



CR 2017/18 - Fringe benefits tax: employer clients of McMillan Shakespeare Limited and its subsidiaries who participate in the fly-in fly-out travel program

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 This document has changed over time. This is a consolidated version of the ruling which was published on *16 March 2017*



Class Ruling

Fringe benefits tax: employer clients of McMillan Shakespeare Limited and its subsidiaries who participate in the fly-in fly-out travel program

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❶ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

[Note: This is a consolidated version of this document. Refer to the Legal Database (<https://www.ato.gov.au/law>) to check its currency and to view the details of all changes.]

Summary – what this ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this ruling are:

- section 45 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA)
- subsection 47(7) of the FBTAA.

All references in this Ruling are to the FBTAA unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies is those employers who provide fly-in fly-out travel to their employees, under the fly-in fly-out travel program administered by McMillan Shakespeare Limited and its subsidiaries (McMillan) on the employer's behalf.

Qualifications

4. The Commissioner makes this ruling based on the precise scheme identified in this Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 8 to 24 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled
- this Ruling may be withdrawn or modified.

Date of effect

7. This Ruling applies from 1 April 2016. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

8. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- Class Ruling application dated 4 November 2016
- supporting documentation and FAQs of the FIFO program
- salary packaging application form
- salary packaging of flights process map
- sample invoice

- further information provided on the 30 January 2017 and 3 February 2017.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

9. Employer clients of McMillan require a number of employees to travel between their homes and place of work in a remote location on a fly-in fly-out basis.

10. These employees:

- Have their usual place of employment at a remote location – that is, not located in or adjacent to an eligible urban area for the purposes of section 140 of the FBTA.
- Are provided with residential accommodation at or near the usual place of employment by the employer.
- Work for a number of days on and has a number of days off.
- 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.
- Are provided with transport to and from their usual place of residence and place of employment on a regular basis by their employer, administered by McMillan.
- Do not travel on a daily basis on work days between their usual place of employment and their usual place of residence because it would be unreasonable to expect them to do so having regard to the location of these places.

11. McMillan, in conjunction with relevant employer clients, have established a corporate travel program and flight booking process with a travel supplier.

12. A participating employer will enter into an agreement with McMillan (acting on the employer's behalf) to facilitate the booking and payment of flights for employees of the employer.

13. The employer will enter into a valid salary sacrifice arrangement with the employee. As part of that agreement the employee agrees that the salary sacrificed amount as authorised under the agreement will be transferred by regular transfers to a nominated account held with McMillan in the employer's name (employer's account).

14. Any unused salary sacrificed amounts are carried forward to the subsequent FBT year. The unused funds are held in trust by McMillan for the employer, waiting for the travel supplier to send an invoice for payment.
15. McMillan will only accept payments from the employer and not directly from the employee.
16. If the employee ceases employment, any unused funds are paid to the employee as salary or wages and are subject to the pay-as-you-go withholding provisions.
17. Employees nominate a flight with the travel supplier, the travel supplier contacts McMillan who then, subject to certain conditions, approves the flight on the employer's behalf.
18. The travel supplier then invoices the employer for the flight and issues a ticket to the employee.
19. The travel supplier will charge the cost of the flight to McMillan's business travel account and will forward the invoice to McMillan. The invoice is issued in the name of the McMillan employer client.
20. McMillan pays for the flight on behalf of the employer, as an outsourced provider of administration services.
21. The funds are immediately drawn from the McMillan employer client's account to McMillan's business travel account to discharge the liability for the cost of the flight.
22. An equivalent cost of the airfare is deducted from the employee's salary packaging account balance, which has been deducted from the employee's pre-tax remuneration (in accordance with a salary packaging agreement).
23. If the employee does not have sufficient funds in their salary packaging account, the cost of the flight will not be approved and the employee makes the payment themselves. This cost cannot be funded through salary packaging.
24. This arrangement only applies to domestic flights.

Ruling

25. The provision of airline travel to the employee is a residual benefit as per section 45 of the FBTA.
26. The residual benefit that arises from the provision of airline travel to the employee is an exempt benefit under subsection 47(7) of the FBTA.

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

27. The provision of the travel, under a salary sacrifice arrangement, will give rise to a benefit as defined in subsection 136(1).

28. The benefit will be a fringe benefit where it meets the definition of 'fringe benefit' as defined in subsection 136(1).

29. The definition of fringe benefit in subsection 136(1) excludes at paragraph (g) a benefit that is an exempt benefit in relation to the year of tax.

30. For the purposes of this Ruling, the relevant exemption is the exemption provided under subsection 47(7) for a residual benefit that consists of the provision of fly-in fly-out transport.

Is the benefit a residual benefit?

31. As section 47 provides the exempt residual benefits, it is necessary to consider whether the benefit is a residual benefit.

32. Section 45 provides that a benefit will be a residual benefit if it is not a benefit by virtue of a provision of Subdivision A of Divisions 2 to 11 (inclusive). Divisions 2-4 and 6-10 are not relevant to this scheme. Division 5 and Division 11 may be relevant to this scheme.

Expense payment benefits

33. Division 5 applies to expense payment fringe benefits.

34. Section 20 states that an expense payment benefit will arise where the provider either:

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

35. Under this arrangement, the flight is booked through a corporate travel supplier, rather than the employee incurring the expense directly.

36. The travel supplier issues an invoice to McMillan in the name of the McMillan employer client. The cost of the flight is charged to McMillan's business travel account and funds from the McMillan employer's account are immediately withdrawn and allocated to McMillan's business travel account to discharge the cost of the flight.

37. The cost of the flight is paid for by the employer through use of the salary sacrificed funds and the employer is discharging their own obligation. The employer is, therefore, not discharging an obligation of another person to pay a third person, nor providing a reimbursement to another person in respect of expenditure incurred by that person.

38. The fact that McMillan is responsible for carrying out the settlement of the transaction does not alter the position that the employer is discharging the employer's own obligation as McMillan is simply effecting payment to the travel supplier.

39. The benefit is therefore not an expense payment benefit under section 20.

Property benefits

40. Division 11 applies to property fringe benefits.

41. Section 40 states:

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.

42. Subsection 136(1) provides the following definitions relevant to property benefits:

'property' means:

- (a) intangible property; and
- (b) tangible property.

'tangible property' means goods and includes:

- (a) animals, including fish; and
- (b) gas and electricity.'

'intangible property' means:

- (a) real property;
- (b) a chose in action; and
- (c) any other kind of property other than tangible property;

but does not include:

- (a) a right arising under a contract of insurance; or
- (b) a lease or licence in respect of real property or tangible property.

'property benefit' means a benefit referred to in section 40, but does not include a benefit that is a benefit by virtue of a provision of Subdivision A or Divisions 2 to 10 (inclusive) of Part III.

43. The term 'goods' is not defined in the FBTA and therefore takes its ordinary meaning. The Macquarie Dictionary Online, 2017, Macquarie Dictionary Publisher, an imprint of Pan Macmillan Australia Pty Ltd, www.macquariedictionary.com.au (the Macquarie Dictionary) defines the term 'goods' relevantly at paragraphs 1 and 2 as:

1. (plural) possessions, especially movable effects or personal belongings.
2. (plural) articles of trade; wares; merchandise, especially that which is transported by land.

44. The airline ticket therefore does not meet the definition of 'goods' and is therefore not tangible property.

45. Paragraph 136(1)(e) relevantly excludes from the definition of intangible property leases or licences in respect of real property or tangible property.

46. Licence is not defined in the FBTA, the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*. It therefore takes on its ordinary meaning.

47. The Macquarie Dictionary defines the term 'licence' (as relevant here) as:

licence

noun

1. formal permission or leave to do or not to do something.
2. formal permission from a constituted authority to do something, as to carry on some business or profession, to be released from jail for part of one's sentence under specific restrictions, etc.
3. a certificate of such permission; an official permit. ...

48. The ticket provides the employee with the formal permission to receive transport on the aeroplane and is therefore not intangible property.

49. As the airline ticket is neither tangible nor intangible property, the provision of the ticket is not a property benefit.

50. Therefore, the benefit provided by the employer, does not fall within any of the provisions of Subdivision A of Divisions 2 to 11 and as such is a residual benefit per section 45.

Is the benefit exempt under subsection 47(7)?

51. As the benefit is a residual benefit, consideration needs to be given as to whether the benefit is an exempt residual benefit under subsection 47(7).

52. Subsection 47(7) states

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
- (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:
 - (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 transport referred to in paragraph (d) is an exempt benefit.

(A) Is the employee's usual place of employment at a remote location in Australia or overseas, or on oil rigs or other installations at sea?

53. A remote location is one that is not located in or adjacent to an eligible urban area as per section 140. The employee's usual place of employment during their assignment period is not situated in or adjacent to an eligible urban area for the purposes of section 140.

(B) Are the employees provided with accommodation at or near the worksite on working days by the employer, an associate of the employer or an arranger?

54. The employees are provided with accommodation at or near the worksite on working days by the employer.

(C) Do the employees, on a regular basis, work for a number of days followed by a number of days off, and return to their usual place of residence on their days off?

55. The employees work for a number of days on and have a number of days off. On completion of the work days, the employees travel from that usual place of employment to his or her usual place of residence. On completion of the days off, the employee returns from his or her usual place of residence to that usual place of employment.

(D) Is the employee regularly provided with transport between their usual place of residence and place of employment?

56. The employee is provided with transport to and from their usual place of residence and place of employment on a regular basis by their employer, administered by McMillan.

(E) Having regard to the location of the two places, is it unreasonable to expect the employee to travel to and from work on a daily basis?

57. It would be unreasonable to expect the employee to travel on a daily basis on work days between the employee's usual place of employment and their usual place of residence, having regard to the location of these places.

58. The requirements of subsection 47(7) are met and the provision of the fly-in fly-out travel is therefore exempt from fringe benefits tax.

59. The Ruling section provides a detailed explanation of the Commissioner's decision. Therefore, no further explanation is warranted.

Appendix 2 – Detailed contents list

60. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- FBTAA 1986
- FBTAA 1986 Pt III Div 2-12
- FBTAA 1986 20
- FBTAA 1986 40
- FBTAA 1986 45
- FBTAA 1986 47
- FBTAA 1986 47(7)

- FBTAA 1986 136(1)
- FBTAA 1986 136(1)(e)
- FBTAA 1986 140
- TAA 1953

Other references:

- Macquarie Dictionary Online, 2017, Macquarie Dictionary Publisher, an imprint of Pan Macmillan Australia Pty Ltd, www.macquariedictionary.com.au

ATO references

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