

MT 2048 - Fringe benefits tax: remote area holiday transport - meaning of "recreation leave" and "working days" in section 143



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**FRINGE BENEFITS TAX
RECREATION LEAVE
- MEANING
WORKING DAYS
- MEANING
REMOTE AREA HOLIDAY
TRANSPORT**

**FBTAA
47, 60A, 61, 143**

OTHER RULINGS ON THIS TOPIC:

**TITLE: FRINGE BENEFITS TAX: REMOTE AREA HOLIDAY TRANSPORT -
MEANING OF "RECREATION LEAVE"
AND "WORKING DAYS" IN SECTION
143**

NOTE: . Income Tax Rulings do not have the force of law.

- . Each decision made by the Australian Taxation Office is made on the merits of each individual case having regard to any relevant Ruling.

PREAMBLE

Fringe benefits tax is payable by employers on the total taxable value of fringe benefits, such as free or subsidised transport, meals and accommodation, that employers provide to employees or associates of their employees. Some benefits provided to employees who work in designated remote areas of Australia are, however, either exempt from the tax or are valued on a concessional basis. One such concessional benefit relates to remote area holiday transport.

2. Under sections 60A and 61 of the Fringe Benefits Assessment Act 1936 a concession is provided for a "remote area holiday transport fringe benefit" as that expression is used in subsection 143(2). Broadly speaking, the concession applies where transport, meals or accommodation is provided or

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reimbursed in respect of an employee working in a designated remote area, in relation to a holiday for the employee or the spouse or a child of the employee.

3. Section 143 makes it clear that:

- (a) if the transport concerned is for the employee (rather than for the spouse or the child of the employee) - the transport must be provided while the employee is on recreation leave of at least 3 working days for the concession to apply (subparagraph 143(1)(h)(i)); and
- (b) if the transport concerned is for the spouse or a child of the employee - the transport does not have to be undertaken while the employee is on recreation leave, it being sufficient if the transport is provided wholly or principally to enable the spouse or child to have a holiday for a period of not less than 3 days (paragraph 143(1)(g)).

4. The value of a remote area holiday transport fringe benefit is reduced in accordance with subsection 60A(1), 61(1), 61(1AA) or 61(2). The reduction may be up to 50% of the taxable value of the relevant benefits in relation to the provision of the remote area holiday transport.

5. The purpose of this Ruling is to clarify the meaning of the phrase "recreation leave being recreation leave of not less than 3 working days" in paragraph 143(1)(h). As indicated above, unless the transport for the employee concerned is provided while the employee is on recreation leave of not less than 3 working days, the concession is not available.

RULING

Meaning of "Recreation Leave"

6. The expression "recreation leave" is not defined in the Act. It therefore bears its ordinary meaning. The word "recreation" is defined in subsection 136(1) to include amusement; sport or similar leisure-time pursuits; and recreation or amusement provided on, or by means of, vehicle, ship, vessel or aircraft. However, it is the ordinary meaning of the composite expression "recreation leave" in its context in paragraph 143(1)(h) which needs to be determined.

7. The word "recreation" is defined in the Macquarie Dictionary to mean "refreshment by means of some pastime, agreeable exercise, or the like, a pastime, diversion, exercise or other resource affording relaxation and

enjoyment". The word "leave" is there defined to mean "permission to do something, permission to be absent, as from duty: to be on leave, the time this permission lasts".

8. The ordinary meaning of the composite expression "recreation leave" in paragraph 143(1)(h) is considered to be leave granted for recreational purposes. It is not confined to annual leave, annual holidays or annual vacations. It may also extend to leave granted for recreational purposes, such as rest and recreation leave and rostered days off, to which an employee is entitled by law, an award, order, determination or industrial agreement, a contract of employment or the terms of an appointment to an office.

Meaning of "Working Days"

9. The expression "working days" is not defined in the Act. It must therefore be given its ordinary meaning construed in the context in which the expression appears in paragraph 143(1)(h).

10. The expression "3 working days" in paragraph 143(1)(h) should be compared with the phrase "the working days" in subparagraph 47(7)(c)(ii). The context in each case is, of course, somewhat different. In subparagraph 47(7)(c)(ii) the phrase "the working days" relates back to the number of days the employee works (to which subparagraph 47(7)(c)(i) refers) to differentiate those days from the number of days the employee has off. This provides some assistance in considering the meaning of "working days" in paragraph 143(1)(h) but is not determinative of that meaning. There the expression is being used essentially to determine the length of the recreation leave during which the employee may be provided transport for the concession to apply.

11. The meaning of the expression "working day", according to the Macquarie Dictionary, is "a day ordinarily given to working (opposed to holiday)".

12. The expression "working days" in its context in paragraph 143(1)(h) is considered to be dealing with working days of an employee rather than those of an employer. It is considered to extend only to days which, according to popular expression and understanding, are ordinarily given to working and for which the employee must have the employer's permission if the employee is not to attend work on those days. If an ordinary employee (i.e. an employee who works standard hours, not on shifts or in cycles) works on a regular basis from Monday to Friday and not on Saturday and Sunday, his or her working days for the purpose of paragraph 143(1)(h) are each of the days from Monday to Friday. Saturday and Sunday are not working days in this situation because they are not ordinarily given to working.

13. The result would be the same where an employee, who is a shift worker, regularly works from Monday to Friday (but not on Saturday or Sunday) on shifts which vary during the five day week. Monday to Friday inclusive would be working days for the purpose of paragraph 143(1)(h). Similarly, where an employee regularly works from Wednesday to Sunday inclusive, those days (but not Monday and Tuesday) would be working days for the purpose of paragraph 143(1)(h).

14. An employee may work on a regular basis (whether on shift work, on a cyclical basis or otherwise) for a period that extends over each and every day of the week (i.e. Sunday to Saturday inclusive). The employee, for instance, may regularly work for a number of days (say, 5) and then have a number of days off (say, 3) with the former days including Saturdays and Sundays as appropriate. In this situation, this Office takes the view that the number of days the employee works (i.e. the 5 days in the example) are days ordinarily given to working and would be regarded as working days for the purpose of paragraph 143(1)(h). The 3 days off in the example would not be accepted as being working days for that purpose.

Recreation Leave of not less than 3 Working Days

15. Having considered the meaning of the expressions "recreation leave" and "working days", it is important to remember that the phrase "recreation leave of not less than 3 working days" in paragraph 143(1)(h) needs to be construed as a whole.

16. The concession will apply to transport provided while an employee is on recreation leave, such as rostered days off, only if those rostered days are "working days" for the purposes of paragraph 143(1)(h).

17. In essence, rostered days off will be regarded as "working days" where the particular days concerned are ordinarily given to working and are days for which the employee must have the employer's permission if the employee is to be absent from work on them. This will be determined according to the basis on which the employee involved regularly works (see paragraphs 12 to 14 for details).

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Examples

18. The following two examples should assist to explain the proper approach to adopt.

19. A shift worker might regularly work for 38 hours per "week" on a 5 days on/5 days off basis for a 28 day cycle as follows:

	S	M	T	W	T	F	S
WEEK 1	D	D	D	D	D	-	-
WEEK 2	-	-	-	A	A	A	A
WEEK 3	A	-	-	-	-	-	D
WEEK 4	D	D	D	X	-	-	-

A = afternoon shift
D = day shift
- = rostered day off
X = one leisure day off allowed each month

Result : If the employee takes leave for 3 days in week 4 from Wednesday to Friday, this would not constitute "recreation leave of not less than 3 working days" for the purpose of paragraph 143(1)(h). The leisure day off on Wednesday would be a working day. The rostered days off on Thursday and Friday would not be working days for the purpose of paragraph 143(1)(h), however, because they are not days ordinarily given to working. If the employee took annual leave from Wednesday to Saturday inclusive in week 2, each of those days would be accepted as being a working day for the purpose of paragraph 143(1)(h).

20. A shift worker might regularly work a five day shift for 38 hours per "week" for a 28 day cycle as follows:

	S	M	T	W	T	F	S
WEEK 1	-	A	A	A	D	X	-
WEEK 2	-	D	D	D	A	A	-
WEEK 3	-	A	A	A	D	D	-
WEEK 4	-	D	D	D	A	A	-

A = afternoon shift
D = day shift
- = weekend day (might also be referred to by the employee and employer as a rostered day off)
X = one leisure day off allowed each month

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Result : If the employee takes 4 days' leave for the period from Friday of week 1 to Monday of week 2, comprising 1 leisure day off, 2 weekend days or "rostered days off" and 1 day of annual leave, this does not constitute "recreation leave of not less than 3 working days" for the purpose of paragraph 143(1)(h). Neither Saturday nor Sunday may be said to be a day ordinarily given to working. Nor are they days for which the employee must have the employer's permission to be absent from work on them. (Unlike the first example where the shift work was regularly done on each and every day of the seven day week, the shift work here was only done from Mondays to Fridays. It is only the days from Mondays to Fridays which are therefore working days).

COMMISSIONER OF TAXATION

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