MT 2033 - Fringe benefits tax : application of sub-section 8(2) exemption to modified cars

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TAXATION RULING NO. MT 2033

FRINGE BENEFITS TAX : APPLICATION OF SUB-SECTION 8(2) EXEMPTION TO MODIFIED CARS

F.O.I. EMBARGO: May be released

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I 1209153	FRINGE BENEFITS TAX	FRINGE BENEFITS TAX ASSESSMENT ACT 1986. SS. 7, 8, 10 and 136

OTHER RULINGS ON TOPIC: MT 2026, MT 2027

PREAMBLE Generally, a taxable car benefit arises for FBT purposes where an employer's car is used by an employee or associate for private purposes or is available for their private use. As detailed in Ruling MT 2027, travel between an employee's residence and place of employment would ordinarily constitute private use for these purposes.

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2. However, by virtue of the exemption afforded by sub-section 8(2) of the Fringe Benefits Tax Assessment Act 1986 (the "Act"), a liability for FBT will not arise where the private use of certain cars during a particular year of tax is limited to work-related travel. Work-related travel is defined for these purposes in sub-section 136(1) of the Act to be travel by an employee between his or her place of 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. It should be noted that in the event that private use is not so limited, FBT liability extends to all private use, including private home to work travel.

3. Cars that may qualify for this exemption are taxis, panel vans, utility trucks or any other road vehicles that, while designed to carry loads of less than one tonne, are not designed for the principal purpose of carrying passengers.

4. This Office has been asked whether modifications to vehicles originally designed as passenger cars will result in the vehicle, as modified, qualifying for the exemption. The enquiries received fall into two broad categories. The first concerns driver instruction cars to which dual foot controls have been fitted. The second relates to modifications to station wagons (and suitable hatchback models) that involve the removal or bolting down of the rear passenger seat.

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5. Whether a car is of a kind to which the work-related use exemption is capable of applying depends on the vehicle's inherent design rather than the use to which the particular car is put. Thus, for example, the fact that the rear seat of a station wagon may be folded down and service equipment located in the extended rear section is not relevant for the purposes of the exemption, i.e. the car's design remains that of a passenger carrying vehicle.

6. Similarly, ordinary passenger cars of the kind commonly used as driver instruction cars are designed principally for the carriage of passengers and the fact that they may be fitted with dual controls and their use restricted to driver instruction does not alter the essential design of the car. This is established, broadly, by its designed seating capacity. Accordingly, passenger cars modified for use as driver instruction cars do not fall within the class of vehicles specified in sub-section 8(2) of the Act.

7. As to the second category of cases, a vehicle's design is generally established at the time of manufacture. In order to change that design it would be necessary that the modifications effect a permanent alteration to the vehicle.

8. A clear example of this would be the process involved in the production of hearses. Under this, a station wagon body is extended, the rear doors removed, flush panelling fitted and the compartment behind the driver's seat suitably modified.

9. Whether or not modifications to a car satisfy the test detailed in paragraph 7 needs to be determined on the facts of the particular case. However, as a general rule, the requirement that modifications effect a permanent change to the car would be satisfied where they are not capable of being readily reversed such that the car could, if required, be used alternatively as a passenger or non-passenger car on a regular basis. The fact that re-conversion may be made difficult by the bulk of any equipment or goods regularly stored in the rear section is not relevant for this purpose; rather, satisfaction of the requirement is to be found in the nature of the modifications themselves.

10. Simply removing the rear seat or bolting it down would not be sufficient for this purpose. However, if, as has been put to this Office, that were to be done in conjunction with the fixing of a rigid floor panel, the reinforcement of internal panels, the fixing of a protective screen behind the driver's seat and the fixing of shelving, etc., to a service vehicle, it would be accepted that the modifications were such as to bring the vehicle within the ambit of sub-section 8(2). Of course, the modifications would need to extend throughout the entire rear area, including that previously devoted to the rear seat. Simply fixing shelving etc., to the area behind the rear seat location would not bring the vehicle within the ambit of sub-section 8(2).

11. It should be noted that to qualify for the exemption the requirements of sub-section 8(2) must be satisfied at all times during an FBT year when the car benefit is provided, i.e., at all times when the car is used or available for the private use of the employee (or associate). Accordingly, the exemption will not apply in the year in which modifications are effected if, during that year, the unmodified car was used by the employee (or

associate) for private purposes or was available for his or her private use. In determining for these purposes whether an unmodified car has been available for an employee's private use, particular regard should be had to sub-section 7(2) of the Act, the effect of which is that a car will be taken to be available for the private use of an employee on any day on which it is garaged at or near the employee's residence.

12. One final point should be noted in discussing eligibility for the exemption afforded by sub-section 8(2). As discussed in Ruling MT 2027, not all travel from an employee's home constitutes private travel. It follows that there will be cases where no FBT liability arises in respect of the use of a car garaged at an employee's home, notwithstanding its exclusion from the operation of sub-section 8(2).

13. By way of example, if, as is understood to be a common situation, driver instruction cars are used solely in travelling from the instructor's home to pick up the first pupil, from lesson to lesson and then to home after dropping off the final pupil for the day, it would be accepted that the car was used exclusively for business purposes. Provided that the employer adopts the operating cost method of valuing car benefits (section 10 of the Act) and the necessary log book requirements are satisfied, there would be no FBT liability in respect of the employee's use of the car. In the example given, the log book requirements would amount to a single daily entry recording the use of the car for driver instruction purposes.

COMMISSIONER OF TAXATION
1 October 1986