TD 95/D14 - 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)?

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Australian Taxation Office

Taxation Determination TD 95/D14

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Draft 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 at 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 tax provisions of the *Income Tax Assessment Act 1936*, 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 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 (the table is intended to reflect market values), we will generally accept the agreement as a bona fide lease.

5. If an agreement is not considered to be a bona fide lease, but in effect is 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.

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. To the extent that this determination is inconsistent with views expressed in IT 2509, that ruling is modified.

Example 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.

Example 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.

Commissioner of Taxation
6/9/95

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