



# Private ruling application form (registered agent)

Use this form if you are a registered tax agent applying for a ruling on behalf of a client. Otherwise, use the *Private ruling application form (not for tax professionals)* form (NAT 13742).

For help completing this form, refer to **Error! Hyperlink reference not valid.** [How to apply for a private ruling](#) on our website at [www.ato.gov.au](http://www.ato.gov.au)

## Section A: Contact details

### 1 Registered tax agents

|                                      |            |                     |                 |
|--------------------------------------|------------|---------------------|-----------------|
| <b>Registered agent number (RAN)</b> | 158 901 41 | <b>Phone number</b> | ( 07) 3011 3243 |
| <b>Date of application</b>           |            | <b>Fax number</b>   | ( 07) 3011 3190 |

### 2 Who is the contact person for this application? (Include title, full name and name of firm)

|                                       |
|---------------------------------------|
| Partner, Desley Grundy, Ernst & Young |
|---------------------------------------|

### 3 Contact phone number (if different from above)

|     |
|-----|
| N/A |
|-----|

### 4 Address for the private ruling and related correspondence

|                        |                               |                 |      |
|------------------------|-------------------------------|-----------------|------|
| <b>Street address</b>  | C/- Ernst & Young             |                 |      |
| <b>or PO Box</b>       | Po Box 7878, Waterfront Place |                 |      |
| <b>Suburb or town</b>  | BRISBANE                      |                 |      |
| <b>State/territory</b> | QLD                           | <b>Postcode</b> | 4001 |

## Section B: Client information

**!** A private ruling only applies to the client(s) named in the ruling in relation to the particular scheme or circumstance set out in that ruling.

### 5 Client details

|  |                             |                |  |
|--|-----------------------------|----------------|--|
| <b>Client 1: Tax file number (TFN) or Australian business number (ABN)</b> | 46 058 563                  | 75 818 456 675 |  |
| <b>Name (including title)</b>  | Queensland State Government |                |  |

|                               |  |  |  |
|-------------------------------|--|--|--|
| <b>Client 2: TFN/ABN</b>      |  |  |  |
| <b>Name (including title)</b> |  |  |  |

**!** We are authorised under the *Taxation Administration Act 1953* (TAA) to collect your TFN. It is not an offence not to provide your TFN. However, failure to provide your TFN may result in a delay in processing your form.

If this application relates to more than two clients, provide the name, TFN or ABN for each additional client in an attached document.

 You are not obliged to quote your client's TFN, but the application may be delayed if you do not.

## Section C: Questions and facts

### 6 Questions and issues for the ruling

We can only give a private ruling on the application of specific tax laws. List the questions and issues you want the ruling to address.

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#### Question 1

Where the employee, the State of Queensland and a financier have entered into a novated leasing arrangement prior to 10 May 2011, will the old statutory fraction rates used to calculate the taxable value of the car fringe benefit under section 9 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) continue to apply where, post 10 May 2011, the employee is re-assigned internally from one Queensland Government Department to another Queensland Government Department.

#### Question 2

Where the employee, the State of Queensland and a financier have entered into a novated leasing arrangement prior to 10 May 2011, will the old statutory fraction rates used to calculate the taxable value of the car fringe benefit under section 9 of the *FBTAA* continue to apply where, post 10 May 2011, the employee of a Queensland Government Department is seconded to another Queensland Government Department (with a chargeback of employment costs to the first Government Department).

#### Question 3

Where the employee, the State of Queensland and a financier have entered into a novated leasing arrangement prior to 10 May 2011, will the old statutory fraction rates used to calculate the taxable value of the car fringe benefit under section 9 of the *FBTAA* continue to apply where, post 10 May 2011, the employee of a Queensland Government Department is seconded to another Queensland Government Department (without a chargeback of employment costs to the first Government Department).

#### Question 4

Where the employee, the State of Queensland and a financier have entered into a novated leasing arrangement prior to 10 May 2011, will the old statutory fraction rates used to calculate the taxable value of the car fringe benefit under section 9 of the *FBTAA* continue to apply where, post 10 May 2011, the employee is re-assigned internally from one Queensland Government Department to another Queensland Government Department as part of Machinery of Government (MOG) changes.

If you want to limit the scope of the private ruling to specific provisions, indicate the Acts and provisions you want us to rule on.

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Relevant legislative provisions

*Fringe Benefits Tax Assessment Act 1986*, section 3.

*Fringe Benefits Tax Assessment Act 1986, subsection 9(1).*

*Fringe Benefits Tax Assessment Act 1986, subsection 7(1).*

*Fringe Benefits Tax Assessment Act 1986, subsection 136(1).*

*Fringe Benefits Tax Assessment Act 1986, subsection 135U(5).*

*Fringe Benefits Tax Assessment Act 1986, subsection 159(2)(a).*

*Fringe Benefits Tax Assessment Act 1986, subsection 162(1).*

*Item 8 of Schedule 5 of Tax Laws Amendment (2011 Measures No. 5) Act 2011.*

## **7 Facts describing the scheme or circumstance**

Give a full description of the scheme or circumstance. Include all facts, assumptions, transaction dates and the names of other parties actively involved. Send copies of any relevant supporting documents with this application. Sending the right supporting documents will speed up the ruling process.

For more information about what documents and facts we require for the most common private ruling topics, visit the [Private rulings & advice essentials](#) page on our website at [www.ato.gov.au](http://www.ato.gov.au)

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- On 17 May 2011 the State of Queensland lodged a nomination with the Commissioner of Taxation in respect of certain Government Departments (within the meaning of section 7 of the *Public Sector Services Act 1996 (Qld)*) under Part XIC of the *FBTAA* (a process referred to as 'disaggregation'). We have provided a copy of the lodged nomination at Appendix 1.
- Subsequent to disaggregation a number of employees (approximately 200) have changed the Government Department they are internally assigned to.
  
- Following the Queensland State election, MOG changes have resulted in a number of State of Queensland employees changing Government Departments without choice.
  
- There are numerous employment arrangements with the State of Queensland that are relevant to this application, including (but not limited to):
  1. Employees who are employed by the State of Queensland under the *Public Service Act 2008*. The *Public Service Act 2008 (Qld)* provides that a chief executive of a department is, for the State, responsible for the employment of public service employees of that department.
  2. Senior executive employees who enter into a contract of employment with the State of Queensland. This contract of employment is made between the chief executive and the person appointed as a senior executive under the *Public Service Act 2008 (Qld)*.
  3. Other employees employed under various other Acts and contracts of employment which generally provide for the chief executives, for the State, to employ the necessary person. Some of these other Acts provide that these employees are also considered to be appointed under the *Public Service Act 2008*.

Hereinafter referred to as "all categories of employees".

- Queensland Government employees can be employed on a permanent, temporary or long term casual basis.
- All categories of employees are permitted to enter into an arrangement with the State of Queensland and a financier under a novated lease arrangement for the provision of a car.
- The following is noted with respect to the employment relationship between the relevant employee and the State of Queensland (both prior to and following disaggregation):
  - The *Public Service Act 2008 (Qld)* provides that the chief executive of a department is, for the State, responsible for the employment of public service employees of that department. The words "for the State" indicate that the State of Queensland is the employer, and the chief executive has responsibility for the employment of employees. The *Public Service Act 2008 (Qld)* also provides that a person who employs another person under that Act does so as the authorised agent of the State.
  - Where employees are employed by the State of Queensland under the *Public Service Act 2008 (Qld)* they are provided with a Letter of Appointment. The content of which varies depending on circumstances (please refer to the example at Appendix 7).
  - The State of Queensland is taken to be the employer of employees under the *Public Service Act 2008 (Qld)*. In addition the State is the employer of employees under the *Police Service Administration Act 1990 (Qld)*, *Health Services Act 1991(Qld)*, *Fire and Rescue Service Act 1990 (Qld)* and the *Ambulance Service Act 1991(Qld)*.
  - When employees are internally re-assigned between Government Departments, there is no requirement to undertake a formal employment termination process. As such, entitlements such as annual leave and long services leave balances are generally not paid out to any



employees on a re-assignment between Government Departments.

All leave balances follow the employee (all categories of employees) when moving between Government Departments, this includes Permanent, Temporary and Casual employees.

If a temporary employee allows their temporary arrangement to terminate rather than re-assigning to another Government Department and instead recommences another temporary arrangement with another Government Department, this employee would be paid out all leave balances at the termination of their temporary assignment.

- When employees (all categories of employees) are terminated, their entitlements and the termination calculations are generally based on the whole service period with the State of Queensland. That is, there are generally no adjustments made to the calculations where the employee has been internally re-assigned between Government Departments during their tenure.
- The Crown in the right of the State of Queensland is the relevant employer for superannuation purposes for employees (all categories of employees).
- The Office of State Revenue has advised that the Crown in the right of the State of Queensland is an employer for payroll tax purposes for employees (all categories of employees). This manifests itself in various Government Departments registering as an employer for payroll tax purposes. The various Government Departments each register for payroll tax allowing payment and lodgement to occur on a departmental level for cash flow /reporting purposes for both periodic and annual returns.
- The following is noted with respect to the novated lease arrangements:
  - The novated leasing process, including the Standard Deed of Novation (DON) used by the State of Queensland and its employees is managed by the Queensland Government Chief Procurement Office (QGCPPO). A template version of the DON is attached at Appendix 2 to this application.
  - The legal entity which enters into the DON as the employing entity is the State of Queensland. However, for administrative purposes and to allow for cost allocation, the relevant Government Department is named on the DON (i.e. as "the State of Queensland acting through a Government Department").
  - When employees are re-assigned internally between Government Departments, there is no change to the DON (apart from a change to the name of the relevant Government Department). As noted above, following the transfer, costs are redirected to the new Government Department.
- The car fringe benefits provided with respect to the novated lease arrangements are the subject of a salary packaging agreement between the State of Queensland and the relevant employee (all categories of employees). The following is noted with respect to the salary packaging arrangements:
  - In order to salary package a car, the employee must enter into a Salary Packaging Participation Agreement. A template version of the Salary Packaging Participation Agreement is attached at Appendix 3 to this application.
  - The relevant Salary Packaging Participation Agreement is between the employee and the "State of Queensland, through the relevant Queensland Government department or agency". When employees are reassigned internally between Government Departments, there is no change to the Salary Packaging Participation Agreement with respect to the provision of the car (apart from a change to the name of the relevant Government Department).
- Salary packaging is administered by two external providers referred to as Salary Packaging

Bureau Service Providers.

- The Salary Packaging Bureau Service Providers maintain a Salary Packaging Trust Account for the Queensland Government (all employees' salary packaging payroll deductions are deposited in to this Trust account).
- The Salary Packaging Bureau Service Providers each have their own salary packaging application forms. A template version is attached at Appendix 4 and 5 to this application. The employer nominated on these forms is the Queensland Government.
- It is noted for completeness that the transfer of a car between Government Departments is not a dutiable transaction for stamp duty purposes.
- The State of Queensland has an excellent lodgement history with the Australian Taxation Office (ATO) with respect to Fringe Benefits Tax returns.
- The State of Queensland prefers a consultative approach to tax compliance and often consults with the ATO on a range of Fringe Benefits Tax issues.
- The State of Queensland has often sought guidance from the ATO on a range of Fringe Benefits Tax related topics through the PBR process (for example, PBR 1012045081983) and through the States and Territories Industry Partnership (STIP).
- The State of Queensland would like to note the following with respect to its approach to the introduction of the new statutory fraction method enacted by *Tax Laws Amendment (2011 Measures No. 5) Act 2011*:
  - The State of Queensland proactively approached the ATO in regards to the operation of the changes to the statutory fraction method when the changes were first announced.
  - Initial non-binding guidance from the ATO's STIP representative during discussions with Queensland Treasury on 3 June 2011 indicated that, for employees who had entered into a DON, any movement by an employee between Departments would not amount to a new benefit with a new employer. A sanitised version of the filenote of this discussion is attached at Appendix 6.
  - Based on this informal guidance from the ATO, the State of Queensland took no further action and in particular did not actively advise employees to record their odometer readings when an internal re-assignment between Government Departments occurred.
  - It was not until the minutes to the August 2011 NTLG FBT sub-committee were released that the State of Queensland became aware of a potential change in the ATO view from that previously discussed with the State of Queensland.
  - The State of Queensland operates its salary packaging arrangements on a Total Employment Cost basis. Accordingly, should the new statutory fraction method have any application, the employee would bear this burden on a retrospective basis. Employees are unaware of any potential application.

## 8 Your arguments and references (optional)

You may provide research and analysis, including references to any relevant legislation, public rulings and case law with your client's application. Completing this may reduce our need to ask for further information that will speed up the ruling process.

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### Arguments and references

#### Question 1

**Where the employee, the State of Queensland and a financier have entered into a novated leasing arrangement prior to 10 May 2011, will the old statutory fraction rates used to calculate the taxable value of the car fringe benefit under section 9 of the *Fringe Benefits Tax Assessment Act 1986 (FBTAA)* continue to apply where, post 10 May 2011, the employee is re-assigned internally from one Queensland Government Department to another Queensland Government Department.**

Subsection 9(1) of the *FBTAA* prescribes the method for calculating the taxable value of a car fringe benefit under the statutory formula method. A key component of the formula is the statutory fraction.

Formerly, the statutory fraction was determined with reference to the annualised number of whole kilometres the car travelled during the year of tax. *Tax Laws Amendment (2011 Measures No. 5) Act 2011* introduced a flat statutory fraction of 20% (subject to transitional statutory fraction rates which apply for the years of tax starting on 1 April 2011, 1 April 2012 and 1 April 2013).

For ease of reference, this application refers to the change in the statutory fraction rate introduced by *Tax Laws Amendment (2011 Measures No. 5) Act 2011* (including the transitional rates) the "new rules" and refers to the statutory fraction rate that applied prior to 10 May 2011 as the "old rules".

Item 8 of Schedule 5 of *Tax Laws Amendment (2011 Measures No. 5) Act 2011* (the Application Provision) stipulates the application of the relevant amendments to subsection 9(1) of the *FBTAA*. It states that:

#### **8 Application provision**

- (1) The amendments made by this Part apply to a car fringe benefit in relation to a year of tax beginning on or after 1 April 2011, whether the car fringe benefit is provided before, on or after the commencement of this item.
- (2) Despite subitem (1), the amendments do not apply to a car fringe benefit, in relation to an employer in relation to a year of tax, that relates to a car, if:
  - (a) any car fringe benefit, in relation to the employer in relation to the year of tax in respect of employment of an employee by the employer, that relates to the car is constituted by the application or availability of the car for a period; and
  - (b) the last time at which:
    - (i) the employer, or an associate of the employer; or
    - (ii) the employee, or an associate of the employee;

committed to the application or availability of the car for that period, in respect of the employment, occurred before 7.30 pm Australian Eastern Standard Time on 10 May 2011.

