employer of an employee is a registered religious institution; and
  - (b) the employee is a religious practitioner; and
  - (c) a benefit is provided to, or to a spouse or a child of, the employee; and
  - (d) the benefit is not provided principally in respect of duties of the employee other than:
    - (i) any pastoral duties; or
    - (ii) any other duties or activities that are directly related to the practice, study, teaching or propagation of religious beliefs;
- the benefit is an exempt benefit.

**57A Exempt benefits—public benevolent institutions, health promotion charities, some hospitals and public ambulance services**

- (1) Where the employer of an employee is a registered public benevolent institution endorsed under section 123C, a benefit provided in respect of the employment of the employee is an exempt benefit.
- (2) Where:
  - (a) the employer of an employee is a government body; and
  - (b) the duties of the employment of the employee are exclusively performed in, or in connection with:
    - (i) a public hospital; or
    - (ii) a hospital carried on by a society or association that is a rebatable employer;a benefit provided in respect of the employment of the employee is an exempt benefit.
- (3) A benefit provided in respect of the employment of an employee is an exempt benefit if:
  - (a) the employer of the employee is a public hospital; or
  - (b) the employer provides public ambulance services or services that support those services and the employee is

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predominantly involved in connection with the provision of those services.

- (4) A benefit provided in respect of the employment of an employee is an exempt benefit if the employer of the employee is a hospital carried on by a society or association that is a rebatable employer.
- (5) A benefit provided in respect of the employment of an employee is an exempt benefit if:
  - (a) the employer of the employee is a registered health promotion charity; and
  - (b) the registered health promotion charity is endorsed under subsection 123D(1).

**58 Exempt benefits—live-in residential care workers**

- (1) Where, during a period:
  - (a) the employer of an employee is:
    - (i) a government body; or
    - (ii) a registered religious institution; or
    - (iii) a company that is registered under the *Australian Charities and Not-for-profits Commission Act 2012* and does not meet the description of the subtype of entity in column 2 of item 4 of the table in subsection 25-5(5) of that Act; or
    - (iv) a non-profit company that is not an ACNC type of entity;  
whose activities consist of, or include, caring for elderly persons or disadvantaged persons; and
  - (b) the duties of the employment of the employee consist of, or consist principally of:
    - (i) caring for elderly persons and any children of those elderly persons who reside with those elderly persons;  
or
    - (ii) caring for disadvantaged persons and any children of those disadvantaged persons who reside with those disadvantaged persons; and

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- (c) in the performance of those duties, the employee lives, together with elderly persons or disadvantaged persons, in residential premises of the employer; and
  - (d) the fact that the person lives in those premises is directly related to the provision, in the course of the performance of the duties of the employment of the employee, of care to the elderly persons or disadvantaged persons living in those premises;
- any benefit arising from the provision, during that period, of:
- (e) that accommodation to the employee or to the employee and a spouse or child of the employee who resides in those premises with the employee; or
  - (f) residential fuel in connection with that accommodation for use by the employee or by the employee and a spouse or child of the employee; or
  - (g) meals provided on those premises to the employee or to a spouse or child of the employee who resides in those premises with the employee; or
  - (h) food or drink (other than meals) for consumption during that period by the employee or by a spouse or child of the employee who resides in those premises with the employee;
- is an exempt benefit.

(2) In this section:

***residential premises*** means a house or hostel used exclusively for the provision of residential accommodation to:

- (a) elderly persons or disadvantaged persons and children of elderly persons or disadvantaged persons;
- (b) persons the duties of whose employment consist of, or consist principally of, caring for persons referred to in paragraph (a); and
- (c) spouses and children of persons referred to in paragraph (b).

**58A Exempt benefits—employment interviews and selection tests**

Where:

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- (a) a car benefit, an expense payment benefit, a property benefit or a residual benefit is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer;
- (b) the benefit is in respect of an employment interview or selection test; and
- (c) in the case of an expense payment benefit:
  - (i) the benefit is not constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a Division 28 car expense incurred by the recipient in relation to a car owned by, or leased to, the recipient, being a reimbursement calculated by reference to the distance travelled by the car; and
  - (ii) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date;

the benefit is an exempt benefit in relation to the year of tax.

**58AA Exempt benefits—engagement of relocation consultant**

- (1) A benefit is an exempt benefit in relation to a year of tax if:
  - (a) the benefit is an expense payment benefit, or a residual benefit, provided in, or in respect of, the year of tax in respect of the employment of an employee; and
  - (b) the benefit is in respect of, or consists of, the engagement of a relocation consultant; and
  - (c) the engagement of the relocation consultant is required solely for one or more of the following reasons:
    - (i) the employee is required to live away from his or her usual place of residence to perform the duties of the employment mentioned in paragraph (a) (the *new employment duties*);
    - (ii) having lived away from his or her usual place of residence to perform the new employment duties, the employee is required to return there to perform them, or because the employee has ceased to perform them;

- (iii) the employee is required to change his or her usual place of residence to perform those duties; and
  - (d) the relocation consultant is engaged to help a family member:
    - (i) if subparagraph (c)(i) applies—to settle, or to remain, at or near the location where the employee performs the new employment duties while living away from his or her usual place of residence; or
    - (ii) if subparagraph (c)(ii) applies—to settle at the location of the employee's usual place of residence; or
    - (iii) if subparagraph (c)(iii) applies—to settle, or to remain, at the location of the employee's new usual place of residence; and
  - (e) the benefit is not provided under a non-arm's length arrangement; and
  - (f) if the benefit is an expense payment benefit—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date.
- (2) Without limiting subsection (1), a reference in that subsection to helping a family member to settle, or to remain, at a location includes:
- (a) a relocation consultant finding, or providing information to the family member about, accommodation for the family member at the location; or
  - (b) a relocation consultant providing information to the family member about education facilities or other community amenities and services at the location;
- but does not include a reference to a relocation consultant paying expenses on behalf of a family member.

**58B Exempt benefits—removals and storage of household effects as a result of relocation**

- (1) Where:
- (a) either of the following benefits is provided in, or in respect of, a year of tax in respect of the employment of an employee:

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- (i) an expense payment benefit where the recipients expenditure is in respect of the removal or storage of household effects of the employee;
- (ii) a residual benefit where the recipients benefit consists of the removal or storage of household effects of the employee;
- (b) the removal or storage is required solely because:
  - (i) the employee is required to live away from his or her usual place of residence in order to perform the duties of that employment;
  - (ii) the employee, having lived away from his or her usual place of residence in order to perform the duties of that employment, is required to return to his or her usual place of residence:
    - (A) in order to perform those duties; or
    - (B) because the employee has ceased to perform those duties; or
  - (iii) the employee is required to change his or her usual place of residence in order to perform the duties of that employment;
- (c) the removal or storage is required to enable a family member to:
  - (i) if subparagraph (b)(i) applies—take up residence, or to continue to reside, at or near the place where the employee performs the duties of that employment while living away from his or her usual place of residence;
  - (ii) if subparagraph (b)(ii) applies—take up residence at the employee’s usual place of residence; or
  - (iii) if subparagraph (b)(iii) applies—take up residence, or to continue to reside, at the employee’s new usual place of residence;
- (d) if subparagraph (b)(iii) applies:
  - (i) the removal takes place, or the storage commences to be provided, within 12 months after the day on which the employee commenced to perform the duties of that employment at the employee’s new place of employment; and

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- (ii) the benefit is not provided under a non-arm's length arrangement;
  - (e) if subparagraph (a)(i) applies—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; and
  - (f) the removal or storage was not provided in connection with travel undertaken by the employee in the course of performing the duties of that employment;
- the benefit is an exempt benefit in relation to the year of tax.
- (2) For the purposes of this section:
- (a) a reference to the household effects of an employee is a reference to tangible property (whether or not owned by a family member) kept primarily for the personal use of family members; and
  - (b) without limiting the generality of an expression used in subsection (1), the recipients expenditure shall be taken to be in respect of, and the recipients benefit shall be taken to consist of, the removal or storage of household effects if the expenditure or benefit is in respect of, or consists of, the transport, packing, unpacking or insurance of the household effects in connection with the removal or storage of the household effects.

**58C Exempt benefits—sale or acquisition of dwelling as a result of relocation**

- (1) Where:
- (a) during a particular period (in this subsection called the *former home holding period*), an employee of an employer, or an associate of an employee of an employer, holds:
    - (i) a prescribed interest in land on which:
      - (A) there is a building constituting or containing a dwelling;
      - (B) the employee or associate proposes to construct, or complete the construction of, a building constituting or containing a dwelling;

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- (ii) a prescribed interest in a stratum unit in relation to a dwelling; or
  - (iii) a proprietary right in respect of a dwelling, being a flat or home unit;
  - (b) the employee or associate sells or proposes to sell, the interest or right solely because the employee is required to change his or her usual place of residence in order to perform the duties of his or her employment;
  - (c) the employer first notifies the employee at a time (in this subsection called the *notice time*) during the former home holding period that the employee is required to perform the duties of that employment at the employee's new place of employment; and
  - (d) at the notice time, the employee occupied, or proposed to occupy, the dwelling, or proposed to occupy the proposed dwelling, as his or her usual place of residence;
- the following subsections have effect.

(2) Where:

- (a) either of the following benefits is provided in respect of that employment of the employee in, or in respect of, a year of tax:
  - (i) an expense payment benefit where the recipients expenditure is incidental to the sale of that interest or right;
  - (ii) a residual benefit where the recipients benefit is incidental to the sale of that interest or right;
- (aa) the employee or associate entered into a contract for the sale of the interest or right within 2 years after the day (the *new employment day*) on which the employee commenced to perform the duties of that employment at the employee's new place of employment;
- (b) if, apart from this paragraph, this subsection would apply in relation to 2 or more dwellings or proposed dwellings in relation to the change in the employee's usual place of residence—the employer of the employee elects that this subsection apply in relation to only one of those dwellings or proposed dwellings;

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- (c) if paragraph (b) applies—the benefit relates to the dwelling or proposed dwelling in respect of which the election is made;
  - (d) if subparagraph (a)(i) applies—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; and
  - (e) the benefit is not provided under a non-arm's length arrangement;
- the benefit is an exempt benefit in relation to the year of tax.

(3) Where:

- (a) at a particular time, the employee or an associate of the employee acquires:
  - (i) a prescribed interest in land on which:
    - (A) there is a building constituting or containing another dwelling;
    - (B) the employee or associate proposes to construct, or complete the construction of, a building constituting or containing another dwelling;
  - (ii) a prescribed interest in a stratum unit in relation to another dwelling; or
  - (iii) a proprietary right in respect of another dwelling, being a flat or home unit;
- (b) the employee or associate acquires the interest or right solely because the employee is required to change his or her usual place of residence in order to perform the duties of that employment at the employee's new place of employment;
- (c) the employee or associate entered into a contract for the acquisition of the interest or right on a day (the **contract day**) within 4 years after the new employment day;
- (ca) if, on the contract day, the employee or associate holds an interest or right in another dwelling in a situation where:
  - (i) if that interest or right were sold within 2 years after the new employment day; and
  - (ii) if a benefit of a kind referred to in subsection (2) were provided in relation to that interest or right;

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the benefit would be an exempt benefit under subsection (2)—not more than 2 years have elapsed since the new employment day;

- (d) immediately after the completion of the acquisition, the employee occupied the other dwelling, or proposed to occupy the other proposed dwelling, as his or her usual place of residence;
- (e) any of the following benefits is provided in respect of that employment of the employee in, or in respect of, a year of tax:
  - (i) an expense payment benefit where the recipients expenditure is incidental to the acquisition of that interest or right;
  - (ii) a residual benefit where the recipients benefit is incidental to the acquisition of that interest or right;
  - (iii) an expense payment benefit where the recipients expenditure is in respect of the act of connecting or re-connecting a telephone service to the other dwelling or proposed dwelling;
  - (iv) a residual benefit where the recipients benefit is constituted by the act of connecting or re-connecting a telephone service to the other dwelling or proposed dwelling;
  - (v) an expense payment benefit where the recipients expenditure is in respect of the act of re-connecting gas or electricity to the other dwelling or proposed dwelling;
  - (vi) a residual benefit where the recipients benefit is constituted by the act of re-connecting gas or electricity to the other dwelling or proposed dwelling;
- (f) if subparagraph (e)(iii) or (iv) applies—immediately before the change, a telephone service was provided to the unit of accommodation that was the employee’s usual place of residence before the change;
- (g) if subparagraph (e)(i), (iii) or (v) applies—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; and

- (h) the benefit is not provided under a non-arm's length arrangement;  
the benefit is an exempt benefit in relation to the year of tax.
- (4) An election by an employer under subsection (2) in relation to a year of tax:
- (a) shall be made by notice in writing to the Commissioner; and
  - (b) shall be lodged with the Commissioner on or before the declaration date.
- (5) If:
- (a) a benefit is an exempt benefit in relation to a year of tax under subsection (3); and
  - (b) paragraph (3)(ca) applied to the employee; and
  - (c) the employee or associate does not enter into a contract for the sale of the interest or right in the other dwelling referred to in that paragraph within 2 years after the new employment day;
- this Act has effect as if:
- (d) a benefit equivalent to the exempt benefit were provided in respect of the employment of the employee in, or in respect of, the year of tax in which that period of 2 years expired; and
  - (e) that equivalent benefit were not an exempt benefit.

**58D Exempt benefits—connection or re-connection of certain utilities as a result of relocation**

- (1) Where:
- (a) either of the following benefits is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer:
    - (i) an expense payment benefit where the recipients expenditure is in respect of the act of connecting or re-connecting a telephone service to a unit of accommodation;

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- (ii) a residual benefit where the recipients benefit is constituted by the act of connecting or re-connecting a telephone service to a unit of accommodation;
- (b) the unit of accommodation is for the accommodation of family members;
- (c) the accommodation is required solely because:
  - (i) the employee is required to live away from his or her usual place of residence in order to perform the duties of that employment; or
  - (ii) the employee is required to change his or her usual place of residence in order to perform the duties of that employment;
- (d) if subparagraph (a)(i) applies—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; and
- (e) if subparagraph (c)(ii) applies:
  - (i) the telephone service is connected or re-connected not later than 12 months after the day on which the employee commenced to perform the duties of that employment at the employee's new place of employment;
  - (ii) immediately before the change, a telephone service was provided to the unit of accommodation that was the employee's usual place of residence before the change; and
  - (iii) the benefit was not provided under a non-arm's length arrangement;

the benefit is an exempt benefit in relation to the year of tax.

(2) Where:

- (a) either of the following benefits is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer:
  - (i) an expense payment benefit where the recipients expenditure is in respect of the act of re-connecting gas or electricity to a unit of accommodation;

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- (ii) a residual benefit where the recipients benefit is constituted by the act of re-connecting gas or electricity to a unit of accommodation;
  - (b) the unit of accommodation is for the accommodation of family members;
  - (c) the accommodation is required solely because:
    - (i) the employee is required to live away from his or her usual place of residence in order to perform the duties of that employment; or
    - (ii) the employee is required to change his or her usual place of residence in order to perform the duties of that employment;
  - (d) if subparagraph (a)(i) applies—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; and
  - (e) if subparagraph (c)(ii) applies:
    - (i) the gas or electricity is re-connected not later than 12 months after the day on which the employee commenced to perform the duties of that employment at the employee's new place of employment; and
    - (ii) the benefit was not provided under a non-arm's length arrangement;
- the benefit is an exempt benefit in relation to the year of tax.

**58E Exempt benefits—leasing of household goods while living away from home**

Where:

- (a) either of the following benefits (in this section called a ***household goods leasing benefit***) is provided in, or in respect of, a year of tax in respect of the employment of an employee:
  - (i) an expense payment benefit where the recipients expenditure is in respect of a lease or licence in respect of goods;

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- (ii) a residual benefit where the recipients benefit consists of the subsistence of a lease or licence in respect of goods;
  - (b) the goods are primarily for domestic use by, and in connection with accommodation for, family members;
  - (c) either of the following benefits is provided in, or in respect of, the year of tax to the employee in respect of that employment:
    - (i) an expense payment benefit where the recipients expenditure is in respect of a lease or licence in respect of that accommodation;
    - (ii) a residual benefit where the recipients benefit is constituted by the subsistence of a lease or licence in respect of that accommodation; and
  - (d) by virtue of section 21 or subsection 47(5), the benefit referred to in paragraph (c) is an exempt benefit in relation to the year of tax;
- the household goods leasing benefit is an exempt benefit in relation to the year of tax.

**58F Exempt benefits—relocation transport**

Where:

- (a) a car benefit, an expense payment benefit, a property benefit or a residual benefit is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer;
- (b) the benefit is in respect of relocation transport; and
- (c) in the case of an expense payment benefit:
  - (i) the benefit is not constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a Division 28 car expense incurred by the recipient in relation to a car owned by, or leased to, the recipient, being a reimbursement calculated by reference to the distance travelled by the car; and
  - (ii) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary

evidence, or a copy, is given to the employer before the declaration date;  
the benefit is an exempt benefit in relation to the year of tax.

**58G Exempt benefits—motor vehicle parking**

- (1) Each of the following benefits is an exempt benefit:
- (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;
  - (b) a residual benefit where the recipients benefit consists of motor vehicle parking facilities.
- (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 registered charity; 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.
- (3) If:
- (a) the employer of an employee is a government body; and
  - (b) the employee is exclusively employed in, or in connection with, a public educational institution;
- the following benefits provided in respect of the employment of the employee are exempt benefits:
- (c) an eligible car parking expense payment benefit;
  - (d) a car parking benefit.

### 58GA Exempt benefits—small business car parking

#### *Exemption*

- (1) A car parking benefit provided in an FBT year in respect of the employment of an employee is an exempt benefit if:
  - (a) the car is not parked at a commercial parking station; and
  - (b) the employer of the employee is not a public company (see subsection (3)), or a subsidiary of a public company (see subsection (3)), in relation to the day on which the benefit is provided; and
  - (c) the employer is not a government body; and
  - (d) either:
    - (i) the sum of the employer's ordinary income and statutory income for the year of income ending most recently before the start of the FBT year is less than \$10 million; or
    - (ii) the employer is a small business entity for the year of income ending most recently before the start of the FBT year.

#### *New employers*

- (2) However, if an employer to which subparagraph (1)(d)(i) applies:
  - (a) in the case of a tax-exempt employer (see subsection (3))—did not start to carry out operations or activities; or
  - (b) in any other case—did not start to carry out business operations;until after the start of the year of income mentioned in subparagraph (1)(d)(i), then:
  - (c) that subparagraph does not apply; and
  - (d) the employer must make a reasonable estimate of the amount that would be the sum of the employer's ordinary income and statutory income for the year of income (the ***business start-up year***) in which the employer did start those operations or activities, or those business operations; and
  - (e) that estimate is to be made on the assumption that the employer had started the operations or activities, or the

- business operations, at the start of the business start-up year;  
and  
(f) the benefit is an exempt benefit only if that estimate is less than \$10 million.

*Definitions*

- (3) In this section:

**ordinary income** has the same meaning as in the *Income Tax Assessment Act 1997*.

**public company** means a company covered by paragraph 103A(2)(a) of the *Income Tax Assessment Act 1936*, but reading the reference in that paragraph to the last day of the year of income as a reference to the day on which the benefit is provided.

**small business entity** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**statutory income** has the same meaning as in the *Income Tax Assessment Act 1997*.

**subsidiary of a public company** means a subsidiary of a public company within the meaning of subsection 103A(4) of the *Income Tax Assessment Act 1936*, but reading:

- (a) a reference in section 103A of that Act to a year of income as a reference to the day on which the benefit is provided; and
- (b) a reference in that section to a public company as a reference to a public company within the meaning of this section.

**tax-exempt employer** means an employer all of whose income is wholly exempt from income tax.

**58H Exempt benefits—newspapers and periodicals used for business purposes**

- (1) Where:
- (a) any of the following benefits is provided to an employee in respect of his or her employment:

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- (i) an expense payment benefit where the recipients expenditure is in respect of a newspaper or periodical;
  - (ii) a property benefit where the recipients property is a newspaper or periodical;
  - (iii) a residual benefit where the recipients benefit consists of the making available of a newspaper or periodical; and
- (b) the newspaper or periodical was for use by the employee for the purpose, or for purposes that included the purpose, of gaining or producing salary or wages of the employee in respect of that employment;
- the benefit is an exempt benefit.
- (2) In determining for the purposes of paragraph (1)(b) whether a newspaper or periodical was for use for the purpose of gaining or producing salary or wages, no regard shall be had to a purpose that is a merely incidental purpose.

**58J Exempt benefits—compensable work-related trauma**

- (1) Where:
- (a) a benefit is provided in respect of the employment of an employee for or in respect of compensable work-related trauma suffered by the employee; and
  - (b) either of the following subparagraphs applies:
    - (i) the benefit is provided under a workers' compensation law that applies to that employment;
    - (ii) the benefit is not provided under a workers' compensation law but the provision of the benefit is reasonable having regard to all relevant matters including, but without limiting the generality of the foregoing, the value of the benefit and the nature and effects of the trauma;
- the benefit is an exempt benefit.
- (2) Where:
- (a) a residual benefit provided in, or in respect of, a year of tax in respect of the employment of an employee is constituted by the subsistence, during the year of tax, of a contingent right

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- (whether arising under a contract of insurance or otherwise) to a benefit for or in respect of compensable work-related trauma suffered by the employee; and
- (b) in the case of a contingent right arising under a contract of insurance—the contract of insurance does not provide for a benefit that is not for or in respect of compensable work-related trauma suffered by any employee;
- the benefit is an exempt benefit in relation to the year of tax.

**58K Exempt benefits—in-house health care facilities**

Where:

- (a) a benefit consisting of the provision of health care is provided in respect of the employment of an employee of an employer; and
- (b) the health care is provided:
- (i) in an in-house health care facility of the employer; or
  - (ii) by a member of the staff of an in-house health care facility of the employer in the performance of his or her duties as such a member;
- the benefit is an exempt benefit.

**58L Exempt benefits—certain travel to obtain medical treatment**

(1) Where:

- (a) a person (in this subsection called the *traveller*):
- (i) is provided with transport by another person; or
  - (ii) provides transport for himself or herself;
- (b) any of the following benefits is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer:
- (i) a car benefit relating to a particular car where the application or availability of the car is in respect of the provision of the transport;
  - (ii) an expense payment benefit where the recipients expenditure is in respect of the provision of:
    - (A) the transport; or

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- (B) meals or accommodation for the traveller;
- (iii) a property benefit where the recipients property consists of meals for the traveller;
- (iv) a residual benefit where the recipients benefit consists of the provision of:
  - (A) the transport; or
  - (B) accommodation for the traveller;
- (c) the transport is required solely because a person (in this subsection called the *patient*) requires medical treatment;
- (d) the medical treatment is provided in a particular place (in this subsection called the *treatment place*) at a time during a period when the employee is, or would but for that requirement to obtain treatment or any other temporary absence be, performing the duties of that employment in another place (in this subsection called the *overseas employment place*), being a place in:
  - (i) a foreign country;
  - (ii) a part of a foreign country; or
  - (iii) a territory, dependency or colony (however described) of a foreign country;
- (e) the transport is between:
  - (i) a place at or near the overseas employment place; and
  - (ii) a place at or near the treatment place;
- (f) if the patient is not the employee—the patient is a family member and lives with the employee at or near the overseas employment place;
- (g) if the traveller is not the patient—either of the following conditions is satisfied:
  - (i) the traveller accompanies the patient because:
    - (A) the patient has not attained the age of 18 years and requires the traveller as an escort; or
    - (B) the patient requires the traveller as an escort for medical reasons;
  - (ii) the traveller is a family member and accompanies or visits the patient where it is customary for family members to accompany or visit patients receiving

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medical treatment of the same nature and duration as the medical treatment required by the patient;

- (h) the meals or accommodation:
  - (i) are:
    - (A) in connection with the transport; or
    - (B) required solely in connection with the presence of the traveller at the treatment place for purposes related to the medical treatment of the patient; and
  - (ii) where sub-subparagraph (i)(B) applies and the traveller is the patient—are not provided to the patient in a hospital, clinic or similar place in connection with the medical treatment of the patient;
- (j) either of the following conditions is satisfied:
  - (i) the treatment place was the place nearest to the overseas employment place at which medical treatment suitable for the patient could be provided;
  - (ii) the total cost associated with obtaining medical treatment at the treatment place was equal to, or less than, the lowest total cost associated with obtaining medical treatment at any of the places at which medical treatment suitable for the patient could have been provided; and
- (k) if subparagraph (b)(ii) applies—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date;

the benefit is an exempt benefit in relation to the year of tax.

- (2) In this section:

***medical expenses*** means payments:

- (a) to a legally qualified medical practitioner, nurse or chemist, or a public or private hospital, in respect of an illness or operation; or
- (b) to a legally qualified dentist for dental services or treatment or the supply, alteration or repair of artificial teeth; or

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- (c) to a person registered under a law of a State or Territory as a dental mechanic in respect of charges lawfully made by that person for the supply, alteration or repair of artificial teeth; or
- (d) for therapeutic treatment administered by direction of a legally qualified medical practitioner; or
- (e) in respect of an artificial limb (or part of a limb), artificial eye or hearing aid; or
- (f) in respect of a medical or surgical appliance (not otherwise specified in this definition) prescribed by a legally qualified medical practitioner; or
- (g) for:
  - (i) the testing of eyes or the prescribing of spectacles or contact lenses by a person legally qualified to perform those services; or
  - (ii) the supply of spectacles or contact lenses in accordance with any such prescription; or
- (h) as remuneration of a person for services rendered by him or her as an attendant of a person who is blind or permanently confined to a bed or an invalid chair; or
- (i) for the maintenance of a dog used for the guidance or assistance of, but not social therapy for, a person with a disability, being a dog that the Commissioner is satisfied is properly trained in the guidance or assistance of persons with disabilities.

**medical treatment** means an act or thing where a payment in respect of the act or thing:

- (a) is a medical expense; and
- (b) is not a payment:
  - (i) to a legally qualified medical practitioner, nurse or chemist, or a public or private hospital, in respect of a cosmetic operation that is not a professional service (within the meaning of subsection 3(1) of the *Health Insurance Act 1973*) for which a medicare benefit is payable under Part II of that Act; or
  - (ii) to a legally qualified dentist for dental services that are, or dental treatment that is, solely cosmetic.

- (3) For the purposes of the definitions of *medical expenses* and *medical treatment* in subsection (2), a payment is taken to be made to a legally qualified medical practitioner, nurse or chemist (the *qualified person*) in respect of the provision of services or treatment, or the supply of goods, if:
- (a) the payment is made to an employer (not being a public or private hospital) of the qualified person, or a person with whom the qualified person has entered into a contract for services; and
  - (b) the payment is made in respect of the provision of those services or that treatment, or the supply of those goods, by the qualified person.
- (4) For the purposes of the definitions of *medical expenses* and *medical treatment* in subsection (2), a payment is taken to be made to a legally qualified dentist in respect of the provision of dental services or treatment or the supply, alteration or repair of artificial teeth if:
- (a) the payment is made to an employer of the dentist, or a person with whom the dentist has entered into a contract for services; and
  - (b) the payment is made in respect of the provision of those services or that treatment or the supply, alteration or repair of those artificial teeth, by the dentist.
- (5) For the purposes of the definitions of *medical expenses* and *medical treatment* in subsection (2), a payment is taken to be made to a person (a *registered dental mechanic*) registered under a law of a State or Territory as a dental mechanic in respect of charges lawfully made by the registered dental mechanic for the supply, alteration or repair of artificial teeth if:
- (a) the payment is made to an employer of such a person, or a person with whom such a person has entered into a contract for services; and
  - (b) the charges are made in respect of the supply, alteration or repair of artificial teeth by the dental mechanic.

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**58LA Exempt benefits—compassionate travel**

Where:

- (a) any of the following benefits is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer, being benefits in relation to the transport of a person (in this section called the *traveller*) who is the employee or a close relative of the employee:
  - (i) a car benefit relating to a particular car where the application or availability of the car is in respect of the provision of the transport;
  - (ii) an expense payment benefit where the recipients expenditure is in respect of the provision of:
    - (A) the transport; or
    - (B) meals or accommodation for the traveller in connection with the transport;
  - (iii) a property benefit where the recipients property consists of meals for the traveller in connection with the transport;
  - (iv) a residual benefit where the recipients benefit consists of the provision of:
    - (A) the transport; or
    - (B) accommodation for the traveller in connection with the transport;
- (b) the sole reason that the transport is required is:
  - (i) if the traveller is the employee:
    - (A) to enable the traveller to attend the funeral of a close relative of the traveller; or
    - (B) to enable the traveller to visit a close relative of the traveller in connection with a serious illness of the close relative or of the traveller; or
  - (ii) if the traveller is a close relative of the employee:
    - (A) to enable the traveller to attend the funeral of the employee;
    - (B) to enable the traveller to visit the employee in connection with a serious illness of the employee or of the traveller;

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- (C) to enable the traveller to attend the funeral of another close relative of the employee; or
  - (D) to enable the traveller to visit another close relative of the employee in connection with a serious illness of the other close relative or of the traveller;
- (c) the travel to which the transport relates commences during a period in respect of which any of the following conditions is satisfied (or, in a case to which sub-subparagraph (b)(ii)(A) applies, would have been satisfied but for the employee's death):
- (i) during that period, the employee is undertaking travel in the course of performing the duties of that employment;
  - (ii) in a case to which subparagraph (i) does not apply—the employee is required, during that period, to live away from his or her usual place of residence in order to perform the duties of that employment;
  - (iii) in a case to which neither subparagraph (i) nor (ii) applies—during that period, the usual place of residence of the employee is at, or the employee is performing duties of that employment at, a place that:
    - (A) is in a State or internal Territory; and
    - (B) is not at a location in, or adjacent to, an eligible urban area;
- (d) in a case to which sub-subparagraph (b)(ii)(C) or (D) applies—the travel to which the transport relates commences during a period during which the traveller ordinarily resides with the employee; and
- (e) if subparagraph (a)(ii) applies and the recipients expenditure is incurred after 25 May 1988—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date;
- the benefit is an exempt benefit in relation to the year of tax.

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**58M Exempt benefits—work-related medical examinations, work-related medical screening, work-related preventative health care, work-related counselling, migrant language training**

- (1) Where any of the following benefits is provided in respect of the employment of an employee:
- (a) an expense payment benefit where the recipients expenditure is in respect of:
    - (i) a work-related medical examination of the employee;
    - (ii) work-related medical screening of the employee;
    - (iii) work-related preventative health care of the employee;
    - (iv) work-related counselling of the employee or of an associate of the employee; or
    - (v) migrant language training of the employee or of an associate of the employee;
  - (b) a property benefit where the recipients property is required solely for the purposes of:
    - (i) a work-related medical examination of the employee;
    - (ii) work-related medical screening of the employee;
    - (iii) work-related preventative health care of the employee;
    - (iv) work-related counselling of the employee or of an associate of the employee; or
    - (v) migrant language training of the employee or of an associate of the employee;
  - (c) a residual benefit where the recipients benefit consists of the provision of:
    - (i) a work-related medical examination of the employee;
    - (ii) work-related medical screening of the employee;
    - (iii) work-related preventative health care of the employee;
    - (iv) work-related counselling of the employee or of an associate of the employee; or
    - (v) migrant language training of the employee or of an associate of the employee;
- the benefit is an exempt benefit.
- (2) Where:
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- (a) a car benefit, an expense payment benefit, a property benefit or a residual benefit is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer;
- (b) the benefit is associated with:
  - (i) a work-related medical examination of the employee;
  - (ii) work-related medical screening of the employee;
  - (iii) work-related preventative health care of the employee;
  - (iv) work-related counselling of the employee or of an associate of the employee; or
  - (v) migrant language training of the employee or of an associate of the employee; and
- (c) in the case of an expense payment benefit:
  - (i) the benefit is not constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a Division 28 car expense incurred by the recipient in relation to a car owned by, or leased to, the recipient, being a reimbursement calculated by reference to the distance travelled by the car; and
  - (ii) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date;

the benefit is an exempt benefit in relation to the year of tax.

### **58N Exempt benefits—emergency assistance**

Where:

- (a) a benefit is provided in respect of the employment of an employee of an employer;
- (b) the benefit is provided solely by way of the grant of emergency assistance to the recipient; and
- (c) if the benefit is:
  - (i) an expense payment benefit where the recipients expenditure is wholly or partly in respect of health care;
  - (ii) a property benefit where the recipients property is supplied in connection with the provision of health care;

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- (iii) a residual benefit where the recipients benefit consists of the provision of health care; or
- (iv) a loan benefit constituted by the making of a loan where the purpose of the making of the loan is wholly or partly to enable the recipient to meet expenses incurred by the recipient in respect of health care;

the health care is provided:

- (v) by an employee of the employer or, if the employer is a company, of the employer or of a company that is related to the employer;
- (vi) on premises of the employer or, if the employer is a company, of the employer or of a company that is related to the employer; or
- (vii) at or adjacent to a place where employees of the employer or, if the employer is a company, of the employer or of a company that is related to the employer perform the duties of their employment;

the benefit is an exempt benefit.

**58P Exempt benefits—minor benefits**

(1) Where:

- (a) a benefit (in this section called a *minor benefit*) is provided in, or in respect of, a year of tax (in this section called the *current year of tax*) in respect of the employment of an employee of an employer;
- (c) in the case of an expense payment benefit, a property benefit or a residual benefit—if the minor benefit were an expense payment fringe benefit, a property fringe benefit or a residual fringe benefit, as the case may be, in relation to the employer, the expense payment fringe benefit, the property fringe benefit or the residual fringe benefit, as the case requires, would not be an in-house fringe benefit;
- (d) in the case of a tax-exempt body entertainment benefit where the provider incurs non-deductible exempt entertainment expenditure that is wholly or partly in respect of the provision of entertainment to the employee or an associate of the employee:

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- (i) the provision of entertainment to the employee or the associate of the employee, as the case may be:
  - (A) is incidental to the provision of entertainment to outsiders; and
  - (B) neither consists of, nor is provided in connection with, the provision of a meal (other than a meal consisting of light refreshments) to the employee or the associate of the employee, as the case may be; or
- (ii) the entertainment is provided to the employee or the associate of the employee, as the case may be:
  - (A) on eligible premises of the employer; and
  - (B) solely as a means of recognising the special achievements of the employee in a matter relating to the employment of the employee;
- (e) the notional taxable value of the minor benefit in relation to the current year of tax is less than \$300; and
- (f) having regard to:
  - (i) the infrequency and irregularity with which associated benefits, being benefits that are identical or similar to:
    - (A) the minor benefit; or
    - (B) benefits provided in connection with the provision of the minor benefit;have been or can reasonably be expected to be provided;
  - (ii) the amount that is, or might reasonably be expected to be, the sum of the notional taxable values of the minor benefit and any associated benefits, being benefits that are identical or similar to the minor benefit, in relation to the current year of tax or any other year of tax;
  - (iii) the amount that is, or might reasonably be expected to be, the sum of the notional taxable values of any other associated benefits in relation to the current year of tax or any other year of tax;
  - (iv) the practical difficulty for the employer in determining the notional taxable values in relation to the current year of tax of:

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- (A) if the minor benefit is not a car benefit—the minor benefit; and
  - (B) if there are any associated benefits that are not car benefits—those associated benefits; and
  - (v) the circumstances surrounding the provision of the minor benefit and any associated benefits including, but without limiting the generality of the foregoing:
    - (A) whether the benefit concerned was provided to assist the employee to deal with an unexpected event; and
    - (B) whether the benefit concerned was provided otherwise than wholly or principally by way of a reward for services rendered, or to be rendered, by the employee;
- it would be concluded that it would be unreasonable to treat the minor benefit as a fringe benefit in relation to the employer in relation to the current year of tax;
- the minor benefit is an exempt benefit in relation to the current year of tax.
- (2) For the purposes of this section, a benefit is an associated benefit in relation to a minor benefit if, and only if:
- (a) any of the following subparagraphs applies:
    - (i) the benefit is identical or similar to the minor benefit;
    - (ii) the benefit is provided in connection with the provision of the minor benefit;
    - (iii) the benefit is identical or similar to a benefit provided in connection with the provision of the minor benefit;
  - (b) the benefit and the minor benefit both relate to the same employment of a particular employee; and
  - (c) the benefit is not an exempt benefit by virtue of a provision of this Act other than this section.

**58PA Exempt benefits—worker entitlement contributions**

If:

- (a) a person makes a contribution to an approved worker entitlement fund; and
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- (b) the contribution is made under an industrial instrument; and
  - (c) the contribution is either:
    - (i) made for the purposes of ensuring that an obligation under the industrial instrument to make leave payments (including payments in lieu of leave) or payments when an employee ceases employment is met; or
    - (ii) for the reasonable administrative costs of the fund;
- the contribution is an exempt benefit.

**58PB Meaning of *approved worker entitlement funds***

- (1) A fund is an ***approved worker entitlement fund*** if the fund:
  - (a) is established by or under a law of the Commonwealth, a State or a Territory for the purpose of ensuring that long service leave is paid; and
  - (b) is operating under that law.

*Endorsed funds*

- (2) A fund is also an ***approved worker entitlement fund*** if:
  - (a) the fund is endorsed as an approved worker entitlement fund under subsection (3); or
  - (b) the entity that operates the fund is endorsed for the operation of the fund under subsection (3A).
- (3) The Commissioner must endorse a fund as an approved worker entitlement fund if:
  - (a) the fund is entitled to be endorsed as an approved worker entitlement fund (see subsection (4)); and
  - (b) the fund has applied for the endorsement in accordance with Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.
- (3A) The Commissioner must endorse an entity for the operation of a fund as an approved worker entitlement fund if:
  - (a) the entity is entitled to be endorsed for the operation of the fund as an approved worker entitlement fund (see subsection (4A)); and

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- (b) the entity has applied for the endorsement in accordance with Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.
- (4) A fund is entitled to be endorsed as an approved worker entitlement fund if:
  - (a) the management of the fund (including the management of the investments of the fund) is carried out at arm's length from the contributors to the fund and their associates; and
  - (b) under the fund's constituting documents:
    - (i) no more than 5% of the total assets of the fund are to be invested in an entity controlled by a contributor or an associate of a contributor; and
    - (ii) the assets of the fund are not to be used to provide or facilitate any form of financial assistance, including a loan, to a contributor, a person in respect of whom contributions are made or an associate of a contributor or an associate of a person in respect of whom contributions are made; and
  - (c) under the fund's constituting documents, payments from contributions to the fund are to be made only for the following purposes:
    - (i) to pay worker entitlements to persons in respect of whom contributions are made, or to death benefits dependants (within the meaning of the *Income Tax Assessment Act 1997*) or legal personal representatives (within the meaning of that Act) of those persons;
    - (ii) to make investments to generate income from the assets of the fund;
    - (iii) to reimburse contributors who have paid entitlements directly to persons in respect of whom contributions are made;
    - (iv) to return contributions to contributors;
    - (v) to pay, for the benefit of a person in respect of whom contributions are made, an employment termination payment (within the meaning of the *Income Tax Assessment Act 1997*) into a complying superannuation fund (within the meaning of section 45 of the

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*Superannuation Industry (Supervision) Act 1993*), a complying approved deposit fund (within the meaning of section 47 of the *Superannuation Industry (Supervision) Act 1993*) or a retirement savings account (within the meaning of the *Retirement Savings Accounts Act 1997*);

- (vi) to transfer contributions to another approved worker entitlement fund;
  - (vii) to pay the reasonable administrative expenses of the fund;
  - (viii) to pay amounts to a contributor's external administrator that would otherwise be payable as mentioned in subparagraph (iii) or (iv) to the contributor;
  - (ix) to pay interest on, or to repay, money lent to the fund; and
- (d) under the fund's constituting documents, payments from the income of the fund are to be made only for the following purposes:
- (i) a purpose mentioned in subparagraphs (c)(ii) to (ix);
  - (ii) to make payments to contributors to the fund;
  - (iii) to make payments to other persons where the payment is specified in subsection (5); and
- (e) under the fund's constituting documents:
- (i) an account must be kept for each person in respect of whom contributions to the fund are made; and
  - (ii) the account must be kept in a manner that enables entitlements in respect of the person to be calculated; and
- (f) the fund, or the entity that operates the fund, has an ABN.
- (4A) An entity is entitled to be endorsed for the operation of a fund as an approved worker entitlement fund if the fund is entitled to be endorsed as an approved worker entitlement fund.
- (5) A payment made by a fund to a person in the following circumstances is specified for the purposes of subparagraph (4)(d)(iii):

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- (a) a contribution has been made to the fund in respect of the person; and
- (b) the contribution would be an exempt benefit under section 58PA if the fund were an approved worker entitlement fund; and
- (c) either:
  - (i) the payment is of a worker entitlement the contribution for which would be an exempt benefit under section 58PA if the fund were an approved worker entitlement fund; or
  - (ii) the payment is of some kind other than a worker entitlement.

**58Q Exempt benefits—long service awards**

(1) Where:

- (a) a long service award benefit (in this section called the ***current long service award benefit***) is provided in, or in respect of, a year of tax in respect of the employment of an employee;
- (b) the current long service award benefit is in recognition of a particular recognised long service period (in this section called the ***current recognised long service period***) of the employee;
- (c) if there is no other long service award benefit provided in, or in respect of, any year of tax in respect of that employment in recognition of a different recognised long service period of the employee that is shorter than the current recognised long service period—the sum of the notional taxable values of the current long service award benefit and any other long service award benefits provided in, or in respect of, any year of tax in respect of the employment of the employee in recognition of the current recognised long service period does not exceed the amount calculated in accordance with the formula:

$$\$1,000 + \left( \$100 \times \left( \text{RLS} - 15 \right) \right)$$

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- where RLS is the number of whole years in the recognised long service period of the employee that was recognised by the provision of the current long service award benefit; and
- (d) if paragraph (c) does not apply—the sum of the notional taxable values of the current long service award benefit and any other long service award benefits provided in, or in respect of, any year of tax in respect of the employment of the employee in recognition of the current recognised long service period does not exceed the amount calculated in accordance with the formula:

$$\$100 \times (RLS - ERLS)$$

where:

**RLS** is the number of whole years in the recognised long service period of the employee that was recognised by the provision of the current long service award benefit; and

**ERLS** is the number of whole years in the longest recognised long service period of the employee that:

- (i) is shorter than the current recognised long service period; and
- (ii) was recognised by the provision of one or more long service award benefits in, or in respect of, any year of tax, in respect of the employment of the employee;

the current long service award benefit is an exempt benefit in relation to the year of tax.

- (2) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to this section.

**58R Exempt benefits—safety awards**

Where:

- (a) one or more safety award benefits are provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer; and

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- (b) the notional taxable value of that safety award benefit, or the sum of the notional taxable values of those safety award benefits, in relation to that year of tax, does not exceed \$200; the safety award benefit, or the safety award benefits, as the case may be, are exempt benefits in relation to that year of tax.

**58S Exempt benefits—trainees engaged under Australian Traineeship System**

Where:

- (a) an employee is a trainee employed under a training agreement as part of the scheme known as the Australian Traineeship System;
- (b) any of the following benefits is provided in, or in respect of, a year of tax in respect of that employment of the employee:
  - (i) an expense payment benefit where the recipients expenditure is in respect of accommodation, or food or drink, for the employee;
  - (ii) a housing benefit where the housing right is in respect of accommodation for the employee;
  - (iii) a board benefit in respect of a meal for the employee;
  - (iv) a property benefit where the recipients property consists of food or drink for the employee;
  - (v) a residual benefit where the recipients benefit consists of the subsistence of a lease or licence in respect of a unit of accommodation for the accommodation of the employee;
- (c) in a case where the benefit relates to food or drink—the food or drink is not provided at a party, reception or other social function; and
- (d) either of the following conditions are satisfied:
  - (i) the benefit is provided pursuant to the provisions of an industrial instrument relating to the employment of the employee;
  - (ii) it is customary for employers in the industry in which the employee is employed to provide benefits of the same kind as the benefit provided to the recipient and to provide such benefits in similar circumstances to those

that applied in relation to the provision of the benefit to the recipient;

the benefit is an exempt benefit in relation to the year of tax.

**58T Exempt benefits—live-in domestic workers employed by religious institutions or by religious practitioners**

Where, during a particular period:

- (a) the employer of an employee is:
    - (i) a registered religious institution; or
    - (ii) a religious practitioner of a registered religious institution; and
  - (b) the duties of the employment of the employee consist of, or consist principally of, rendering domestic services or personal services, or both, for:
    - (i) one or more religious practitioners who reside in one or more units of accommodation located on a particular parcel of land; and
    - (ii) any relatives of that religious practitioner, or of those religious practitioners, who reside in the unit of accommodation with the religious practitioner concerned; and
  - (c) the employee resides in a unit of accommodation located on the same parcel of land; and
  - (d) the fact that the employee resides in the unit of accommodation is directly related to the rendering, in the course of the performance of the duties of the employment of the employee, of those domestic services or of those personal services;
- any benefit arising from the provision, during that period, of:
- (e) that accommodation to the employee or to the employee and a spouse or child of the employee who resides in that unit of accommodation with the employee; or
  - (f) residential fuel in connection with that accommodation for use by the employee or by the employee and a spouse or child of the employee; or

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- (g) meals provided on the parcel of land to the employee or to a spouse or child of the employee who resides in that unit of accommodation with the employee; or
  - (h) food or drink (other than meals) for consumption, during that period, by the employee or by a spouse or child of the employee who resides in that unit of accommodation with the employee;
- is an exempt benefit.

**58U Exempt benefits—live-in help for elderly and disadvantaged persons**

Where, during a particular period:

- (a) the employer of an employee is a natural person;
  - (b) the duties of the employment of the employee consist of, or consist principally of:
    - (i) caring for one or more elderly persons and any child or children of that elderly person, or those elderly persons, who reside with the elderly person concerned; or
    - (ii) caring for one or more disadvantaged persons and any child or children of that disadvantaged person, or those disadvantaged persons, who reside with the disadvantaged person concerned;
  - (c) in the performance of those duties, the employee resides in the same unit of accommodation as the person or persons being cared for; and
  - (d) the fact that the employee resides in that unit of accommodation is directly related to the provision, in the course of the performance of the duties of the employment of the employee, of care to the elderly person or elderly persons or to the disadvantaged person or disadvantaged persons;
- any benefit arising from the provision, during that period, of:
- (e) that accommodation to the employee or to the employee and a spouse or child of the employee who resides in that unit of accommodation with the employee;
  - (f) residential fuel in connection with that accommodation for use by the employee or by the employee and a spouse or child of the employee;

- (g) meals provided in that unit of accommodation to the employee or to a spouse or child of the employee who resides in that unit of accommodation with the employee; or
  - (h) food or drink (other than meals) for consumption, during that period, by the employee or by a spouse or child of the employee who resides in that unit of accommodation with the employee;
- is an exempt benefit.

**58V Exempt benefits—food and drink for non-live-in domestic employees**

Where:

- (a) the employer of an employee is:
  - (i) a natural person; or
  - (ii) a registered religious institution; and
- (b) if the employer is a natural person—the duties of the employment of the employee consist of, or consist principally of, rendering domestic services for the employer or one or more relatives of the employer at a place of residence of the employer; and
- (c) if the employer is a registered religious institution—the duties of the employment of the employee consist of, or consist principally of, rendering domestic services for one or more religious practitioners or one or more relatives of religious practitioners at a place of residence of the religious practitioner concerned; and
- (d) the employee is not provided with residential accommodation in respect of that employment;

any benefit arising from the provision of food or drink consumed by the employee at that place of residence at or about the time the employee was engaged in the performance of the duties of that employment is an exempt benefit.

Note: Section 960-255 of the *Income Tax Assessment Act 1997* may be relevant to determining who a person's relatives are for the purposes of paragraphs (b) and (c).

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**58W Exempt benefits—deposits under the *Small Superannuation Accounts Act 1995***

*When section applies*

- (1) This section applies if:
  - (a) a benefit is provided in respect of the employment of an employee; and
  - (b) the benefit consists of the making of a deposit, or purported deposit, under the *Small Superannuation Accounts Act 1995*.

*Exempt benefit*

- (2) The benefit is an exempt benefit.

*Definition*

- (3) In this section:

**deposit** has the same meaning as in the *Small Superannuation Accounts Act 1995*.

**58X Exempt benefits—provision of certain work related items**

- (1) Any of the following benefits provided by an employer to an employee of the employer in respect of the employee's employment is an exempt benefit:
  - (a) an expense payment benefit where the recipients expenditure is in respect of an eligible work related item;
  - (b) a property benefit where the recipients property is an eligible work related item;
  - (c) a residual benefit where the recipients benefit consists of the making available of an eligible work related item.
- (2) Subject to subsection (3), each of the following is an **eligible work related item** if it is primarily for use in the employee's employment:
  - (a) a portable electronic device;
  - (b) an item of computer software;
  - (c) an item of protective clothing;

- (d) a briefcase;
  - (e) a tool of trade.
- (3) An item (the *later item*) listed in subsection (2) is not an *eligible work related item* if, earlier in the FBT year, an expense payment benefit or a property benefit of the employee has arisen in relation to another item that has substantially identical functions to the later item.
- (4) However, the rule in subsection (3) does not apply if the later item is a replacement for the other item.

Example: The later item would be a replacement for the other item if the other item were lost or destroyed, or needed replacing because of developments in technology.

### **58Y Exempt benefits—membership fees and subscriptions**

- (1) Either of the following benefits provided by an employer to an employee of the employer in respect of the employee's employment is an exempt benefit:
- (a) an expense payment benefit where the recipients expenditure is in respect of an eligible membership or subscription;
  - (b) a property benefit where the recipients property is an eligible membership or subscription.
- (2) Each of the following is an *eligible membership or subscription*:
- (a) a subscription to a trade or professional journal;
  - (b) an entitlement to use a corporate credit card;
  - (c) an entitlement to use an airport lounge membership.

### **58Z Exempt benefits—taxi travel**

- (1) Any benefit arising from taxi travel by an employee is an exempt benefit if the travel is a single taxi trip beginning or ending at the employee's place of work.
- (2) Any benefit arising from taxi travel by an employee is an exempt benefit if the travel:
- (a) is as a result of sickness of, or injury to, the employee; and

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- (b) is the whole or a part of the journey directly between any of the following:
  - (i) the employee's place of work; or
  - (ii) the employee's place of residence; or
  - (iii) any other place that it is necessary, or appropriate, for the employee to go as a result of the sickness or injury.

**58ZB Exempt benefits—approved student exchange programs**

- (1) Where:
  - (a) a benefit is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer; and
  - (b) the benefit is in respect of participation in an approved student exchange program by the employee or an associate of the employee; and
  - (c) the employer or an associate of the employer did not select, or take part in the selection of, the employee or associate as a participant in the program;the benefit is an exempt benefit in relation to the year of tax.
- (2) An *approved student exchange program* is a student exchange program run by a body that is registered as a student exchange body with the relevant State or Territory body in accordance with the National Guidelines for Student Exchange that are published by the National Co-ordinating Committee for International Secondary Student Exchange.

**58ZC Exempt benefits—remote area housing benefits**

*Remote area housing benefit to be exempt*

- (1) A housing benefit that is a remote area housing benefit is an exempt benefit.

*What constitutes remote area housing benefit*

- (2) A housing benefit in relation to an employer for a year of tax and for a unit of accommodation, being a benefit provided to an

employee of the employer in respect of the employee's employment, is a **remote area housing benefit** if:

- (a) during the whole of the tenancy period, the unit of accommodation was located in a State or internal Territory and was not at a location in, or adjacent to, an eligible urban area; and
- (b) during the whole of the tenancy period, the recipient was a current employee of the employer and the usual place of employment of the recipient was not at a location in, or adjacent to, an eligible urban area; and
- (d) it would be concluded that it was necessary for the employer, during the year of tax, to provide, or to arrange for the provision of, residential accommodation for employees of the employer because:
  - (i) the nature of the employer's business was such that employees of the employer were liable to be frequently required to change their places of residence; or
  - (ii) there was not, at or near the place or places at which the employees of the employer were employed, sufficient suitable residential accommodation for those employees (other than residential accommodation provided by or on behalf of the employer); or
  - (iii) it is customary for employers in the industry in which the recipient was employed during the tenancy period to provide residential accommodation for their employees free of charge or for a rent or other consideration that is less than the market value of the right to occupy or use the accommodation concerned; and
- (e) the recipients overall housing right was not granted to the recipient under:
  - (i) a non-arm's length arrangement; or
  - (ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of this section.

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*Discretion to treat accommodation or place of employment as being remote*

- (3) For the purposes of subsection (2):
- (a) if a unit of accommodation:
    - (i) is at a location in, or adjacent to, an eligible urban area; and
    - (ii) is adjacent to, or in close proximity to, another unit of accommodation that is occupied or used and is not at a location in, or adjacent to, an eligible urban area;the Commissioner may, if the Commissioner considers that it is appropriate to do so having regard to all the circumstances, treat the first-mentioned unit of accommodation as not being at a location in, or adjacent to, an eligible urban area; and
  - (b) if the usual place of employment of a person:
    - (i) is at a location in, or adjacent to, an eligible urban area; and
    - (ii) is adjacent to, or in close proximity to, another location at which people are employed, being another location that is not in, or adjacent to, an eligible urban area;the Commissioner may, if the Commissioner considers that it is appropriate to do so having regard to all the circumstances, treat that place of employment of the first-mentioned person as not being at a location in, or adjacent to, an eligible urban area.

**58ZD Exempt benefits—meals on working days**

If:

- (a) an employer is carrying on a business of primary production for the purposes of the *Income Tax Assessment Act 1997*; and
- (b) the business is carried on at a location in a State or internal Territory that is not in, or adjacent to, an eligible urban area; and
- (c) a benefit consisting of a meal that is ready for consumption is provided on a working day to a person; and
- (d) the benefit is not, or does not include, the provision of meal entertainment as defined in section 37AD; and

- (e) the benefit is:
    - (i) a board benefit; or
    - (ii) a property benefit; or
    - (iii) an expense payment benefit; or
    - (iv) a residual benefit; and
  - (f) the person to whom the benefit is provided is:
    - (i) an employee of the employer, being an employee who is employed in the business and is primarily so employed at a location referred to in paragraph (b); or
    - (ii) if the benefit is a board benefit—an associate of an employee referred to in subparagraph (i); and
  - (g) the benefit is provided in respect of the employment of an employee referred to in subparagraph (f)(i);
- the benefit is an exempt benefit.

## **Division 14—Reduction of taxable value of miscellaneous fringe benefits**

### **59 Reduction of taxable value—remote area residential fuel**

(1) If:

(a) residential fuel is for use:

(i) in connection with the recipients unit of accommodation; and

(ii) during the subsistence of the recipients overall housing right;

in relation to a remote area housing benefit, in relation to an employer in relation to a year of tax; and

(b) any of the following conditions are satisfied:

(i) the recipients expenditure in relation to an expense payment fringe benefit in relation to the employer in relation to the year of tax or a subsequent year of tax is in respect of the supply of that residential fuel;

(ii) the recipients property in relation to a property fringe benefit in relation to the employer in relation to the year of tax is that residential fuel;

(iii) the recipients benefit in relation to a residual fringe benefit in relation to the employer in relation to the year of tax is the benefit of the consumption of that residential fuel;

the amount that, apart from this subsection and section 62, would be the taxable value of the fringe benefit referred to in paragraph (b) in relation to the year of tax is reduced by 50%.

(2) Where:

(a) any of the following conditions are satisfied:

(i) the recipients expenditure in relation to an expense payment fringe benefit in relation to an employer in relation to an employee in relation to a year of tax is in respect of the supply of residential fuel;

- (ii) the recipients property in relation to a property fringe benefit in relation to an employer in relation to an employee in relation to a year of tax is residential fuel;
  - (iii) the recipients benefit in relation to a residual fringe benefit in relation to an employer in relation to an employee in relation to a year of tax is the benefit of the consumption of residential fuel;
- (b) the residential fuel is for use in connection with a dwelling during a period in the year of tax or, in a case to which subparagraph (a)(i) applies, a preceding year of tax, when the recipient of the fringe benefit occupied or used the dwelling as his or her usual place of residence and was under an obligation to repay the whole or a part of a remote area housing loan connected with the dwelling; and
- (c) the fringe benefit was not provided under:
- (i) a non-arm's length arrangement; or
  - (ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of this section;

the amount that, but for this subsection and section 62, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50%.

- (3) Where:
- (a) any of the following conditions are satisfied:
    - (i) the recipients expenditure in relation to an expense payment fringe benefit in relation to an employer in relation to an employee in relation to a year of tax is in respect of the supply of residential fuel;
    - (ii) the recipients property in relation to a property fringe benefit in relation to an employer in relation to an employee in relation to a year of tax is residential fuel;
    - (iii) the recipients benefit in relation to a residual fringe benefit in relation to an employer in relation to an employee in relation to a year of tax is the benefit of the consumption of residential fuel;

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- (b) the residential fuel is for use in connection with a unit of accommodation during a period in the year of tax or, in a case to which subparagraph (a)(i) applies, in a preceding year of tax, during which:
  - (i) the recipient of the fringe benefit occupied or used the unit of accommodation as his or her usual place of residence; and
  - (ii) remote area housing rent connected with the unit of accommodation accrued; and
- (c) the fringe benefit was not provided under:
  - (i) a non-arm's length arrangement; or
  - (ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of this section;

the amount that, but for this subsection and section 62, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50%.

**60 Reduction of taxable value—remote area housing**

- (1) Where:
  - (a) the recipient of a loan fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;
  - (b) the loan is a remote area housing loan connected with a dwelling; and
  - (c) the recipient occupied or used the dwelling as his or her usual place of residence during a period in the year of tax (in this section referred to as the *occupation period*) during which the recipient was under an obligation to repay the whole or a part of the loan;

the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50% of so much of that amount as relates to the occupation period.

(2) Where:

- (a) the recipient of an expense payment fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;
- (b) the recipients expenditure is in respect of interest in respect of a remote area housing loan connected with a dwelling;
- (c) the recipient occupied or used the dwelling as his or her usual place of residence during a period (in this section referred to as the *occupation period*) during which the interest accrued; and
- (d) the fringe benefit was not provided under:
  - (i) a non-arm's length arrangement; or
  - (ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of this section;

the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50% of so much of that amount as relates to the occupation period.

(2A) Where:

- (a) the recipient of an expense payment fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;
- (b) the recipients expenditure is in respect of remote area housing rent connected with a unit of accommodation;
- (c) the recipient occupied or used the unit of accommodation as his or her usual place of residence during a period (in this subsection called the *occupation period*) during which the rent accrued; and
- (d) the fringe benefit was not provided under:
  - (i) a non-arm's length arrangement; or
  - (ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the

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employer to obtain the benefit of the application of this section;

the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50% of so much of the recipients expenditure as relates to the occupation period.

(3) Where:

(a) the recipient of a property fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and

(b) the recipients property is remote area residential property;  
the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50%.

(4) Where:

(a) the recipient of an expense payment fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and

(b) the recipients expenditure is in respect of remote area residential property;  
the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50%.

(5) Where:

(a) the recipient of a property fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and

(b) the recipients property is a remote area residential property option fee;  
the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50%.

(6) Where:

- (a) the recipient of a property fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and
  - (b) the recipient's property is remote area residential property repurchase consideration;
- the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50%.
- (7) Where:
- (a) subsection (6) applies to a property fringe benefit; and
  - (b) the amount paid by the provider of the fringe benefit by way of consideration for the purchase of the estate or interest concerned exceeds both:
    - (i) the market value of the estate or interest at the time of the purchase; and
    - (ii) the guideline price of the estate or interest at the time of the purchase;
- a reference in subsection (6) to the taxable value of the fringe benefit is a reference to so much of the taxable value as is attributable to the amount of the guideline price.

#### **60AA Guideline price for repurchase of remote area residential property**

- (1) In this section:
- index number***, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.
- (2) Subject to subsection (3), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by the Australian Statistician in respect of that quarter, the publication of the later index number shall be disregarded for the purposes of this section.

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- (3) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this section after the change took place or takes place, regard shall be had only to index numbers published in terms of the new reference base.
- (4) A reference in subsection 60(7) to the guideline price of an estate or interest in land is a reference to:
  - (a) if the factor ascertained in accordance with subsections (5) and (6) in relation to the market value of the estate or interest as at the time the estate or interest was acquired by the employee is greater than 1—the market value as at that time multiplied by that factor; or
  - (b) in any other case—the market value as at that time.
- (5) The factor to be ascertained for the purposes of subsection (4) in relation to the market value of the estate or interest in land as at the time of the acquisition of the estate or interest by the employee is the number (calculated to 3 decimal places) ascertained by dividing the index number in respect of the quarter of the year in which the employee sold the estate or interest to the provider by the index number in respect of the quarter of the year in which the estate or interest was acquired by the employee.
- (6) Where the factor ascertained in accordance with subsection (5) would, if it were calculated to 4 decimal places, end with a number greater than 4, that factor shall be taken to be the factor calculated to 3 decimal places in accordance with that subsection and increased by 0.001.

**60A Reduction of taxable value—remote area holiday transport fringe benefits subject to ceiling**

- (1) Where one or more remote area holiday transport fringe benefits in relation to an employer in relation to a year of tax relate to a particular employee of the employer and to a particular holiday for a particular family member, the amount (in this subsection called the *gross taxable value*) that, but for this subsection and section 62, would be:

- (a) so much of the taxable value of that fringe benefit as is attributable to transport, meals or accommodation in relation to the holiday for the family member; or
  - (b) so much of the sum of the taxable values of those fringe benefits as is attributable to transport, meals or accommodation in relation to the holiday for the family member;
- as the case requires, in relation to that year of tax, shall be reduced by:
- (c) 50% of the gross taxable value; or
  - (d) 50% of the benchmark travel amount in relation to that fringe benefit, or in relation to those fringe benefits, in relation to the holiday for the family member;
- whichever is the less.
- (2) Subsection (1) does not apply in relation to a remote area holiday transport fringe benefit unless:
- (a) subsection 143(3) applies to the fringe benefit; and
  - (b) if the fringe benefit is an expense payment fringe benefit:
    - (i) in the case of an expense payment fringe benefit where:
      - (A) the expense payment fringe benefit is constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a Division 28 car expense incurred by the recipient in relation to a car owned by, or leased to, the recipient; and
      - (B) the reimbursement is calculated by reference to the distance travelled by the car;the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients expenditure; or
    - (ii) in the case of an expense payment fringe benefit where subparagraph (i) does not apply:
      - (A) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; or

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- (B) the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients expenditure.
- (3) Where subsection (1) applies, in relation to 2 or more years of tax, in relation to 2 or more fringe benefits relating to a particular holiday for a particular family member, subsection (1) has effect, in relation to each of those years of tax, as if the reference in paragraph (1)(d) to the benchmark travel amount in relation to that fringe benefit, or those fringe benefits, in relation to the holiday for the family member were a reference to the amount calculated in accordance with the formula:

$$BTA \times \frac{TV}{TTV}$$

where:

**BTA** is the amount that, but for this subsection, would be the benchmark travel amount in relation to that fringe benefit, or in relation to those fringe benefits, in relation to the holiday for the family member;

**TV** is the amount that, but for this section and section 62, would be:

- (a) so much of the taxable value, in relation to the year of tax concerned, of that fringe benefit as is attributable to transport, meals or accommodation in relation to the holiday for the family member; or
- (b) so much of the sum of the taxable values, in relation to the year of tax concerned, of those fringe benefits as is attributable to transport, meals or accommodation in relation to the holiday for the family member; and

**TTV** is the amount that, but for this section and section 62, would be so much of the sum of the taxable values, in relation to all of those years of tax, of all of those fringe benefits as is attributable to transport, meals or accommodation in relation to the holiday for the family member.

(4) Where:

- (a) subparagraph (2)(b)(i) applies to an expense payment fringe benefit; and
- (b) the amount of the reimbursement concerned exceeds the reimbursement (in this subsection called the **statutory reimbursement**) that would have been paid if it had been calculated on the basis of the sum of the following rates:
  - (i) the basic car rate;
  - (ii) where 2 or more family members travelled in the car when it provided the transport by virtue of which the expense payment fringe benefit is a remote area holiday transport fringe benefit—the supplementary car rate;

a reference in subsection (1) or (3) of this section to the taxable value of the fringe benefit is a reference to so much of the taxable value as is attributable to the amount of the statutory reimbursement.

(5) Where:

- (a) a remote area holiday transport fringe benefit in relation to an employee consists of the provision of an allowance to the spouse or a child of the employee; and
  - (b) the whole or a part of the allowance has been expended by the recipient in obtaining the transport, meals or accommodation in respect of which the allowance was paid;
- this section applies in relation to the fringe benefit as follows:
- (c) the fringe benefit shall be treated as if it were an expense payment fringe benefit;
  - (d) the amount expended as mentioned in paragraph (b) shall be treated as if it were the recipients expenditure;
  - (e) so much of the allowance as does not exceed the recipients expenditure shall be treated as if it were a reimbursement of the recipients expenditure.

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**61 Reduction of taxable value—remote area holiday transport fringe benefits not subject to ceiling**

(1A) This section does not apply in relation to a fringe benefit in respect of remote area holiday transport if subsection 143(3) applies in relation to the fringe benefit.

(1) Where:

(a) the recipients expenditure in relation to an expense payment fringe benefit in relation to a year of tax is in respect of remote area holiday transport;

(c) in a case where:

(i) the expense payment fringe benefit is constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a Division 28 car expense incurred by the recipient in relation to a car owned by, or leased to, the recipient; and

(ii) the reimbursement is calculated by reference to the distance travelled by the car;

the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients expenditure; and

(d) if paragraph (c) does not apply:

(i) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; or

(ii) the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients expenditure;

the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by:

(e) where paragraph (c) does not apply—50%; and

(f) where paragraph (c) applies—50% of so much of the amount of the reimbursement as does not exceed the reimbursement

that would have been paid if it had been calculated on the basis of the sum of the following rates:

- (i) the basic car rate;
- (ii) where 2 or more family members travelled in the car when it provided the transport by virtue of which the recipients expenditure is in respect of remote area holiday transport—the supplementary car rate.

(1AA) Where the recipients property in relation to a property fringe benefit in relation to a year of tax is in respect of remote area holiday transport, the amount that, but for this subsection and section 62, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50%.

(2) Where the recipients benefit in relation to a residual fringe benefit in relation to a year of tax is in respect of remote area holiday transport, the amount that, but for this subsection and section 62, would be the taxable value of that fringe benefit in relation to the year of tax shall be reduced by 50%.

(3) Where:

- (a) a remote area holiday transport fringe benefit in relation to an employee consists of the provision of an allowance to the spouse or a child of the employee; and
- (b) the whole or a part of the allowance has been expended by the recipient in obtaining the transport, meals or accommodation in respect of which the allowance was paid;

this section applies in relation to the fringe benefit as follows:

- (c) the fringe benefit shall be treated as if it were an expense payment fringe benefit;
- (d) the amount expended as mentioned in paragraph (b) shall be treated as if it were the recipients expenditure;
- (e) so much of the allowance as does not exceed the recipients expenditure shall be treated as if it were a reimbursement of the recipients expenditure.

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**61A Reduction of taxable value—overseas employment holiday transport**

(1) Where one or more fringe benefits, being fringe benefits in respect of overseas employment holiday transport, in relation to an employer in relation to a year of tax relate to a particular employee of the employer, the amount (in this subsection called the **gross taxable value**) that, but for this subsection and section 62, would be:

- (a) so much of the taxable value of that fringe benefit as is attributable to transport, meals or accommodation for a particular family member; or
- (b) so much of the sum of the taxable values of those fringe benefits as is attributable to transport, meals or accommodation for a particular family member;

as the case requires, in relation to that year of tax, shall be reduced by:

- (c) 50% of the gross taxable value; or
- (d) 50% of the benchmark travel amount in relation to that fringe benefit in relation to the family member or 50% of the greatest benchmark travel amount in relation to those fringe benefits in relation to the family member, as the case requires;

whichever is the less.

(2) Subsection (1) does not apply in relation to a fringe benefit in respect of overseas employment holiday transport, being an expense payment fringe benefit, unless:

- (a) in the case of an expense payment fringe benefit where:
  - (i) the expense payment fringe benefit is constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a Division 28 car expense incurred by the recipient in relation to a car owned by, or leased to, the recipient; and
  - (ii) the reimbursement is calculated by reference to the distance travelled by the car;

the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out:

- (iii) particulars of the car; and
  - (iv) the number of whole kilometres travelled by the car in providing transport by virtue of which the recipients expenditure is in respect of overseas employment holiday transport; or
- (b) in the case of an expense payment fringe benefit where paragraph (a) does not apply—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date.

(3) Where:

- (a) subsection (1) applies in relation to one or more fringe benefits (in this subsection called the ***overseas holiday transport fringe benefits***) in relation to an employer in relation to a year of tax, being fringe benefits that relate to a particular employee of the employer;
- (b) one or more of the overseas holiday transport fringe benefits are home country fringe benefits in relation to a particular holiday or holidays for a particular family member;
- (c) if the home country fringe benefit, or home country fringe benefits, referred to in paragraph (b) relate to only one holiday for the family member—the home country holiday amount in relation to the holiday in relation to the family member exceeds the benchmark travel amount, or the greatest benchmark travel amount, as the case requires, that, apart from this subsection, would be applicable under paragraph (1)(d) in relation to the overseas holiday transport fringe benefits in relation to the family member; and
- (d) if the home country fringe benefit, or home country fringe benefits, referred to in paragraph (b) relate to 2 or more holidays for the family member—the greatest of the home country holiday amounts in relation to the holidays in relation to the family member exceeds the benchmark travel amount, or the greatest benchmark travel amount, as the case requires, that, apart from this subsection, would be applicable

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under paragraph (1)(d) in relation to the overseas holiday transport fringe benefits in relation to the family member; the benchmark travel amount, or the greatest benchmark travel amount, as the case requires, that, apart from this subsection, would be applicable under paragraph (1)(d) in relation to the overseas holiday transport fringe benefits in relation to the family member shall be increased by the amount of the excess referred to in whichever of paragraph (c) or (d) of this subsection is applicable.

- (4) For the purposes of subsection (3), where the whole or a part (which whole or part is in this subsection called the **attributable portion**) of the amount that, but for subsection (1) and section 62, would be the taxable value, or of the sum of the taxable values, in relation to the year of tax, of one or more home country fringe benefits in relation to a particular holiday for a particular family member is attributable to transport, meals or accommodation in relation to the holiday for the family member, the home country holiday amount, in relation to the holiday, in relation to the family member, is an amount equal to the attributable portion.
- (5) Where:
- (a) paragraph (2)(a) applies to an expense payment fringe benefit; and
  - (b) the amount of the reimbursement concerned exceeds the reimbursement (in this subsection called the **statutory reimbursement**) that would have been paid if it had been calculated on the basis of the sum of the following rates:
    - (i) the basic car rate;
    - (ii) where 2 or more family members travelled in the car when it provided the transport by virtue of which the expense payment fringe benefit is in respect of overseas employment holiday transport—the supplementary car rate;

a reference in subsection (1) or (4) of this section to the taxable value of the fringe benefit is a reference to so much of the taxable value as is attributable to the amount of the statutory reimbursement.

**61B Reduction of taxable value of certain expense payment fringe benefits in respect of relocation transport**

Where:

- (a) an expense payment fringe benefit in respect of relocation transport is provided in a year of tax to an employee of an employer, or to an associate of the employee, in respect of the employment of the employee;
- (b) the fringe benefit is constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a Division 28 car expense incurred by the recipient in relation to a car owned by, or leased to, the recipient, being a reimbursement calculated by reference to the distance travelled by the car; and
- (c) the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out:
  - (i) particulars of the car; and
  - (ii) the number of whole kilometres travelled by the car in providing transport by virtue of which the benefit is in respect of relocation transport;

the amount that, but for this section, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by so much of the amount of the reimbursement as does not exceed the reimbursement that would have been paid if it had been calculated on the basis of the sum of the following rates:

- (d) the basic car rate;
- (e) where 2 or more family members travelled in the car when it provided the transport by virtue of which the benefit is in respect of relocation transport—the supplementary car rate.

**61C Reduction of taxable value—temporary accommodation relating to relocation**

(1) Where:

- (a) any of the following fringe benefits is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer:

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- (i) an expense payment fringe benefit where the recipients expenditure is in respect of:
    - (A) a lease or licence in respect of a unit of accommodation occupied or used for the temporary accommodation of family members; or
    - (B) a lease or licence in respect of goods primarily for domestic use by family members, being domestic use in connection with a unit of accommodation occupied or used for the temporary accommodation of family members;
  - (ii) a housing fringe benefit where the housing right is in respect of a unit of accommodation occupied or used for the temporary accommodation of family members;
  - (iii) a residual fringe benefit where the recipients benefit:
    - (A) is constituted by the subsistence of a lease or licence in respect of a unit of accommodation occupied or used for the temporary accommodation of family members; or
    - (B) is constituted by the subsistence of a lease or licence in respect of goods primarily for domestic use by family members, being domestic use in connection with a unit of accommodation occupied or used for the temporary accommodation of family members;
  - (b) the temporary accommodation is required solely because the employee is required to change his or her usual place of residence in order to perform the duties of that employment;
  - (c) if the unit of accommodation is located at or near the employee's former usual place of residence—the temporary accommodation was required because the unit of accommodation that was the employee's former usual place of residence became unavailable, or unsuitable, for residential use by family members due to removal, storage or other arrangements relating to the change in the usual place of residence of the employee;
  - (d) if the unit of accommodation is located at or near the employee's new place of employment—the employee, or an
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associate of the employee, either before, on, or as soon as reasonably practicable after, the day (in this section called the **relocation day**) on which the employee commenced to perform the duties of that employment at the employee's new place of employment, commenced sustained reasonable efforts to acquire, or to acquire the right to occupy or use, a unit of accommodation intended by the employee or associate, as the case may be, to provide a long-term place of residence for the employee; and

- (e) the fringe benefit is not provided under a non-arm's length arrangement;

the following provisions have effect.

- (2) Where:

- (a) paragraph (1)(c) applies; and
- (b) a percentage (in this subsection called the **attributable percentage**) of the taxable value of the fringe benefit in relation to the year of tax is attributable to the subsistence of the lease, licence or housing right referred to in paragraph (1)(a) during the whole or a part of the period of 21 days that ended on the day on which the employee commenced to perform the duties of that employment at the employee's new place of employment;

the amount that, but for this subsection and section 62, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by the attributable percentage.

- (3) Where:

- (a) paragraph (1)(d) applies;
- (b) any of the following subparagraphs applies:
  - (ii) the employee, not later than 4 months after the relocation day, pursuant to a contract entered into by the employee or an associate of the employee, commences or commenced to occupy or use a unit of accommodation intended by the employee or associate, as the case may be, to provide a long-term place of residence for the employee;
  - (iii) the employee gives to the employer, before the declaration date, a declaration in a form approved by the

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Commissioner, in respect of the application of this section in relation to the employee; and

- (c) a percentage (in this subsection called the *attributable percentage*) of the taxable value of the fringe benefit in relation to the year of tax is attributable to the subsistence of the lease, licence or housing right referred to in paragraph (1)(a) during the whole or a part of the period commencing 7 days before the relocation day and ending on the earlier or earliest of whichever of the following days is applicable:
- (i) if, during the initial accommodation search period, a contract is or was entered into by the employee or an associate of the employee for the acquisition of, or of the right to occupy or use, a unit of accommodation intended by the employee or associate to provide a long-term place of residence for the employee—the day on which the employee could reasonably be or have been expected to commence, or to have commenced, to occupy or use that unit of accommodation pursuant to that contract;
  - (ii) if the initial accommodation search period ends or ended before any contract of a kind referred to in subparagraph (i) of this paragraph is or was entered into by the employee or an associate—the day on which that period ends or ended;
  - (iii) if:
    - (A) the unit of accommodation that was the employee's former usual place of residence was a dwelling in which the employee, or an associate of the employee, held a relevant proprietary interest;
    - (B) within 6 months after the relocation day, a contract for the sale of that relevant proprietary interest is or was entered into; and
    - (C) the efforts referred to in paragraph (1)(d), and the efforts of that kind that continue or continued to be made during the initial accommodation search period are, or were,

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- efforts to acquire a relevant proprietary interest in a unit of accommodation, being a dwelling;  
the day occurring 12 months after the relocation day;
- (iv) except in a case where subparagraph (iii) applies—the day occurring 6 months after the relocation day;
- the amount that, but for this subsection and section 62, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by the attributable percentage.
- (4) A reference in this section to the acquisition of a unit of accommodation includes a reference to the acquisition of a relevant proprietary interest in a unit of accommodation, being a dwelling.
- (5) In this section:
- initial accommodation search period***, in relation to a case to which paragraph (1)(d) applies, means the period commencing on the commencement, or the first commencement, as the case requires, of the efforts referred to in that paragraph and ending when efforts of that kind first cease or ceased to be made.
- relevant proprietary interest***, in relation to a unit of accommodation, being a dwelling, means:
- (a) in any case—a prescribed interest in land on which a building constituting, or containing, the dwelling is located;
- (b) in any case—a prescribed interest in a stratum unit in relation to the dwelling; or
- (c) if the dwelling is a flat or home unit—a proprietary right in respect of the dwelling.

**61D Reduction of taxable value of temporary accommodation meal fringe benefits**

- (1) Where:
- (a) either of the following fringe benefits (in this section called a ***temporary accommodation meal fringe benefit***) is provided in a year of tax to an employee of an employer, or to an associate of the employee, in respect of the employment of the employee:

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- (i) an expense payment fringe benefit where the recipients expenditure is in respect of a meal;
- (ii) a property fringe benefit where the recipients property is a meal; and
- (b) the meal was for consumption by a family member at a time when the family member was accommodated in a hotel, motel, hostel or guest-house;
- (c) any of the following fringe benefits is provided in, or in respect of, the year of tax in respect of that employment:
  - (i) an expense payment benefit where the recipients expenditure is in respect of that accommodation;
  - (ii) a housing benefit where the housing right is in respect of that accommodation;
  - (iii) a residual benefit where the recipients benefit is constituted by the subsistence of a lease or licence in respect of that accommodation;
- (d) both of the following conditions are satisfied:
  - (i) under section 61C, the taxable value of the fringe benefit referred to in paragraph (c) in relation to the year of tax is reduced by the extent to which that taxable value is attributable to the subsistence of a lease or licence, or a housing right, in respect of the accommodation during a particular period in the year of tax;
  - (ii) the meal was for consumption by a family member at a time during that period; and
- (e) the amount that, but for this section and section 62 and the recipients contribution, would be the taxable value of the temporary accommodation meal fringe benefit exceeds:
  - (i) in a case where the recipient had attained the age of 12 years before the beginning of the year of tax—\$2.00; or
  - (ii) in any other case—\$1.00;

the amount that, but for this section and section 62 and the recipients contribution, would be the taxable value of that temporary accommodation meal fringe benefit shall be reduced by the amount of the excess referred to in paragraph (e).

- (2) For the purposes of the application of this section to an in-house property expense payment fringe benefit, a reference in this section to the recipients contribution in relation to the fringe benefit is a reference to the amount ascertained under paragraph 22A(1)(b).

**61E Reduction of taxable value of certain expense payment fringe benefits in respect of employment interviews or selection tests**

Where:

- (a) an expense payment fringe benefit in respect of an employment interview or selection test is provided in a year of tax to an employee of an employer in respect of the employment of the employee;
- (b) the fringe benefit is constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a Division 28 car expense incurred by the recipient in relation to a car owned by, or leased to, the recipient, being a reimbursement calculated by reference to the distance travelled by the car; and
- (c) the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out:
  - (i) particulars of the car; and
  - (ii) the number of whole kilometres travelled by the car in providing transport by virtue of which the benefit is in respect of an employment interview or selection test;

the amount that, but for this section, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by so much of the amount of the reimbursement as does not exceed the reimbursement that would have been paid if it had been calculated on the basis of the basic car rate.

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**61F Reduction of taxable value of certain expense payment fringe benefits associated with work-related medical examinations, work-related medical screenings, work-related preventative health care, work-related counselling or migrant language training**

Where:

- (a) an expense payment fringe benefit associated with:
  - (i) a work-related medical examination of an employee of an employer;
  - (ii) work-related medical screening of an employee of an employer;
  - (iii) work-related preventative health care of an employee of an employer;
  - (iv) work-related counselling of an employee of an employer or of an associate of an employee of an employer; or
  - (v) migrant language training of an employee of an employer or of an associate of an employee of an employer;

is provided in a year of tax to the employee, or to an associate of the employee, in respect of the employment of the employee;

- (b) the fringe benefit is constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a Division 28 car expense incurred by the recipient in relation to a car owned by, or leased to, the recipient, being a reimbursement calculated by reference to the distance travelled by the car; and
- (c) the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out:
  - (i) particulars of the car; and
  - (ii) the number of whole kilometres travelled by the car in providing transport by virtue of which the benefit is associated with:

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- (A) a work-related medical examination of the employee;
- (B) work-related medical screening of the employee;
- (C) work-related preventative health care of the employee;
- (D) work-related counselling of the employee or of an associate of the employee; or
- (E) migrant language training of the employee or of an associate of the employee;

the amount that, but for this section, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by so much of the amount of the reimbursement as does not exceed the reimbursement that would have been paid if it had been calculated on the basis of the sum of the following rates:

(d) the basic car rate;

(e) where:

- (i) the benefit is associated with work-related counselling of the employee or of an associate of the employee or with migrant language training of the employee or of an associate of the employee; and
- (ii) 2 or more family members travelled in the car when it provided the transport by virtue of which the benefit is associated with work-related counselling of the employee or of an associate of the employee or with migrant language training of the employee or of an associate of the employee;

the supplementary car rate.

**61G Reduction of taxable value of fringe benefits if certain deductions relating to payments to associates are not allowed**

If:

- (a) a fringe benefit is provided in the year of tax in respect of the employment of a current employee; and

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(b) the person providing the benefit cannot deduct an amount under the *Income Tax Assessment Act 1997* for providing the benefit because of section 85-15, 85-20 or 86-60 of that Act; the amount that, but for this section, would be the taxable value of the fringe benefit in relation to the year of tax is reduced by the amount mentioned in paragraph (b).

Note: Sections 85-15, 85-20 and 86-60 of the *Income Tax Assessment Act 1997* limit the extent to which a person can deduct payments to associates that relate to personal services income.

**62 Reduction of aggregate taxable value of in-house fringe benefits**

- (1) Where one or more in-house fringe benefits in relation to an employer in relation to a year of tax relate to a particular employee of the employer, the taxable value of that fringe benefit, or the sum of the taxable values of those fringe benefits, as the case may be, in relation to that year shall be reduced by:
  - (a) if the taxable value or the sum of the taxable values does not exceed \$1,000—an amount equal to the taxable value or the sum of the taxable values; or
  - (b) in any other case—\$1,000.
- (2) Subsection (1) does not apply to an in-house fringe benefit provided under a salary packaging arrangement.

**63 Reduction of taxable value of living-away-from-home food fringe benefits**

- (1) Where:
  - (a) a living-away-from-home food fringe benefit, or 2 or more living-away-from-home food fringe benefits, in relation to an employer in relation to a year of tax relates or relate to a particular employee; and
  - (b) the fringe benefit or fringe benefits are equivalent to the food component of a living-away-from-home allowance fringe benefit in respect of a particular period in the year of tax; and
  - (c) that food component exceeds the sum of the statutory food amounts in respect of eligible family members in respect of that period; and

- (d) the employee satisfies:
    - (i) sections 31C (about maintaining an Australian home) and 31D (about the first 12 months); or
    - (ii) section 31E (about fly-in fly-out and drive-in drive-out requirements); and
  - (da) the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out:
    - (i) if the employee satisfies sections 31C and 31D—the matters in subparagraphs 31F(1)(a)(i) to (iii); or
    - (ii) if the employee satisfies section 31E—the matters in subparagraphs 31F(1)(b)(i) to (iii);
- the following provisions apply:
- (e) if there is only one living-away-from-home food fringe benefit—the amount that, but for this section and section 62, and the recipients contribution, would be the taxable value of that fringe benefit, shall be reduced by the amount of the excess referred to in paragraph (c);
  - (f) if there are 2 or more living-away-from-home food fringe benefits—the amounts that, but for this section and section 62, and the recipients contribution, would be the taxable values of those fringe benefits shall be reduced by amounts proportionate to those taxable values and equal in total to the amount of the excess referred to in paragraph (c).
- (2) For the purposes of the application of this section to an in-house property expense payment fringe benefit, a reference in this section to the recipients contribution in relation to the fringe benefit is a reference to the amount ascertained under paragraph 22A(1)(b).

### **63A Reduction of taxable value in respect of entertainment component of certain fringe benefits**

*Taxable value reduced by entertainment percentage*

- (1) If:

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- (a) the recipient of an expense payment fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and
- (b) a percentage of the recipients expenditure is in respect of the provision of entertainment other than to the recipient or an associate of the recipient;

the amount that, apart from this subsection, would be the taxable value of the expense payment fringe benefit in relation to the year of tax is reduced by that percentage.

*Avoidance of double reduction*

- (2) If the taxable value of the expense payment fringe benefit has been reduced under Division 5 by reason of a particular matter or thing, the taxable value of the fringe benefit is not reduced under this section in respect of the same matter or thing.

**65A Reduction of taxable value—education of children of overseas employees**

Where:

- (a) any of the following fringe benefits in relation to a year of tax is provided in respect of the employment of an employee:
  - (i) a car fringe benefit where the application or availability of the car is in respect of the full-time education of a child of the employee, not being a child who had attained the age of 25 years before the day on which the benefit was provided;
  - (ii) an expense payment fringe benefit where the recipients expenditure is in respect of the full-time education of a child of the employee, not being a child who had attained the age of 25 years before the day on which the benefit was provided;
  - (iii) a property fringe benefit where the recipients property is required solely for the purposes of the full-time education of a child of the employee, not being a child who had attained the age of 25 years before the provision time;

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- (iv) a residual fringe benefit where the recipients benefit consists of, or is required solely for the purposes of, the full-time education of a child of the employee, not being a child who had attained the age of 25 years before the comparison time;
- (b) the full-time education is:
  - (i) at an educational institution; or
  - (ii) by a tutor;
- (c) the whole or any part of the full-time education is undertaken by the child when the employee is an overseas employee;
- (d) either of the following conditions is satisfied:
  - (i) the benefit is provided pursuant to the provisions of an industrial instrument relating to the employment of the employee;
  - (ii) it is customary for employers in the industry in which the employee is employed to provide benefits of the same kind as the benefit provided to the recipient and to provide such benefits in similar circumstances to those that applied in relation to the provision of the benefit to the recipient;
- (e) in the case of an expense payment fringe benefit—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer of the employee before the declaration date; and
- (f) a percentage (in this section called the ***attributable percentage***) of the taxable value, in relation to the year of tax, of the fringe benefit is attributable to the full-time education of the child in the period commencing on whichever of the following days is applicable:
  - (i) if:
    - (A) the full-time education is at an educational institution;
    - (B) the overseas posting period is a period of not less than 28 days; and

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- (C) the overseas posting period commenced during an academic period of the educational institution;  
the day on which that academic period commenced; or
  - (ii) in any other case—the day on which the overseas posting period commenced;  
and ending on whichever of the following days is applicable:
    - (iii) if:
      - (A) the full-time education is at an educational institution;
      - (B) the overseas posting period is a period of not less than 28 days; and
      - (C) the overseas posting period ended during an academic period of the educational institution;  
the day on which that academic period ended;
    - (iv) in any other case—the day on which the overseas posting period ended;
- the amount that, but for this section and section 62, would be the taxable value of that fringe benefit in relation to the year of tax shall be reduced by the attributable percentage.

**Division 14A—Amortisation of taxable value of fringe  
benefits relating to remote area home ownership  
schemes**

**65CA Amortisation of taxable value of fringe benefits relating to  
remote area home ownership schemes**

- (1) Where:
- (a) the recipient of any of the following fringe benefits in relation to an employer in relation to a year of tax (in this section called the *benefit year of tax*) is an employee of the employer:
    - (i) a property fringe benefit where the recipients property is remote area residential property;
    - (ii) a property fringe benefit where the recipients property is a remote area residential property option fee;
    - (iii) an expense payment fringe benefit where the recipients expenditure is in respect of remote area residential property;
  - (b) in the case of a property fringe benefit where the recipients property is remote area residential property—at or before the provision time, the employee entered into a recognised remote area housing obligation restricting the disposal of the estate or interest concerned;
  - (c) in the case of an expense payment fringe benefit—at or before the time when the employee acquired the estate or interest concerned, the employee entered into a recognised remote area housing obligation restricting the disposal of the estate or interest concerned; and
  - (d) in all cases—the period (in this section called the *overall amortisation period*) commencing at whichever of the following times is applicable:
    - (i) if subparagraph (a)(i) or (ii) applies—the provision time;
    - (ii) if subparagraph (a)(iii) applies—the time when the recipients expenditure was incurred;

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(which time is in this section called the *benefit time*) and ending at the earliest of the following later times:

- (iii) the time when the employee ceases or first ceases to be subject to the recognised remote area housing obligation referred to in paragraph (b) or (c) of this subsection or in paragraph 142(2A)(e), as the case requires;
- (iv) the time when the employee ceases or first ceases to be employed by the employer;
- (v) the time when the employee ceases or first ceases to occupy or use the dwelling concerned as his or her usual place of residence;
- (vi) the time of the death of the employee;
- (vii) the end of the period of 7 years after the benefit time; commences and ends in different years of tax;

the fringe benefit is an amortised fringe benefit.

- (2) The notional amortisation period in relation to the amortised fringe benefit is the period commencing at the benefit time and ending at the earlier of the following times:
  - (a) the end of the period specified in the contract to which the recognised remote area housing obligation concerned relates, being the period during which the employee is to be subject to that obligation;
  - (b) the end of the period of 7 years after the benefit time.
- (3) If the overall amortisation period has not come to an end before the end of a particular year of tax (in this subsection called the *current year of tax*), the amortised amount, in relation to the current year of tax, of the amortised fringe benefit is the amount calculated in accordance with the formula:

$$\text{Taxable value} \times \frac{\text{Current amortisation period}}{\text{Notional amortisation period}}$$

where:

**Taxable value** is the taxable value, in relation to the benefit year of tax, of the fringe benefit.

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**Current amortisation period** is the whole number of months (or part months) in the current year of tax that are included in the notional amortisation period.

**Notional amortisation period** is the whole number of months (or part months) that are included in the notional amortisation period.

- (4) If the overall amortisation period comes to an end during a particular year of tax (in this subsection called the **current year of tax**), the amortised amount, in relation to the current year of tax, of the amortised fringe benefit is the amount calculated in accordance with the formula:

Taxable value – Previously amortised amounts

where:

**Taxable value** is the taxable value, in relation to the benefit year of tax, of the fringe benefit.

**Previously amortised amounts** is the sum of the amortised amounts, in relation to each year of tax preceding the current year of tax, of the fringe benefit.

- (5) Where the recipients expenditure in relation to an expense payment fringe benefit was incurred before 1 July 1986, paragraph (1)(d) applies in relation to the fringe benefit as if the recipients expenditure had been incurred on 1 July 1986.
- (6) Where the following paragraphs apply in relation to a fringe benefit in relation to an employer in relation to a year of tax:
- (a) the fringe benefit would have been an amortised fringe benefit if the reference in subsection 142(2D) to 5 years were a reference to 7 years;
  - (b) the benefit time occurred before 31 August 1988;
- the employer is eligible for extended amortisation treatment.
- (7) Where:
- (a) an employer is eligible for extended amortisation treatment;
- and

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- (b) a fringe benefit in relation to the employer in relation to a year of tax would have been an amortised fringe benefit if the reference in subsection 142(2D) to a contractual obligation were a reference to a contractual obligation entered into before the end of the period of 6 months after the commencement of this subsection;

the following provisions have effect:

- (c) a reference in subsection (3) or (4) of this section to the overall amortisation period in relation to the fringe benefit is to be read as a reference to the period that would have been the overall amortisation period in relation to the fringe benefit if the reference in subparagraph (1)(d)(vii) of this section to 7 years were a reference to 15 years;
- (d) for the purpose of determining the notional amortisation period in relation to the fringe benefit, the reference in paragraph (2)(b) of this section to 7 years is to be read as a reference to 15 years.

**65CB Amendment of assessments**

Nothing in section 74 prevents the amendment at any time of an assessment for the purposes of giving effect to this Division.

## **Division 14B—Reducible fringe benefits relating to remote area home repurchase schemes**

### **65CC Reducible fringe benefits relating to remote area home repurchase schemes**

- (1) Where:
  - (a) the recipient of a property fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;
  - (b) the recipients property is remote area residential property repurchase consideration;
  - (c) the taxable value of the fringe benefit in relation to the year of tax is nil; and
  - (d) the market value of the estate or interest purchased by the provider of the fringe benefit exceeds the amount paid by the provider by way of consideration for the purchase of the estate or interest;the fringe benefit is a reducible fringe benefit.
- (2) The reduction amount, in relation to the year of tax, of the reducible fringe benefit is 50% of the amount of the excess referred to in paragraph (1)(d).

## **Division 15—Car substantiation rules for otherwise deductible provisions**

### **65D Car substantiation rules**

The object of this Division is to set out the substantiation rules that apply for the purposes of sections 19, 24, 44 and 52 in relation to cars held by recipients of fringe benefits.

### **65E No compliance with substantiation rules in log book year of tax unless log book records and odometer records are maintained**

Where a car is held by the recipient of a loan fringe benefit, expense payment fringe benefit, property fringe benefit or residual fringe benefit in relation to an employer during a period (in this section called the *holding period*) in a year of tax that is a log book year of tax of the recipient in relation to the car, the substantiation rules shall be taken to have been complied with in relation to the car in relation to the holding period if, and only if:

- (a) log book records and odometer records have been maintained by or on behalf of the recipient for an applicable log book period in relation to the car; and
- (b) odometer records are maintained by or on behalf of the provider for the holding period; and
- (c) the employer specifies the employer's estimate of the number of business kilometres travelled by the car during the holding period; and
- (d) the employer specifies a percentage as the business use percentage applicable to the car in relation to the recipient for the holding period.

**65F No compliance with substantiation rules in non-log book year of tax unless log book records kept in previous log book year of tax**

Where a car is held by the recipient of a loan fringe benefit, an expense payment fringe benefit, a property fringe benefit or a residual fringe benefit during a period (in this section called the *holding period*) in a year of tax that is not a log book year of tax of the recipient in relation to the car, the substantiation rules shall be taken to be complied with in relation to the car if, and only if:

- (a) odometer records are maintained by or on behalf of the recipient in relation to the car for the holding period; and
- (b) the employer specifies the employer's estimate of the number of business kilometres travelled by the car in the holding period; and
- (c) the employer specifies a percentage as the business use percentage applicable to the car in relation to the recipient for the holding period.

## Part IIIA—Rebates of tax

### 65J Rebate for certain not-for-profit employers etc.

*Rebatable employer*

- (1) An employer is a **rebatable employer** for a year of tax if the employer:
- (a) is exempt from income tax at any time during the year of tax under any of the provisions set out in the following table; and
  - (b) satisfies the special conditions (if any) set out in the following table.

<b>Rebatable employer</b>		
<b>Item</b>	<b>Column 1 Type of employer</b>	<b>Column 2 Special conditions</b>
1	a registered charity covered by item 1.1 of the table in section 50-5 of the <i>Income Tax Assessment Act 1997</i>	The registered charity is not a rebatable employer for the year of tax if it: <ul style="list-style-type: none"> <li>(a) is a registered public benevolent institution; or</li> <li>(b) is a registered health promotion charity; or</li> <li>(c) is an institution of the Commonwealth, a State or a Territory; or</li> <li>(d) has not been endorsed under subsection 123E(1); or</li> <li>(e) is not an institution.</li> </ul>

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<b>Rebatable employer</b>		
<b>Item</b>	<b>Column 1 Type of employer</b>	<b>Column 2 Special conditions</b>
2	a scientific institution covered by item 1.3 of the table in section 50-5 of the <i>Income Tax Assessment Act 1997</i>	The institution is not an institution of the Commonwealth, a State or a Territory unless it: <ul style="list-style-type: none"> <li>(a) is an institution established by a law of the Commonwealth, a State or a Territory; and</li> <li>(b) is not conducted by or on behalf of the Commonwealth, a State or a Territory; and</li> <li>(c) is engaged solely in research into the causes, prevention or cure of diseases in humans.</li> </ul>
3	a public educational institution covered by item 1.4 of the table in section 50-5 of the <i>Income Tax Assessment Act 1997</i>	The institution is not an institution established by a law of the Commonwealth, a State or a Territory unless it: <ul style="list-style-type: none"> <li>(a) is not conducted by or on behalf of the Commonwealth, a State or a Territory; and</li> <li>(b) is a preschool or school (other than a tertiary institution).</li> </ul>
4	a society, association or club: <ul style="list-style-type: none"> <li>(a) established for the encouragement of science; and</li> <li>(b) covered by item 1.7 of the table in section 50-5 of the <i>Income Tax Assessment Act 1997</i></li> </ul>	See subsection (5) of this section.
5	a society, association or club: <ul style="list-style-type: none"> <li>(a) established for community service purposes (except political or lobbying purposes); and</li> <li>(b) covered by item 2.1 of the table in section 50-10 of the <i>Income Tax Assessment Act 1997</i></li> </ul>	See subsection (5) of this section.

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<b>Rebatable employer</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>Type of employer</b>	<b>Special conditions</b>
6	an employer association or an employee association covered by item 3.1 of the table in section 50-15 of the <i>Income Tax Assessment Act 1997</i>	None.
7	a trade union covered by item 3.2 of the table in section 50-15 of the <i>Income Tax Assessment Act 1997</i>	None.
8	a society or association: (a) established for the purpose of promoting the development of: (i) aviation; or (ii) tourism; and (b) covered by item 8.1 of the table in section 50-40 of the <i>Income Tax Assessment Act 1997</i>	See subsection (5) of this section.
9	a society or association: (a) established for the purpose of promoting the development of any of the following Australian resources: (i) agricultural resources; (ii) horticultural resources; (iii) industrial resources; (iv) manufacturing resources; (v) pastoral resources; (vi) viticultural resources; (vii) aquacultural resources; (viii) fishing resources; and (b) covered by item 8.2 of the table in section 50-40 of the <i>Income Tax Assessment Act 1997</i>	See subsection (5) of this section.

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<b>Rebatable employer</b>		
<b>Item</b>	<b>Column 1 Type of employer</b>	<b>Column 2 Special conditions</b>
10	a society or association: (a) established for the purpose of promoting the development of Australian information and communications technology resources; and (b) covered by item 8.3 of the table in section 50-40 of the <i>Income Tax Assessment Act 1997</i>	See subsection (5) of this section.
11	a society, association or club: (a) established for the encouragement of any of the following: (i) animal racing; (ii) art; (iii) a game or sport; (iv) literature; (v) music; and (b) covered by item 9.1 of the table in section 50-45 of the <i>Income Tax Assessment Act 1997</i>	See subsection (5) of this section.
12	a society, association or club: (a) established for musical purposes; and (b) covered by item 9.2 of the table in section 50-45 of the <i>Income Tax Assessment Act 1997</i>	See subsection (5) of this section.

Note: Subsection (3) affects the kind of employers that may be considered to be an institution of government.

*Rebate for year of tax 2000-2001 and later years*

- (2A) If an employer is a rebatable employer for the year of tax beginning on 1 April 2000 or a later year of tax, the employer is entitled to a rebate of tax in the employer's assessment for the year

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of tax concerned equal to the amount worked out using the formula:

$$\text{FBT rate} \times \left( \text{Gross tax} - \frac{\text{Aggregate non-rebatable amount}}{\text{Total days in year}} \right) \times \frac{\text{Rebatable days in year}}{\text{Total days in year}}$$

where:

**gross tax** means the amount of tax payable on the fringe benefits taxable amount of the employer of the year of tax (assuming that this section had not been enacted).

**rebatable days in year** means the number of whole days in the year of tax when the employer engaged in activities as an employer covered by any of the table items in subsection (1).

**total days in year** means the number of days in the year of tax excluding the days on which the employer did not engage in activities as an employer.

*How to work out aggregate non-rebatable amount*

- (2B) An employer's **aggregate non-rebatable amount** for the year of tax is the amount worked out as follows.

*Method statement*

Step 1. For each employee, add:

- (a) the individual grossed-up type 1 non-rebatable amount (see subsection (2C)) in relation to the employer for the year of tax; and
- (b) the individual grossed-up type 2 non-rebatable amount (see subsection (2D)) in relation to the employer for the year of tax.

The result is the ***individual grossed-up non-rebatable amount*** for the employee.

Step 2. Reduce the individual grossed-up non-rebatable amount for each employee of the employer:

- (a) to zero for the year of tax beginning on 1 April 2000; and
- (b) by \$30,000, but not below zero, for a later year of tax.

Note: Paragraph (a) means the employer's aggregate non-rebatable amount for the year of tax beginning on 1 April 2000 will be nil.

Step 3. Add up the results of step 2 for all the employer's employees.

Step 4. Multiply the sum from step 3 by the FBT rate. The result is the employer's ***aggregate non-rebatable amount*** for the year of tax.

*Individual grossed-up type 1 non-rebatable amount*

- (2C) For the purposes of step 1 in the method statement in subsection (2B), the ***individual grossed-up type 1 non-rebatable amount*** of an employee in relation to the employer for the year of tax is:

$$\text{Type 1 individual base non-rebatable amount} \times \frac{\text{FBT rate} + \text{GST rate}}{\left(1 - \text{FBT rate}\right) \times \left(1 + \text{GST rate}\right) \times \text{FBT rate}}$$

*Individual grossed-up type 2 non-rebatable amount*

- (2D) For the purposes of step 1 in the method statement in subsection (2B), the ***individual grossed-up type 2 non-rebatable***

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**amount** of an employee in relation to the employer for the year of tax is:

$$\text{Type 2 individual base non-rebatable amount} \times \frac{1}{(1 - \text{FBT rate})}$$

*Working out the type 1 individual base non-rebatable amount*

- (2E) An employee's **type 1 individual base non-rebatable amount** in relation to the employer for the year of tax is worked out by adding the amounts worked out under step 3 of the method statement in subsection (2G) and step 3 of the method statement in subsection (2H).

*Working out the type 2 individual base non-rebatable amount*

- (2F) An employee's **type 2 individual base non-rebatable amount** in relation to the employer for the year of tax is worked out by adding the amounts worked out under step 4 of the method statement in subsection (2G) and step 4 of the method statement in subsection (2H).

*Working out the subsection (2G) amounts*

- (2G) An employee's subsection (2G) amounts for the year of tax are worked out as follows.

*Method statement*

Step 1. Work out under section 5E for each of the employer's employees the employee's individual fringe benefits amount (if any) for the year of tax in respect of the employee's employment by the employer.

Step 2. Identify the benefits taken into account in step 1 that are GST-creditable benefits (see section 149A).

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- Step 3. So much of the amount worked out under step 1 that relates to the benefits identified under step 2 is the ***step 3 of subsection (2G) amount*** for the individual.
- Step 4. The remainder of the amount is the ***step 4 of subsection (2G) amount*** for the individual.

*Working out the subsection (2H) amounts*

- (2H) An employee's subsection (2H) amounts for the year of tax are worked out as follows.

*Method statement*

- Step 1. Work out for each employee his or her share (if any) of the taxable values of the excluded fringe benefits for the year of tax in respect of the employee's employment by the employer, but disregarding benefits:
- (a) that constitute the provision of meal entertainment as defined in section 37AD (whether or not the employer made an election under section 37AA); or
  - (b) that are car parking fringe benefits; or
  - (c) whose taxable values are wholly or partly attributable to entertainment facility leasing expenses.
- Step 2. Identify the benefits taken into account in step 1 that are GST-creditable benefits (see section 149A).
- Step 3. So much of the amount worked out under step 1 that relates to the benefits identified under step 2 is the ***step 3 of subsection (2H) amount*** for the individual.
- Step 4. The remainder of the amount is the ***step 4 of subsection (2H) amount*** for the individual.

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*[Extended meaning of “institution of the Commonwealth, a State or a Territory”]*

- (3) For the purposes of this section, an institution established by a law of the Commonwealth, a State or a Territory is taken to be an institution of the Commonwealth, the State or the Territory, as the case requires.

*[Meanings of “non-profit society”, “non-profit association” and “non-profit club”]*

- (5) A society, association or club is not covered by table item 4, 5, 8, 9, 10, 11 or 12 in subsection (1) for a year of tax if it is:
- (a) an incorporated company where all the stock or shares in the capital of the company is or are beneficially owned by:
    - (i) the Commonwealth, a State or a Territory; or
    - (ii) an authority or institution of the Commonwealth, a State or a Territory; or
  - (b) an incorporated company where the company is limited by guarantee and the interests and rights of the members in or in relation to the company are beneficially owned by:
    - (i) the Commonwealth, a State or a Territory; or
    - (ii) an authority or institution of the Commonwealth, a State or a Territory.

*Definitions*

- (6) In this section:

**FBT rate** means the rate of fringe benefits tax for the year of tax.

**GST rate** means the rate of goods and services tax payable under the *A New Tax System (Goods and Services Tax) Act 1999* for the year of tax.

## **Part IV—Liability to tax**

### **66 Liability to pay tax**

- (1) Subject to this Act, tax imposed in respect of the fringe benefits taxable amount of an employer of a year of tax is payable by the employer.
- (2) A law, or a provision of a law, passed before the commencement of this Act that purports to exempt a person from liability to pay fringe benefits tax or to pay taxes that include that tax does not exempt that person from liability to pay that tax.
- (3) A law, or a provision of a law, passed after the commencement of this Act that purports to exempt a person from liability to pay taxes under the laws of the Commonwealth or to pay certain taxes under those laws that include fringe benefits tax, other than a law or a provision that expressly exempts a person from liability to pay that tax, shall not be construed as exempting the person from liability to pay that tax.

### **67 Arrangements to avoid or reduce fringe benefits tax**

- (1) Where:
  - (a) an employer (in this subsection referred to as the *eligible employer*) has obtained or, but for this section, would obtain, a tax benefit in respect of a year of tax in connection with an arrangement under which a benefit is or was provided to a person, being an arrangement that was entered into, or commenced to be carried out, on or after 19 September 1985; and
  - (b) it would be concluded that the person, or one of the persons, who entered into or carried out the arrangement or any part of the arrangement did so for the sole or dominant purpose of enabling the eligible employer to obtain a tax benefit in connection with the arrangement or of enabling the eligible employer and another employer or other employers each to obtain a tax benefit in connection with the arrangement

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(whether or not that person who entered into or carried out the arrangement or any part of the arrangement is the eligible employer or is the other employer or one of the other employers);

the Commissioner:

- (c) may determine that the aggregate fringe benefits amount (if any) of the eligible employer of the year of tax be increased by the amount of the tax benefit; and
  - (d) may determine that appropriate adjustments (if any) be made to the aggregate fringe benefits amount of the eligible employer in respect of another year of tax or of another employer in respect of any year of tax;
- and any such determination has effect accordingly.
- (2) A reference in this section to the obtaining by an employer of a tax benefit in respect of a year of tax in connection with an arrangement under which a benefit is provided to a person is a reference to an amount not being included in the aggregate fringe benefits amount of the employer of the year of tax in respect of that benefit where the amount would have been included, or could reasonably be expected to have been included, in that aggregate fringe benefits amount if the arrangement had not been entered into or carried out.
  - (3) A reference in this section to the obtaining by an employer of a tax benefit in respect of a year of tax in connection with an arrangement under which a benefit is provided to a person does not include a reference to an amount not being included in the aggregate fringe benefits amount of the employer of the year of tax in respect of that benefit, being an amount that would have been included, or could reasonably be expected to have been included, in that aggregate fringe benefits amount if the arrangement had not been entered into or carried out, where the non-inclusion of the amount in that aggregate fringe benefits amount is attributable to the payment or provision by a person of consideration in respect of the provision of the benefit.
  - (4) Where, at any time, an employer considers that the Commissioner ought to make a determination under paragraph (1)(d) in relation to the employer in relation to a year of tax, the employer may post to

or lodge with the Commissioner a request in writing for the making by the Commissioner of a determination under that paragraph.

- (5) The Commissioner shall consider the request and serve on the employer a written notice of the Commissioner's decision on the request.
- (6) If the employer is dissatisfied with the Commissioner's decision on the request, the employer may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.
- (8) Nothing in section 74 prevents the amendment of an assessment at any time before the end of 6 years after the original assessment date if the amendment is for the purposes of giving effect to subsection (1) of this section as it applies by virtue of paragraph (1)(c).
- (9) Nothing in section 74 prevents the amendment of an assessment at any time if the amendment is for the purpose of giving effect to subsection (1) of this section as it applies by virtue of paragraph (1)(d).
- (10) In this section, a reference to an employer, in relation to an arrangement, includes a reference to a person who would be, or might reasonably be expected to be, an employer but for the arrangement.
- (11) A reference in this section to the carrying out of an arrangement by a person shall be read as including a reference to the carrying out of an arrangement by a person together with another person or other persons.
- (12) Nothing in the provisions of this Act other than this section or in the *International Tax Agreements Act 1953* or in the *Petroleum (Timor Sea Treaty) Act 2003* shall be taken to limit the operation of this section.

## **Part V—Returns and assessments**

### **Division 1—Returns**

#### **68 Annual returns**

Where there is a fringe benefits taxable amount of an employer of a year of tax, the employer shall, unless the employer has furnished a return or returns under section 69 in relation to the fringe benefits taxable amount of the year of tax, furnish to the Commissioner a return not later than 21 May in the next year of tax or such later date as the Commissioner allows.

#### **69 Further returns**

Where the Commissioner, by notice in writing served on a person, requires the person, whether an employer or not, to furnish to the Commissioner a return in relation to a year of tax, the person shall furnish the return in the manner and within the time specified in the notice, whether or not the person has furnished, or is or was required to furnish, a return under section 68 or this section in respect of that year of tax.

#### **70 Keeping records of indirect tax transactions**

A return under section 68 or 69 must:

- (a) be in the approved form; and
- (b) specify:
  - (i) the fringe benefits taxable amount of the employer of the year of tax concerned; and
  - (ii) the amount of tax payable on that amount.

#### **70D Tax agent to give taxpayer copy of notice of assessment**

- (1) Where a taxpayer has given the address of a registered tax agent as the taxpayer's address for service, the registered tax agent must give the taxpayer the original of, or a copy of, any notice of

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assessment in respect of that taxpayer that is delivered to that address.

Penalty: 30 penalty units.

(2) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## Division 2—Assessments

### 72 First return deemed to be an assessment

Where:

- (a) at a particular time, a return under this Act in relation to an employer in relation to a year of tax is furnished; and
- (b) before that time, no return has been furnished, and no assessment has been made, in relation to the employer in relation to the year of tax;

the following provisions have effect:

- (c) the Commissioner shall be deemed at that time to have made an assessment (in this section referred to as the *deemed assessment*) of:
  - (i) the fringe benefits taxable amount (including a nil amount) of the employer of the year of tax; and
  - (ii) the amount (including a nil amount) of tax payable on that fringe benefits taxable amount;

being those respective amounts as specified in the return referred to in paragraph (a);

- (d) the return referred to in paragraph (a) shall be deemed to be a notice of the deemed assessment and to be under the hand of the Commissioner;
- (e) the notice referred to in paragraph (d) shall be deemed to have been served at that time on the person liable to pay the tax.

### 73 Default assessments

Where:

- (a) an employer has not furnished a return in respect of a year of tax; and
- (b) the Commissioner is of the opinion that the employer is liable to pay tax in respect of that year;

the Commissioner may, whether during that year or after the end of that year, make an assessment of:

- (c) the fringe benefits taxable amount of the employer of the year of tax; and
- (d) the amount of tax payable on that fringe benefits taxable amount.

#### **74 Amendment of assessments**

- (1) The Commissioner may, at any time within a period of 3 years after the original assessment date in relation to an assessment, amend the assessment by making such alterations or additions to it as the Commissioner thinks necessary.
- (2) Subject to this section, the Commissioner may, after the end of 3 years after the original assessment date in relation to an assessment, amend the assessment by making such alterations or additions to it as the Commissioner thinks necessary.
- (3) Where:
  - (a) an employer does not make a full and true disclosure of all the material facts necessary for an assessment of the tax payable by the employer;
  - (b) the Commissioner makes an assessment; and
  - (c) there is an avoidance of tax;the Commissioner may:
  - (d) where the Commissioner is of the opinion that the avoidance of tax is due to fraud or evasion—at any time; and
  - (e) in any other case—within 6 years after the original assessment date in relation to the assessment;amend the assessment by making such alterations or additions to it as the Commissioner thinks necessary.
- (4) No amendment effecting a reduction in the liability of an employer under an assessment shall be made after the end of 3 years after the original assessment date.
- (5) Where an assessment has been amended under this section in any particular, the Commissioner may, within 3 years after the date on which the amended assessment is made, make, in or in respect of that particular, such further amendment of the assessment as, in the Commissioner's opinion, is necessary to effect such reduction in

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the liability of the employer liable to pay tax under the assessment as is just.

- (6) Where an employer:
  - (a) applies, within 3 years after the original assessment date in relation to an assessment, for an amendment of an assessment; and
  - (b) supplies to the Commissioner within that period all information needed by the Commissioner for the purposes of determining the application made by the employer;the Commissioner may amend the assessment, notwithstanding that that period has expired.
- (6A) An application for amendment must be in the approved form.
- (7) Nothing in this section prevents the amendment of an assessment:
  - (a) in order to give effect to a decision on a review or appeal; or
  - (b) by way of reduction in any particular pursuant to an objection made under this Act or pending an appeal or review.
- (8) The Commissioner may, at any time, amend an assessment of additional tax under Part VIII.

**75 Refund of amounts overpaid**

- (1) Where, by reason of an amendment of an assessment, a person's liability to tax is reduced:
  - (a) the amount by which the tax is so reduced shall be taken, for the purposes of section 93, never to have been payable; and
  - (b) the Commissioner shall:
    - (i) refund the amount of any tax overpaid; or
    - (ii) apply the amount of any tax overpaid against any liability of the person to the Commonwealth and refund any part of the amount that is not so applied.
- (2) In subsection (1), unless the contrary intention appears, *tax* includes additional tax under section 93 or Part VIII.

**76 Amended assessment to be an assessment**

Except as otherwise provided, an amended assessment is an assessment for all the purposes of this Act.

**77 Notice of assessment**

As soon as practicable after an assessment is made, the Commissioner shall serve notice of the assessment in writing on the person liable to pay the tax.

**78 Validity of assessment**

The validity of any assessment is not affected by reason that any provision of this Act has not been complied with.

**78A Objections**

An employer who is dissatisfied with an assessment may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.