IT 2614 - Income tax and fringe benefits tax: employee expenses incurred on relocation of employment

This ruling contains references to repealed provisions, some of which may have been rewritten.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32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

TAXATION RULING NO. IT 2614

INCOME TAX AND FRINGE BENEFITS TAX: EMPLOYEE EXPENSES INCURRED ON RELOCATION OF EMPLOYMENT

FOI Embargo: May be released

REF

NO Ref.: 89/9120-1 Date of effect: Immediate

BO Ref.: Date original memo issued:

FOI INDEX DETAIL

Reference no.:	Subject refs:	Legislative refs:
I 1012378	EMPLOYEE - TRANSFER IN LOCALITY OF EMPLOYMENT	23(L) 25(1) 26(e)
	DISTURBANCE ALLOWANCE	51(1)
	DEPRECIATION ALLOWANCE	FBTAA: 20, 58B, 58C, 58D, 58F, 136
	RELOCATION ALLOWANCE	
	REMOVAL ALLOWANCE	
	STORAGE EXPENSES	

OTHER RULINGS ON THIS TOPIC: IT 2173, 2406, 2481, MT 2030

PREAMBLE This Office was recently asked to consider the taxation treatment of certain allowances granted, or payments made, to employees who had been permanently transferred by their employer to a new location.

2. One of the allowances was in the nature of "compensation for depreciation and disturbance" and was paid under the Crown Employees (Transferred Officers Compensation) Award. The provision of the award which governed the conditions of service stated that "a transferred officer shall be entitled to compensation for the accelerated depreciation of personal and/or household effects removed to a new location, occasioned by the relocation". The term "transferred officer" was defined in the award to mean "an officer who has been assigned to a new location ... at which he is to perform duty and who, as a consequence of such assignment, finds it necessary to leave the existing residence and seek or take up a new residence ...". The definition excluded officers transferred at their request or on account of misconduct. It was clear from the award that the compensation was paid without any real regard to costs actually incurred by the transferred officer and was additional to an allowance which was intended to cover the officer's costs of removing furniture and personal effects. It is understood similar allowances are paid under other Federal and State awards.

3. The issue which arose was whether the compensation payment constituted a fringe benefit under the provisions of the Fringe Benefits Tax Assessment Act 1986 (FBTAA) or was assessable income under the provisions of the Income Tax Assessment Act 1936

(ITAA). A further issue was whether, where the compensation payment was used by the transferred officer to purchase household items such as curtains, blinds, light fittings, etc., the expenditure was deductible under subsection 51(1) of the ITAA if the compensation constituted assessable income.

4. In addition to the issues arising in relation to the specific compensation payment mentioned in paragraph 2, this Ruling is intended to provide general guidance on the taxation treatment of various allowances paid by an employer to an employee in respect of removal and storage costs incurred as a result of a permanent transfer from one place of employment to another. This Ruling also extends to the situation where, instead of a relocation in an existing employment, an employee moves location to take up a new job with a new employer and the employer reimburses (wholly or in part) the cost of removal to the new locality of employment.

5. An allowance paid in respect of a temporary transfer may constitute a living-away-from-home allowance as explained in Taxation Ruling MT 2030.

RULING Depreciation and Disturbance Allowance

(A) Fringe Benefits Tax

6. In determining whether a payment to an employee is a fringe benefit taxable to an employer or assessable income for income tax purposes in the hands of the employee, it is always necessary to begin with the question whether the payment constitutes a fringe benefit. The FBTAA generally applies to non-cash benefits although certain cash benefits may constitute fringe benefits, provided they fall within the definition of "fringe benefit" in subsection 136(1) of the FBTAA.

7. In essence, a "fringe benefit" is defined in the FBTAA as any benefit provided to an employee, or an associate of an employee, in respect of the employment of that employee. However, the term by paragraph (f) of the definition does not include a payment of salary or wages for the purposes of the ITAA. The term "salary or wages" is defined in subsection 136(1) of the FBTAA to mean "assessable income, being salary or wages within the meaning of section 221A of the" ITAA. Under subsection 221A(1) of the ITAA "salary or wages" means, inter alia, "allowances paid (whether at piece work rates or otherwise) to an employee as such".

8. Under paragraph 20(b) of the FBTAA where a person (employer/provider) reimburses another person (employee/recipient), in whole or in part, in respect of an amount of expenditure incurred by the employee/recipient, the reimbursement is taken to constitute the provision of a benefit by the employer/provider to the employee/recipient. The term "reimburse" is defined in subsection 136(1) of the FBTAA to include "any act having the effect or result, direct or indirect, of a reimbursement." The ordinary meaning of the word "reimburse", according to the Macquarie Dictionary, is either "to make repayment for expense or loss incurred" or "to pay back; refund; repay."

9. In order to determine whether a payment constitutes a fringe benefit or is assessable income in the recipient's hands it is therefore necessary to decide whether the payment is an "allowance" or a "reimbursement" of expenses.

10. In Case 153 10 TBRD 480 the Board of Review said at 484:

> "Our view is that, as between employer and employee, there is a marked difference between a reimbursement and an allowance. A reimbursement transfers from the employee to the employer the burden of expenses actually incurred in the course of employment. An allowance is designed to compensate the employee because the employer does not wish to be under an obligation of meeting such expenses directly or indirectly."

11. A reimbursement seems to assume that an employee is to be compensated exactly for an expense already incurred although not necessarily disbursed. As between an employer and an employee, a reimbursement transfers from the employee to the employer the burden of expenses actually incurred in the course of employment. In the generality of such cases the employer considers the expense to be its own and the employee initially incurs the expense on behalf of the employer (Case B55 (1951 2 TBRD (NS) 227). Whether an expense has been treated as that of the employer is a question of fact which depends on the circumstances of each case. However, a requirement that an employee vouch expenses may suggest that a payment is a reimbursement rather than an allowance.

12. The word "allowance" is defined in the Macquarie Dictionary to mean "a definite sum of money allotted or granted to meet expenses or requirements." An allowance will usually consist of the payment of a definite pre-determined amount to cover an estimated expense, and will be paid regardless of whether the employee incurs the expected payment. The payment is merely an extra amount contributed towards the defraying of a particular type of employee expense, and is made regardless of whether the employee incurs the expected payment, or whether an expense is likely to be incurred. Whether the allowance is expended is at the discretion of the employee.

13. An amount paid to an employee as compensation for accelerated depreciation of personal and/or household effects as a result of relocation in employment is considered to be an allowance paid to an employee as such within the definition of "salary or wages". Such an amount is paid to the employee in connection with and by reason of the employee's service as an employee or in respect of an incident of the employee's service (see Mutual Acceptance Co Ltd v. FCT (1945) 69 CLR 389 and Trustees of the Estate of George Adams (Deceased) v. Commissioner of Pay-roll Tax (Victoria) 80 ATC 4424; (1979) 10 ATR 238. The amount is clearly attributable to the employment of the employee (see Glambed v. F.C. of T. 89 ATC 4259; (1989) 20 ATR 428). The allowance is therefore not a fringe benefit under the FBTAA.

(B) Assessable income

14. As the payment described in paragraph 13 is not a fringe benefit it will not be excluded from the operation of paragraph 26(e) of the ITAA by subparagraph (iv) of that provision. Consequently, the payment will be assessable as an allowance given or granted to a taxpayer in respect of that taxpayer's employment. Such an allowance is also considered to be income within ordinary concepts and assessable under subsection 25(1) of the ITAA.

Payment for Removal and Storage Expenses

15. Where an amount is paid by an employer to an employee by way of a reimbursement of expenses incurred by the employee in relocating to a new locality of employment, the payment is considered to be an expense payment fringe benefit which may be taxable to the employer under section 20 of the FBTAA. Similarily, where an amount is paid by an employer to a future employee (a future employee also being an "employee" as defined) by way of a reimbursement of costs incurred by the future employee in moving location to take up new employment, the payment is considered to be an expense payment fringe benefit in terms of section 20 of the FBTAA.

16. Some expense payment fringe benefits will be taxable to the employer e.g., reimbursement of expenses incurred by an employee in finding tenants for the employee's previous residence. Other expense payment fringe benefits may qualify for exemption. If an expense payment fringe benefit is paid, for example, in respect of the removal or storage of an employee's household effects as a result of a relocation of the employee's employment, the benefit may be an exempt benefit under subsection 58B(1) of the FBTAA. It may accordingly be exempted from the definition of "fringe benefit" by paragraph 136(1)(g) of the definition. Exempt benefits might also arise on the sale or acquisition of a dwelling as a result of relocation (section 58C of the FBTAA), on the connection or re-connection of the telephone service, the gas or electricity (section 58D of the FBTAA) and for certain benefits in respect of relocation transport (section 58F of the FBTAA).

17. It should be borne in mind that under paragraph 58B(1)(e) of the FBTAA one condition for the application of sections 58B, 58C, 58D and 58F is that documentary evidence of the recipient/employee's expenditure must be provided to the employer. By subsection 136(1), the expression "documentary evidence" means a document that would constitute documentary evidence of the relevant expense under the substantiation provisions of the ITAA. To the extent to which the employee fails to obtain suitable documentary evidence, or fails to provide such evidence to the employer by the "declaration date", (i.e. the date of lodgment of the fringe benefit tax return for that year or such later date as the Commissioner allows) the benefit will no longer be an exempt benefit. Instead the employer will be assessed, under section 20 of the FBTAA, on the value of the unvouched benefit.

18. For income tax purposes any income derived by an employee by way of the provision of a fringe benefit or a benefit which, but for paragraph (g) of the definition of "fringe benefit", would be a fringe benefit is exempt income in accordance with section 23L of the ITAA. Further, subparagraph 26(e)(v) of the ITAA specifically excludes from the operation of paragraph 26(e) payments which are exempt benefits under paragragh (g) of the definition of "fringe benefit" in the FBTAA. Accordingly, payments made to an employee by way of reimbursement for actual removal and storage expenses are not assessable to the employee under paragraph 26(e).

19. Where an amount is paid by an employer directly to the removalists or storage providers in respect of the removal or storage of the transferred employee's household effects or where an employer pays an employee an amount being an estimate of removal or storage expenses and requires vouching for the actual expenditure and return of any unused funds, the payment is a reimbursement rather than an allowance. The amount may therefore constitute an exempt benefit for the purposes of the FBTAA and, if so, is not included in the assessable income of the employee.

20. However, where an employer pays an employee an amount which represents an estimate of removal and storage expenses, without requiring any vouching for the actual expenditure, the amount does not constitute a fringe benefit under the FBTAA. The payment is considered to be an allowance and not a fringe benefit for the reasons outlined in paragraphs 7 to 13. It is therefore included in the assessable income of the employee by the operation of subsection 25(1) or paragraph 26(e) of the ITAA.

21. There may also be situations where an employer pays an employee an amount being an estimate of removal and storage expenses and requires vouching of the actual expenditure incurred but allows the employee to retain any excess of the amount paid over the expenditure incurred. In these situations, the whole amount is considered to be an allowance which constitutes assessable income of the employee under either subsection 25(1) or paragraph 26(e) of the ITAA.

22. The matters dealt with in Taxation Ruling IT 2173 are now covered by this Ruling and that earlier Ruling is withdrawn.

Indemnity for Loss or Damage

23. Where an employee receives from his/her employer a payment by way of indemnity for vouched expenses incurred in respect of any loss or damage to household effects caused by relocation, the indemnity constitutes a reimbursement of actual expenditure incurred. The indemnity is an exempt benefit under section 58B of the FBTAA and therefore does not constitute assessable income of the employee.

Deductions

24. Where an employee in receipt of a depreciation and

disturbance allowance uses the allowance to purchase household items the expenditure incurred is not an allowable deduction for income tax purposes. The fact that an allowance paid to an employee is expended by that employee for the purpose for which it was paid does not of itself impress an outgoing with any greater degree of deductibility than that which it would have had if no allowance been paid. It is the nature or character of the outgoing itself, without regard to the nature or character of any allowance that might be received, which determines whether it is an outgoing that is deductible under subsection 51(1): Taxation Board of Review in Case R22 84 ATC 212 at 214, (1984) 27 CTBR (NS) Case 76 at 603. The expenditure in this case is considered not to be incurred in gaining or producing assessable income and is essentially of a private or domestic nature. Similarly, removal and storage expenses in respect of which a removal or storage allowance of the type discussed in paragraphs 15 to 18 has been received are not allowable deductions.

Tax Instalment Deductions

25. Tax instalment deductions are required to be made from any allowances of the type referred to in paragraph 13 that are paid to transferred employees as compensation for accelerated depreciation of personal and/or household effects. Tax instalments are also required to be deducted from any allowances of the kinds considered in paragraphs 20 and 21 paid to employees to meet removal and storage costs incurred because of a relocation from one place of employment to another. The amount of the allowance must be included in the gross income shown on the group certificate.

Date of Effect

26. The change in policy from Taxation Ruling IT 2173 to this Ruling in relation to the assessability of relocation allowances (paragraphs 20 and 21 above refer) is to apply in respect of all amounts paid on or after 1 July 1991.

COMMISSIONER OF TAXATION
27 September 1990