

Guidelines for Providing Cars

July 2019

Introduction:

The provision of cars for private use is a common practice amongst councils either as a private benefit in a senior staff contract of employment or as part of a leaseback arrangement with an employee. A leaseback arrangement is one where a car is purchased by a council for council use and is “leased back” to the employee for private use.

The purpose of these guidelines is to assist councils in determining a formula for costing the private use component of cars purchased by councils and offered to employees. LGNSW provides three costing examples:

- a car benefit from a total remuneration package;
- a leaseback arrangement; and
- a comparison of the salary sacrifice model and a straight leaseback arrangement.

The *Local Government (State) Award 2017 (the Award)*:

Clause 16B of the Award sets out the arrangements relating to Motor Vehicle Leasebacks.

Leaseback vehicles may be provided to employees as a condition of employment (e.g. as an incentive for accepting employment) or as a discretionary benefit that is not a condition of employment.

A leaseback vehicle will be considered to be a condition of employment for an employee unless it was clearly identified that it was not being provided on such a basis at the time that it was provided.

Factors to consider when determining whether a leaseback vehicle is a condition of employment include:

- Whether the vehicle was offered as an incentive to attract and/or retain the employee; and
- The period that the employee has had access to a leaseback vehicle.

Where a council and an employee enter into a leaseback vehicle arrangement and the employee is entitled to a leaseback vehicle as a condition of employment, the arrangement may only be terminated by agreement.

Where a leaseback vehicle is provided to an employee on a discretionary basis, the council is required to give a minimum of six (6) months written notice of termination of the arrangement.

However, council retains the right to terminate or suspend access to a leaseback vehicle immediately on termination of employment, loss of licence, serious breach of the leaseback agreement or if the employee accepts a new position with the council that does not include access to a leaseback vehicle. Council may also terminate or suspend a leaseback vehicle arrangement where an employee is demoted, for the period of demotion, provided that at least two weeks’ notice is given.

Notwithstanding the above, the Award provides that where the leaseback vehicle agreement was entered into prior to 1 November 2010, the council shall give a minimum of 12 months' notice to terminate the agreement.

Proposals to vary leaseback vehicle arrangements, including the formula for calculating the leaseback vehicle fee, must be referred to council's consultative committee.

Under the Award a council is not to increase the leaseback vehicle fee an employee is required to pay in any one year by more than ten (10) percent or the percentage movement in the index figure published by the Australian Bureau of Statistics for Eight Capitals, private motoring sub-group (Cat No 6401.0), whichever is the greater. The above does not apply where the leaseback vehicle fee is adjusted to reflect changes in the type of vehicle being used (including changes in vehicle options, the class, model or make of vehicle).

Where an employee's hours of work change significantly or the employee is absent on approved leave for an extended period, the council and the employee shall discuss whether the employee will be allowed to retain possession of the vehicle and/or whether the leaseback vehicle fee is to be adjusted. In the absence of agreement, Clause 35, Grievance and Disputes Procedures of the Award applies.

Car Policy:

Councils should have a car policy covering issues such as:

- Contribution payments
- Contribution calculations
- Variation to contributions
- Car use
- Car rotation
- Authorised drivers
- Authorised use of car
- Council responsibilities – maintenance and repair
- Employee responsibilities – maintenance and repair
- Accidents
- Car accessories
- Car security
- Non smoking
- Traffic and parking infringements
- Non Compliance
- Termination of lease
- Lease agreement variation

Car Costings – assumptions:

The following tables show examples of car costings. The cost to Council for the car purchase (the Net Purchase Price), is the GST inclusive price (Gross Purchase Price) less the input tax credit that is claimable on purchase. The purchase price is the government contract price.

The examples assume that the statutory method is used to assess the Fringe Benefit Tax liability.

The worked examples are based on the car travelling 30,000kms in a year and the car being kept for one year.

Costs:

In determining the costs that councils should pass on to employees for the use of cars, councils need to take into account the net (i.e. exclusive of GST) operating costs attributable to the employee as well as the associated costs that councils may need to pay the Australian Taxation Office (ATO). These can take one of two forms:

- A fringe benefit tax liability; or
- GST remitted as a result of after tax contributions made by the employee (1/11th of the value of the contributions has to be remitted).

The attached car costings provide worked examples of how these costs arise. **Councils should substitute their own costs into the examples.**

Net Operating Costs:

There are 4 operating costs which need to be accounted for (listed below). The net cost incurred by council is the GST inclusive price less any input taxed credits which are claimable. For example council can claim input tax credits for GST incurred in the purchase of cars, petrol and maintenance costs.

The four net operating costs used in our worked examples are:

- Capital cost - This is assessed as 5.0% per annum of the net purchase price and maintained for each year the car is kept.
- Depreciation – This is assessed as 18.75% per annum (diminishing value method) of the net purchase price. However, depreciation varies, as in the second and subsequent year the depreciation is based on the residual depreciated cost.
- Fixed costs – This includes registration, CTP and insurance. Of these costs insurance and CTP are subject to GST.
- Running costs - These have been calculated based on the Executive and Non-Executive Salary Packaging running costs as published by the New South Wales Department of Finance, Services & Innovation which are usually released in the first week of April each year.

All examples are based on the council recovering all net operating costs for the private use component of the car. So the net operating costs of the vehicle should be attributed to the employee based on the proportion of personal private use to council use.

Fringe Benefits Tax (FBT):

Fringe benefits tax arises where an employee derives a benefit from the private use of a council supplied vehicle. There are two ways of calculating FBT:

- the operating cost (log book) method
- the statutory formula method. Most councils use this method.

Using the statutory formula method the FBT liability is determined by the formula:

[Gross Purchase Price] x [Statutory Percentage] x [Gross Up Amount] x [47%]

NB: The gross up rate used in our worked examples is the same as that utilised by the NSW State Government (currently 1.8868). This gross up rate may or may not apply to councils' costings.

It was announced by the Australian Government in the 2011/12 Federal Budget that a single statutory 20% rate would be introduced for employers using the statutory formula method to value car fringe benefits. This change replaced the progressive statutory rates, calculated based on the number of kilometres travelled.

Council may wish to consider using the operating cost (log book) method of valuing fringe benefits, which may result in considerable FBT savings. This will require employees to keep accurate and valid log books for a representative 12 week period.

Any after tax payments made by the employee to council can be used to reduce the fringe benefits liability. Where the after tax payment is equal to the taxable value then the council's FBT liability is negated. The taxable value is always determined with reference to GST inclusive price (referred to as the Gross Purchase Price) x Statutory Percentage.

Any after tax payments made by the employee to council for costs incurred by council are considered to be payment for a separate taxable supply made by council to the employee (as they are not funded out of salary or wages). The council is required to remit GST equal to 1/11th of any after tax payments made by the employee. This is a direct cost to council and should be passed onto the employee.

It should be noted that any after tax payments made by the employee directly toward the car costs (e.g. payment of petrol) are direct deductions from the taxable value for FBT purposes but do not constitute a separate supply by council. No GST has to be paid by council. An example is where the supply is made by the petrol station to the employee. Council has not made a separate supply of petrol to the staff member; however, the staff member may have paid GST in the purchase of the petrol.

Employee Payments:

The total of any employee payments should equal the net operating costs for the private use component plus any ATO liabilities. There are three methods by which this is generally achieved.

Senior Staff – Remuneration Package Deduction - Where the employee pays for both the FBT liability and the net operating costs for their private use component from their pre-tax salary (remuneration packaging). This form of recovery is traditionally used for senior staff.

Leaseback - The employee contributes all of the net operating costs and GST from after tax contributions. Note – employee leaseback contributions incur GST.

Salary Sacrifice - Where the employee contributes sufficient after tax income to reduce the Fringe Benefit Tax liability to nil (i.e. pays the taxable value). The after tax contribution also reduces the net operating costs to council. The employee may still be required to pay additional costs to the employer to meet any residual operating costs and to meet the GST remitted by council on after tax contributions. These additional costs are salary sacrificed thus reducing the taxable income payable to the employee.

Worked Examples:

LGNSW has used the 2019 statutory rates for vehicle contracts entered into on or after 7.30pm (AEST) on 10 May 2011 in the worked examples.

Table 1 - Senior Staff – Package Deduction - This examines the use of a Holden Trax by an employee. Car is assumed to travel 30,000kms.

Table 2 – Leaseback – This examines the use of a Holden Trax by an employee. Car is assumed to travel 30,000kms and the personal private use component is 30%. The leaseback model represents the full recovery of the operating costs of private use from after tax salary. In the example the leaseback fee is less than the taxable value of the vehicle. This means that the leaseback fee would only partially offset the FBT. If council wanted to negate all of the applicable FBT it would set the leaseback fee at the same level as the taxable value of the vehicle.

Table 3 - Leaseback/Salary Sacrifice - This examines the use of a Holden Trax by an employee on gross salary of \$65,000. Car is assumed to travel 30,000kms and the personal private usage is 50%. In the salary sacrifice model the employee pays an amount equivalent to the taxable value to negate council's tax liability from after tax salary with the additional cost to fully compensate for the private use component to be salary sacrificed. Table 3 compares the salary sacrifice model and a straight leaseback arrangement to show that the salary sacrifice model gives a higher disposable income.

Salary Sacrificing:

If council is to use salary sacrificing the following three conditions should be complied with:

- Ensure that council has a policy which allows the use of salary sacrificing.
- A written agreement between council and employee should be entered into. The *Industrial Relations Act 1996 (NSW)* allows for deduction to be made on authority of the employee where the benefit is principally for the employee.
- Salary sacrificing can only be used prospectively.