MT 2027 - Fringe benefits tax : private use of cars : home to work travel

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TAXATION RULING NO. MT 2027

FRINGE BENEFITS TAX : PRIVATE USE OF CARS :
HOME TO WORK TRAVEL

F.O.I. EMBARGO: May be released

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OTHER RULINGS ON TOPIC: MT 2016, MT 2019, MT 2021, MT 2022, MT 2023, MT 2024, MT 2025, MT 2026, IT 112, IT 2122, IT 2199, IT 2273

PREAMBLE Section 7 of the Fringe Benefits Tax Assessment Act (the "Act") sets out the circumstances in which the use of a car will be a taxable fringe benefit. The Act provides two alternative methods of valuing the benefit. It is common to both methods that private use of the car by employees (or their associates, e.g., family members) be identified.

2. Thus, under the statutory formula method of valuation specified in section 9, the figure ascertained by applying a statutory percentage to the original cost of the car to the employer is apportioned according to the number of days on which the car is used or available for the private use of employees.

3. Under the alternative operating cost method of valuation established by section 10, the value of the benefit is determined by apportioning the total operating cost (as specified in that section) according to the proportion that the private kilometres travelled by employees in the car bears to the total kilometres travelled in the car. For these purposes the number of private kilometres is determined by subtracting from the total kilometres travelled in the car the number of kilometres travelled on business journeys, as evidenced by log book entries.

4. The distinction between business and private use of a car in circumstances where the car is being driven to or from the employee's home has been the subject of a number of queries raised with this office. This Ruling focuses on that issue.

5. It should be noted, however, that where the statutory formula approach is adopted, a fringe benefits tax liability will arise on any day on which the car is available for the private use of an employee, irrespective of the fact that there may have been no actual private use of the car on that day. For

this purpose a car will generally be taken to be available for the private use of an employee where it is not at the employer's business premises and the employee is entitled to use the car for private purposes or where the car is garaged at or near the employee's place of residence (sub-sections 7(1) and (3)).

6. It follows that a fringe benefits tax liability will arise where a car is garaged at an employee's home notwithstanding that the home to work travel may have been accepted as business travel. This result would need to be recognised by an employer when deciding whether to elect the operating cost basis of valuation in relation to a car. Such an election, which is irrevocable once made, must be made by the date of lodgment of the FBT return for the first year in which a FBT liability arises in relation to the use of the car.

7. A further point to note is that under sub-section 8(2) of the Act, a liability for FBT will not arise where the private use of certain vehicles by employees during a year of tax is limited to travel between the employee's residence and place of employment or other place at which employment duties are performed and any travel that is incidental to travel in the course of performing duties of employment. Vehicles which qualify for this concession are taxis, panel vans, utility trucks and any other road vehicle that, while designed to carry a load of less than one tonne, is not designed for the principal purpose of carrying passengers.

RULING

8. By virtue of the definition of "private use" in sub-section 136(1), any use of a car by an employee or associate that is not exclusively in the course of producing assessable income of the employee will constitute private use.

9. For the purposes of the operating cost valuation method, a business journey is defined in sub-section 136(1) to be, in effect, any use of the car other than private use by an employee or associate. As explained in paragraph 3, details of business journeys are required to be entered in a log book or similar document if they are to be taken into account in determining the private use proportion of a car for the purposes of the application of the operating cost method.

10. A critical question in determining the distinction between private and business use, therefore, is whether, when the car is used by an employee or associate, it is being used exclusively in the course of producing assessable income of the employee. This includes all use that is exclusively in the course of gaining or producing assessable income of the employee or carrying on a business for the purpose of gaining or producing such assessable income (in accordance with the definition of "producing assessable income" in sub-section 136(1)). It follows that, as well as its use in the course of the employee's employment with the employer who provided the car, use of the car in a business carried on by the employee or in another employment activity of the employee may constitute business use of the car for FBT purposes. Use of the car by an associate in the course of a business carried on by the employee

may similarly constitute business use for these purposes.

11. In essence, the test for determining business use for FBT purposes is the same as that asked under the income tax law in deciding whether expenses incurred in operating a car are deductible under section 51 of the Income Tax Assessment Act. There the result turns on whether the expenditure is incurred in gaining or producing assessable income or in carrying on a business for that purpose. A finding that expenditure incurred in the operation of a car satisfied that test is seen as synonymous with the determination that the car is used for that purpose.

12. Determining the distinction between private and business use for FBT purposes, therefore, can be approached by asking the question whether, if the employee had incurred expenditure on that use of the car, the expenditure would have been wholly deductible for income tax purposes.

13. Consistent with this, the following guidelines draw, as appropriate, on established income tax principles. It follows that this Ruling is equally relevant to the substantiation requirements of Sub-division F of Division 3 of the Income Tax Assessment Act in determining whether car expenses incurred by employees or self-employed persons in operating their own cars are deductible for income tax purposes. It is also relevant to determining the value of the benefit provided to employees in respect of the private use of an employer's vehicle that is not a car for the purposes of section 7 of the Fringe Benefits Tax Assessment Act - broadly, vehicles designed to carry more than nine passengers or a load of one tonne or more. A Ruling dealing with the valuation of benefits of this kind is to issue shortly.

The General Rule

14. As discussed in Taxation Ruling IT 112, the decision in Lunney and Hayley v FCT (1958) 100 CLR affirmed the position that travel between home and a person's regular place of employment or business is ordinarily private travel. While travel to work is a necessary pre-requisite to earning income it is not undertaken in the course of earning that income. Put at its simplest, travel to work is private; travel on work is business.

15. The fact that the car may be used during the day in the course of business operations would not alter this result unless, as discussed in paragraphs 25-27, it is concluded that the office or employment is essentially itinerant in nature. See, for example, the majority decision in Lunney and Hayley at page 500, quoting with approval the comments of Denning L.J. in Newsom v Robertson (1952) 2 All ER 728; (1952) 33 TC 542, who concluded that costs incurred by a barrister in travelling between his home and chambers were not business expenses, despite acknowledging that the expenses incurred in travelling from chambers to various courts during the course of the day were.

16. Further, the general position is unaffected by the fact that travel is undertaken at a time when public transport may not be available or may not be readily available (see, for example, Case R22 84 ATC 212; Case 76 27 CTBR (NS) 601 and Case R69 84 ATC 491; Case 123 27 CTBR (NS) 977).

Travel While on Stand-By Duty

17. The fact that an employee may travel to and from work in response to a call while on stand-by duty would not ordinarily alter the character of that travel, i.e., it remains private travel.

18. However, the position will be different where it is concluded, on an objective analysis of the nature of the employment duties, that the employee commenced duties on receiving the call. In these circumstances the journey from home to the place of employment is undertaken not in order to commence employment duties but to complete duties of employment already underway before the journey commenced. As such, the travel would constitute business travel including the return trip.

19. An example of the application of this principle can be found in the decision in Owen v Pook (1970) AC 244 (discussed in paragraph 21(a) of Taxation Ruling IT 112). In that case a medical practitioner, under the terms of his appointment with a hospital, was required to be accessible by telephone to receive emergency calls and to give immediate instructions on treatment prior to travelling to the hospital, such that his responsibility for the patient commenced on receiving the call.

20. A further example was the subject of the decision in F.C. of T. v Collings 76 ATC 4254, 6 ATR 476 (discussed in paragraphs 11, 12 and 21(e) of Ruling IT 112). In that case an employee was engaged in supervising a major conversion in a computer facility under arrangements where she was required to be available at all hours to receive telephone calls and give advice to fellow workers at the office over the phone when problems arose in the operation of the computer. For this purpose, she was provided with a portable computer terminal which could be connected to the central computer through the telephone line. Where the problem could not be rectified by this means the employee would proceed to the office. In this case it was found that the employee was, in effect, on continuous duty.

21. These cases can be distinguished from the circumstances of an employee who is on stand-by duty but who, when called on by the employer, does not actually commence duties until after arriving at the place of employment (e.g., a pilot on stand-by duty who does not commence duty until after arriving at the airport).

22. Two further points should be noted. First, where the application of this principle results in travel undertaken in

response to an emergency call being treated as business travel, it does not follow that normal daily travel undertaken by the employee to and from the office will be similarly treated. The decision in Collings was expressly restricted to travel outside the normal daily journey. Secondly, it would not extend to a person who simply chooses to perform some of his or her employment duties at home and who, as a consequence, may need to respond to a call to attend to particular duties at the office or other usual work place.

Travel between Places of Employment/Business

23. The treatment of travel between two places of employment or business is canvassed in Taxation Ruling IT 2199. The major elements of that ruling for present purposes may be summarised as follows -

- Travel directly between two places of employment, two places of business or a place of employment and a place of business, will generally be accepted as business travel where the person does not live at either of the places and the travel has been undertaken for the purpose of enabling the person to engage in income-producing activities.
- The position is less clear where the person lives at one of the places said to be a place of employment or business - it is then necessary to look closely at the requirement that the income-producing activity carried on at the person's home is such as to constitute the home as a place of employment or business.

- For this purpose it is not sufficient that a room in the home is used in association with an employment or business conducted elsewhere.

- It is rare for a home to represent a place of employment.

- The more usual situation is for a self-employed person to use his home or part of it as a base of business operations (for example, painters, plumbers, electricians) and in these circumstances travel between the home and another place of employment or business will be accepted as business travel where it is part and parcel of the income-producing activities.

- Travel between a person's home, at which a part-time income-producing activity is carried on, and a place of full-time employment or business will not be treated as business travel unless there is some aspect of the travel which is directly related to the part-time activity (for example, delivery of fruit to market where the home based part-time activity is the conduct of an

orchard).

. Similarly, a person operating a business from his home who is engaged in unrelated part-time employment outside the normal hours of the business would not be entitled to treat travel from home to that place of employment as business travel (for example, where a house painter operating from his home is employed in the evenings as a theatre attendant).

24. Taxation Ruling IT 2199 contains further examples and details of the principle to be applied in these cases.

Employment Duties of an Itinerant Nature
(Commercial Travellers, etc.)

25. It has long been acknowledged that travel from an employee's home may constitute business travel where the nature of the office or employment is inherently itinerant (see, for example, the comments of Lords Wilberforce and Simon in Taylor v Provan (1975) AC 194 at pages 1213 and 1219 respectively). More recently, this issue was addressed in Australia in FCT v Wiener, 78 ATC 4006; 8 ATR 335, from which the following guidelines for the application of the principle have been adopted (see Taxation Ruling IT 2122). These are that travel will be indicated as business travel where the nature of the office or employment is such that -

(a) it is inherently itinerant;

(b) travel is a fundamental part of the employee's work;

(c) it is impractical for the employee to perform the duties without the use of a car;

(d) the terms of employment require the employee to perform duties at more than one place of employment;

(e) the nature of the job itself makes travel in the performance of duties essential; and

(f) it can be said of the employee that he or she is travelling in the performance of the employment duties from the time of leaving home.

26. Wiener's case dealt with a teacher who, under a trial scheme, was allocated as part of her normal teaching duties the task of instructing pupils at five different schools. On the facts of the particular case, it was concluded that the duties were inherently itinerant. More common examples of the application of this principle would include commercial travellers and government inspectors whose homes can be seen to be a base of operations from which they travel to one of a number of locations throughout the day, over a continuing period.

27. Commonly, in these cases, the employee will attend at the employer's office periodically (e.g., once a week) to complete or file reports, pick up supplies or organise future trips. Travel from home to the office and back made in these limited circumstances will be accepted as an ordinary incident of the business travel and, as such, will also be treated as business travel.

Business Trip on Way to or from Work

28. There will be cases where, while the nature of the office or employment is not inherently itinerant, an employee will be required in the ordinary course of duties to visit clients, customers, etc. Examples would occur in the work of employees engaged as accountants, solicitors and doctors.

29. Where return travel of this kind is undertaken from the employee's usual place of employment (e.g., office, surgery, etc.) it will clearly constitute business travel.

30. The position may, however, be less clear where the employee travels from home directly to the client's, etc., premises and then on to the office. Such travel may be undertaken in a variety of circumstances, for example -

- the client's premises may be located at a point on or close to the normal route travelled by the employee to the office;

- alternatively, the employee may be required to travel in the opposite (or a markedly different) direction to the normal work route;

- in some cases, the distance travelled to reach the client's premises will be substantially greater than the direct route to the office; even to the extent that the employee may need to devote the whole day to the visit;

- the visit to the client may be the first of a number made before travelling to the office.

31. Such travel is distinguishable from the general position determined in Lunney's case which, to use the words of Dixon C.J. at page 405, deals with travel undertaken "by ordinary people to enable them to go day by day to their regular place of employment or business and back to their homes".

32. The present examination deals with situations where an employee who has a regular place of employment travels to an alternative location which, for the period of the visit, constitutes a place of employment. Further, they involve trips to a destination that, if made from the office or other normal work place, would constitute business travel. Inevitably the distance of travelling direct from the office would have been greater than that part of the overall journey from home - i.e.,

the travel between the client's premises and the office - that would clearly constitute business travel. Depending on the respective locations of the premises, the alternative journey of travelling from the office (and return) may, in fact, be greater than the total distance travelled from home.

33. In essence, the question to be determined when, as a practical alternative, an employee travels to a client's premises directly rather than travelling to the office and then to those premises, is whether the travel should similarly be treated as business travel.

34. While the position is not free from doubt and is perhaps clearer in some of the instances cited in paragraph 30 than in others, it has been decided that the total journey from the employee's home to the client's premises and on to the office should be accepted as business travel. This approach is to be adopted where -

- the employee has a regular place of employment to which he or she travels habitually;

- in the performance of his or her duties as an employee, travel is undertaken to an alternative destination which is not itself a regular place of employment (i.e., this approach would not apply, for example, to a plant operator who ordinarily travels directly to the job site rather than calling first at the depot or to an employee of a consultancy firm who is placed on assignment for a period with a client firm); and

- the journey is undertaken to a location at which the employee performs substantial employment duties.

As an illustration of this last point, travel to an employee's place of employment would not be accepted as business travel where the employee merely performs incidental tasks enroute such as collecting newspapers or mail. Similarly, for example, the fact that a dentist may call in at a dental laboratory to collect dentures, etc., enroute to the surgery at which he or she is employed would not result in the trip being accepted as constituting business travel.

35. The preceding principles apply equally to cases where an employee makes a business call in the afternoon and travels from there to home, rather than returning to the office.

36. Where an employer provides an employee with a car solely for the purposes of undertaking a business journey from the employee's home the next morning, the trip home on the preceding night will be accepted as business travel, being incidental to the next morning's journey. However, this approach is restricted to circumstances of the kind detailed and would not, for example, apply where a person has regular use of the car for private purposes.

Travel Incorporating the Transport of Equipment etc.

37. In certain limited ranges of circumstances the use of a car may be attributed to the necessary carriage of equipment rather than travel to and from work and, as such, accepted as business travel. Guidelines for the application of this principle are discussed in paragraph 21(b) of Ruling IT 112 in the context of the decision in FCT v Vogt, 75 ATC 4073. Broadly, however, the approach should be followed where the employee performs duties at a number of places requiring the transport and use of equipment of substantial bulk such as to justify the need for a motor vehicle to transport it and where there are sound reasons for keeping the equipment at home.

38. This rule would not apply where, as a matter of convenience, the employee performs some work at home and transports papers, materials, etc., (whether bulky or not) between home and work for that purpose (see for example Case Q1 83 ATC 1; Case 65 26 CTBR (NS) 469, where the use of a car by a school principal in such circumstances was treated as private use).

Certain Sportsmen and Shearers

39. Reference should be made to Rulings IT 112 (paragraphs 13 to 17 and 21(d)) and IT 2273 for a discussion of rules relating to professional sportsmen and shearers respectively. Broadly, as discussed in those Rulings, travel between home and places of employment will be accepted as business travel where, in the particular circumstances of the case, it is possible to conclude that the home forms a base of business operations.

COMMISSIONER OF TAXATION
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