TD 95/63 - Fringe benefits tax: where a car is acquired at the end of a lease, is the acquisition at the residual value an 'arm's length transaction' for the purposes of section 43 of the Fringe Benefits Tax Assessment Act 1986 (FBTAA)?

This cover sheet is provided for information only. It does not form part of *TD 95/63 - Fringe benefits tax: where a car is acquired at the end of a lease, is the acquisition at the residual value an 'arm's length transaction' for the purposes of section 43 of the Fringe Benefits Tax Assessment Act 1986 (FBTAA)?*

This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

Australian Taxation Office

Taxation Determination TD 95/63

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part . Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does 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 the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Fringe benefits tax: where a car is acquired at the end of a lease, is the acquisition at the residual value an 'arm's length transaction' for the purposes of section 43 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA)?

1. Yes, if it is a bona fide lease.

2. In *Granby Pty Ltd v. FC of T* (1995) 30 ATR 400; 95 ATC 4240, the Federal Court determined that where a lessor and lessee had dealt with each other at arm's length in the initial lease transaction, the acquisition by a lessee for the residual value at the completion of the lease was also a dealing at arm's length. Even though the *Granby* case concerned the capital gains provisions of the *Income Tax Assessment Act 1936* (ITAA), we accept that the views of the Court regarding the arm's length dealing also apply to the FBTAA.

3. Where an employer acquires a car at the end of a lease and subsequently provides that car to an employee, the employer is taken to have provided a property fringe benefit. If the lease is a bona fide lease, the taxable value of the property fringe benefit will be the amount of the residual payment less any employee contribution.

4. The *Granby* case proceeded on the assumption that there was a bona fide lease in that case. Therefore, the first question to be considered in each case is whether a bona fide lease exists. As indicated in paragraph 7 of Taxation Ruling IT 28, it is necessary to decide whether payments really are lease rentals or whether they are, in substance, consideration for the sale of the goods purported to be leased. Where the residual value under a lease agreement is equal to or exceeds the minimum residual value calculated in accordance with the percentages of the original cost as set out in the table in IT 28, and where there is no express or implied agreement under which ownership would pass to the lessee at the end of the lease, we will generally accept the agreement as a bona fide lease. The table in IT 28 provides only an estimate of the future value of leased plant, and is not intended to reflect actual market value.

5. If an agreement is not considered to be a bona fide lease, but is, in effect a contract for the sale of goods, then the taxable value for the purposes of section 43 of the FBTAA is the notional (or market) value at the time of the acquisition of the car by the employee, less any employee contribution. The notional (or market) value will be the amount the employer would have been expected to pay to obtain the car in the market place, which will not necessarily equate with the residual value under the agreement.

6. Under certain other types of leasing arrangements, including subleases and novations, the lessee of the car may be the employee or an associate of the employee. (Such arrangements are set out in more detail in Taxation Ruling IT 2509.) Consistent with the above views, the taxable value of a property fringe benefit arising (under one of these arrangements) from the purchase by the employee at the residual value, will depend on whether or not the lease is a bona fide lease.

7. It should be noted that where a lessee or associate subsequently disposes of a car acquired from the lessor, section 26AAB of the ITAA may apply to assess any profit made on that disposal.

8. Employers who have previously returned taxable amounts in relation to bona fide leases may request an amended assessment where the request is within the three year time limit set out in section 74 of the FBTAA. Further, an objection may be lodged to an assessment within four years of the date of assessment (for the 1993 and later FBT years) under the provisions of Part IVC of the *Taxation Administration Act 1953*. Requests that the Commissioner extend the 60 day objection period for 1992 and earlier year assessments will be considered in terms of the guidelines in Taxation Ruling IT 2455.

9. To the extent that this determination is inconsistent with views expressed in IT 2509 and TD 93/231, the views of this determination prevail.

Examples

1. A car costing $30,000 is leased by an employer for 4 years with a 30% residual value that equals the minimum residual value set out in IT 28. The employer subsequently purchases the car for the residual value of $9,000 and on-sells it to an employee for the same amount.

The lease is a bona fide lease, so the purchase of the car at the residual value is accepted as an 'arm's length transaction' for the purposes of paragraph 43(a) of the FBTAA. The taxable value is nil, being the cost price to the employer of $9,000 less the employee contribution of $9,000.

Where the employee purchases the car directly from the lessor at the residual value, the taxable value is the same.

2. A car costing $30,000 is leased by an employer for 4 years with a 20% residual value, which is less than the minimum residual values set out in IT 28. The employer subsequently purchases the car for the residual value of $6,000 and on-sells it to an employee for the same amount. Similar cars have been sold at public auction for an average of $9,000.

The lease is not accepted as a bona fide lease, so the taxable value calculated under paragraph 43(c) of the FBTAA is $3,000, being the notional (or market) value of $9,000 at the time the car is provided to the employee less the employee contribution of $6,000.

Last Determination

This is the last Taxation Determination for the 1995 calendar year. The next Determination will be Taxation Determination TD 96/1.

Commissioner of Taxation
20/12/95

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