

# DLK ADVISORY

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## FBT CAR PARKING BENEFITS: NEW DRAFT RULING

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The ATO has updated a previously issued draft ruling which consolidates proposed changes to FBT car parking as well as addressing the Full Federal Court's decision in *FCT v Virgin Australia Regional Airlines Pty Ltd* [2021] FCAFC 209 concerning the "primary place of employment". When made final, this consolidated draft ruling will replace the previously withdrawn TR 96/26 (FBT: car parking benefits) as well as other previously issued drafts.

In *FCT v Virgin Australia Regional Airlines Pty Ltd* [2021] FCAFC 209, the Full Federal Court allowed the ATO's appeal and held that Virgin Airlines provided car parking benefits to its flight and cabin crew in various airports. The case centred around the concept of primary place of employment.

In the first instance, the Federal Court found that where employees operated on only one aircraft during a particular day, that aircraft was their primary place of employment. In addition, it held that where employees operated on more than one aircraft during a particular day, they had no primary place of employment for that day. The ATO disagreed and then appealed to the Full Federal Court.

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The Full Court then noted that, under the enterprise agreements covering the flight and cabin crew, they were allocated a "home base" and that numerous rights and obligations were defined by reference to the home base, including rosters, rest periods between "tours of duty" or "trips", allowances and car parking entitlements. A "tour of duty" was the period commencing when an employee signed on at their home base and ending when they signed off at their home base.

Taking those matters into account, the Full Court concluded that, in relation to each relevant day, an employee's relevant home base airport was their "primary place of employment" and this was the case even on days when the employee did not attend the home base airport at all. As a result, it found that car parking benefits were provided as the employees' cars were parked at, or in the vicinity of the primary place of employment.

The consolidated draft ruling now considers the primary place of employment to be a broad test that is not limited to the place at which duties are performed and includes other considerations such as the place which is primary to an employee's conditions of employment (ie rostering, allowances, car parking etc) contained in their employment contract or industrial instrument.

Generally, where the conditions of employment indicate that a particular business premises are primary to the employee's employment, those premises satisfy the definition of primary place of employment on a particular day even if the employee performs duties principally at another place on that day.

In situations where an employee performs duties at more than one business premises on a particular day, the consolidated draft ruling notes that the primary place of employment should be identified through a quantitative and qualitative analysis of the duties performed from, or at, the different business premises.

This new consolidated draft ruling also includes clarification on the meaning of "in the vicinity of" as well as what constitutes a commercial parking station for the purposes of FBT. It is currently open for comment and when made final will apply to parking benefits provided on or after 1 April 2022.

## **CONTACT**

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