MT 2034 - Fringe benefits tax : private use of motor vehicles other than cars

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TAXATION RULING NO. MT 2034

FRINGE BENEFITS TAX : PRIVATE USE OF MOTOR VEHICLES OTHER THAN CARS

F.O.I. EMBARGO: May be released

REF H.O. REF: L83/10-3 DATE OF EFFECT: Immediate

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1209224	FRINGE BENEFITS TAX	FRINGE BENEFITS TAX ASSESSMENT ACT 1986: DIVISIONS 2, 5 and 12 of PART III; s.5, 7, 10, 45, 47, 48, 49, 50, 51, 52, 62, 106 and 136.

PREAMBLE Under Division 2 of Part III of the Fringe Benefits Tax Assessment Act 1986 (the "Act") a liability for FBT arises where, broadly, an employer's car is used by an employee or associate for private purposes or is available for their private use.

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2. The purpose of this ruling is to detail when the use of an employer's vehicle other than a car will give rise to a FBT liability and to provide guidelines for the determination of the value of that benefit. By virtue of the definitions of "motor vehicle" and "car" in sub-section 136(1) of the Act, this ruling is concerned, therefore, with motor vehicles other than -

. a motor car, station wagon, panel van, utility truck or similar vehicle; or

. any other road vehicle designed to carry a load of less than one tonne or fewer than nine passengers.

For this purpose a motor vehicle includes a four-wheel drive vehicle and a motor cycle or similar vehicle.

3. The ruling addresses the general situation where an employer's vehicle other than a car is provided for the use of an employee. However, as with benefits generally, FBT would extend similarly to benefits provided to associates of an employee (e.g. family members) and to vehicles provided by an associate of the employer or by a third party under an arrangement with the employer. The position where a vehicle is taken out on short-term hire at the employer's expense is addressed in paragraphs 19 to 22. It should be noted that a car taken on short-term hire by an employer is, by virtue of sub-section 7(7) of the Act, excluded from the operation of the car rules. As such, the benefit to an employee of the use of the car is a residual benefit that is subject to valuation in accordance with the rules in paragraphs 19 to 22.

4. It is assumed for the purposes of the ruling that the requirement that the benefit be provided in respect of the

employment of the employee has been satisfied.

Summary

5. A full discussion of the FBT implications of an employer providing a vehicle other than a car for the use of an employee is contained in the following paragraphs. For convenience, however, the general position may be summarised as follows -

. the right to use an employer's vehicle other than a car is a residual benefit;

. an appropriate measure of the benefit would be obtained by apportioning the operating costs of the car - determined as per component A of the operating cost car formula in section 10 of the Act - according to the number of private kilometres travelled in the vehicle;

. given the clear legislative intent not to require the same level of detail as that required for car benefits, an approach that gave a reasonably based measure of the vehicle's operating cost for these purposes would be sufficient to satisfy the requirements of the law; and

. One such method that would be accepted for these purposes would be to value the net benefit of the private use of the vehicle by multiplying the number of private kilometres travelled by the following per kilometre rates -

(i) the rates to be applied for the fringe benefits tax year commencing 1 April 1993 (refer TD 93/59) are:

Engine Capacity	Rate Per Kilometre
0 - 2500 cc	29 cents
Over 2500 cc	35 cents
Motor cycles	9 cents; and

(ii) the rates to be applied for the fringe benefits tax year commencing 1 April 1994 (refer TD 94/22) are:

Engine Capacity	Rate Per Kilometre
0 - 2500 cc	29 cents
Over 2500 cc	35 cents
Motor cycles	9 cents.

Reference should be made to the following paragraphs in determining the detailed application of these rules.

RULING 6. The right to use an employer's motor vehicle other than a car constitutes a residual benefit under section 45 of the Act. Section 45, which forms part of Division 12 of Part III of the Act, applies to all benefits that are not subject to the specific rules incorporated in the preceding Divisions. For these purposes, benefit is defined widely in sub-section 136(1) of the Act to include any privilege, service or facility and any right in relation to real or personal property. As such, it would include the right to use a motor vehicle.

7. Further, when the term benefit is read in conjunction with sub-section 148(1), a benefit will exist for the purposes of section 45 whether or not the use of the vehicle is in connection with employment duties. At the same time, this would, by virtue of the operation of section 52 of the Act, be a consideration in determining the net value of the benefit for FBT purposes. This is discussed further in paragraphs 23 to 27.

8. A significant exemption from FBT is, however, provided under sub-section 47(6) of the Act. Under this sub-section, no liability for FBT will arise in respect of the provision of a vehicle to an employee where there is no private use of the vehicle by the employee or where private use of the vehicle by the employee during a year of tax is limited to certain work-related travel. Work related travel is defined in sub-section 136(1) of the Act to be travel between the employee's 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.

Valuation of Benefit - Employer's Vehicle

9. The example of an employee who is provided with the use of an employer's vehicle (e.g., a one tonne dual cab) on a continuing basis for both business and private use will serve to illustrate the basic valuation approach in this area.

10. In this example, the value of the benefit of the right to use the employer's vehicle is determined in accordance with paragraph 51(c) of the Act as the notional value of the benefit. Notional value is defined in sub-section 136(1) for these purposes as the amount that the employee could reasonably be expected to have been required to pay to obtain the benefit under an arm's length transaction.

11. One measure of that would be the rate charged to rent a similar vehicle on the open market. However, on the basis of information available to this office, such rates are generally based on short-term hire and even with available longer-term discounts, such an approach would generally produce an unrealistically high value. In addition they may not, in any event, encompass the full value of the benefit provided, e.g., the rate charged may not include the cost of fuel.

12. An alternative measure would be to look, broadly, to what would be the cost to the employee of providing his or her own vehicle of the same kind as that provided by the employer. However, rather than attempting a notional calculation of the cost to the employee of providing a similar vehicle, which becomes largely impracticable if different employees use the same vehicle over time, a more practical measure would be to look to the operating cost of the particular vehicle to the employer. Operating costs for these purposes would be as per component A of the car operating cost formula. As required by paragraph 10(3)(a), operating costs would thus include the cost of fuel, repairs and maintenance, registration and insurance and leasing charges (or depreciation and imputed interest, as appropriate). Any sales tax exemptions would, as for cars, be disregarded for these purposes.

13. The gross taxable value determined on this basis would

be reduced under section 52 of the Act, broadly, according to the proportion of business kilometres to total kilometres travelled in the year - see paragraphs 23 to 27. If, rather than being provided for use by a single employee, the vehicle was used during the year by two or more employees, the aggregate value of the benefits provided to employees would similarly be determined by reducing the gross taxable value in the proportion of total business kilometres to total kilometres travelled in the year.

14. The preceding discussion assumes that the vehicle is provided on a fully maintained basis, including fuel. In the event that what is being provided to the employee is the use of a vehicle without the provision of fuel (i.e. where it is the employee's responsibility to provide fuel) the value of the benefit would be determined by reference to operating costs excluding fuel.

15. While, as discussed, the application of the car operating cost approach would provide an appropriate measure of the value of the benefit to employees of the use of vehicles other than cars, there is expressed in the legislation a clear intent not to require the same level of detail as that required for valuing car benefits. This is against the background of the type of vehicles involved, their expected high business usage and their general lack of suitability for significant private use. Accordingly, an approach that gave a reasonably based measure of that cost would be sufficient to satisfy the requirements of the law.

16. One method that would be acceptable for this purpose would be to determine the benefit on a cents per kilometre basis. Given that the vehicles under examination could be expected to be used extensively for business purposes - with the result that the standing costs would be spread over a substantial number of annual kilometres travelled - the following rates would be accepted for the purposes of valuing benefits provided in the transitional year -

(i) the rates to be applied for the fringe benefits tax year commencing 1 April 1993 (refer TD 93/59) are:

Engine Capacity	Rate Per Kilometre
0 - 2500 cc	29 cents
Over 2500 cc	35 cents
Motor cycles	9 cents; and

(ii) the rates to be applied for the fringe benefits tax year commencing 1 April 1994 (refer TD 94/22) are:

Engine Capacity	Rate Per Kilometre
0 - 2500 cc	29 cents
Over 2500 cc	35 cents
Motor cycles	9 cents.

17. These rates could be applied to the total private kilometres travelled by the employee in the vehicle during the year to give the taxable value net of the reduction afforded by section 52 (see paragraphs 23 to 27). Where the vehicle is used by more

than one employee during the year the rates would be applied to the aggregate number of private kilometres to give the aggregate value of the benefits provided to employees. The basis for determining the number of private kilometres travelled is discussed in paragraph 27.

18. Where the vehicle is provided without fuel the taxable value would, consistent with paragraph 14, be reduced accordingly. Thus, the taxable value determined in accordance with paragraphs 16 and 17 would be reduced by the private proportion of the employee's fuel costs. For this purpose a reduction determined by multiplying the number of private kilometres travelled by an estimate of fuel costs per kilometre based on average fuel costs and average fuel consumption of the vehicle would be accepted in the absence of specific records. The position where an employee pays consideration for the right to use the vehicle is discussed in paragraphs 28 to 31.

Valuation of Benefit - Rented Vehicle

19. Where an employer takes out a vehicle on short-term hire for the specific purpose of making it available to an employee, the taxable value would be determined under paragraph 51(1)(a) or (b) as the arm's length amount paid by the employer. In the event that the vehicle is rented for one day only, the value of the benefit would be determined on the same basis under paragraph 50(a) or (b). Similarly where the employer meets hiring costs incurred by an employee, an expense payment benefit arises under Division 5 of Part III of the Act, the gross value of the benefit being the amount paid or reimbursed by the employer.

20. Where the hiring costs do not include the use of fuel, any payment or reimbursement of fuel costs by the employer would give rise to a benefit of an amount equal to the costs borne by the employer.

21. As mentioned in the preamble, the valuation rules detailed in the preceding paragraphs apply equally to cars taken out on short-term hire by virtue of the operation of sub-section 7(7) of the Act.

22. It should be noted that the discussion in paragraph 19 of the operation of sections 50 and 51 is based on the assumption that the employer is not in the business of providing such vehicles on hire to the public. In the event that this is not the case, e.g. where a vehicle rental firm hires out a vehicle other than a car to an employee free or at a discount, the taxable value would be determined under section 48 or 49 of the Act by reference to 75% of the lowest amount payable by members of the public at the time for equivalent rights. In those cases, reference should also be made to section 62 of the Act, the broad effect of which is to exempt from FBT the first $500 ($375 in the transitional year) of benefits provided to an employee that are of a kind supplied to the public in the ordinary course of the employer's business.

Reduction in Taxable Value - Operation of Section 52

23. Under section 52 of the Act, the gross taxable value of a residual benefit constituted by the right to use a vehicle is subject to reduction to the extent to which, had the employee paid to obtain the right to use the vehicle, the amount would have been deductible for income tax purposes. As noted in paragraph 13, the appropriate reduction factor is the proportion

of business kilometres travelled to total kilometres travelled in the vehicle during the year. The principles outlined in ruling MT2027 in determining the private use of cars are similarly relevant for this purpose.

24. The reduction under section 52 is dependent on certain substantiation requirements being satisfied, i.e., unless those requirements are satisfied, the taxable benefit will be established on the basis of the total (private and business) kilometres travelled by the employee in the vehicle. As is relevant for present purposes the reduction will apply only where the employee lodges with the employer a declaration in an approved format specifying the business connection and deductible percentage, i.e. the business proportion of total kilometres travelled.

25. Such a declaration must normally be provided before the date of lodgment of the employer's FBT return, although there is provision for the Commissioner of Taxation to extend the period where there are circumstances warranting that action (see the definition of declaration date in sub-section 136(1)). For the purposes of determining the taxable value of the benefit for quarterly instalments in the current (transitional) year, the declarations are similarly required to be lodged before the date of lodgment of the relevant quarterly statement (see paragraph 106(1)(c) of the Act). Further details of these requirements, including details of the approved format for declarations, are contained in paragraphs 5 and 5.6 of the "Fringe Benefits Tax supplement to a guide for employers".

26. As a practical measure, the valuation approach outlined in paragraphs 16 and 17 determines the taxable value net of the operation of section 52 by applying the specified rates per kilometre to the private kilometres travelled. In these circumstances it would be acceptable for the declaration to state the number of private kilometres travelled in lieu of the "deductible percentage". In the event that the full operating costs basis of deduction outlined in paragraph 12 were being applied in circumstances where the vehicle is used by a number of employees throughout a year, a declaration by each employee detailing the private kilometres travelled would be acceptable on the understanding that the employer maintains details of the total kilometres travelled during the year. An approved format for these purposes is attached.

27. Detailed log book requirements of the kind specified for the determination of the value of car benefits are not required by law in the case of vehicles other than cars. However, many businesses would, in any event, maintain some form of log book records and these should be utilised where possible in determining the extent of private use of the vehicle. In the absence of such records soundly based estimates of the number of private kilometres travelled will be accepted. Thus, for example, the home to work component of private use could be determined by multiplying the number of journeys during the year by the distance between the employee's residence and place of employment.

Employee Contributions

28. In the event that an employee pays consideration to the employer for the right to use the vehicle, the gross taxable value of the benefit is reduced by the amount of the consideration paid. That reduction applies prior to the operation of section 52, i.e., the section 52 reduction applies to the value of the benefit net of

any employee contributions. It should be noted that, unlike car benefits, the cost to the employee of providing fuel does not constitute an employee contribution (see the definition of recipients contribution in sub-section 136(1)). The position where it is the employee's responsibility to provide fuel is discussed in paragraphs 14 and 18.

29. In the circumstances where the operating cost method of valuing the benefit is being used, the taxable value determined in accordance with paragraph 12 would be reduced by the amount of the employee contribution prior to the further reduction under section 52. In the event that more than one employee has the use of the vehicle during a year, the operating cost of the vehicle for the year would need to be apportioned between employees according to the total kilometres travelled by each employee. The taxable value determined on that basis would be reduced firstly by the amount of an employee's contribution, with the reduction factor under section 52 then being applied to that net value.

30. As previously noted, the cents per kilometre basis detailed in paragraphs 16 and 17 anticipates the operation of section 52 by applying the per kilometre rate to private kilometres travelled. In the event that there was an employee contribution the order of reduction detailed in paragraph 28 would be achieved by applying the per kilometre rate to the total kilometres travelled by the employee, deducting from that the employee contribution and apportioning the result in the proportion of private kilometres to total kilometres.

31. It follows from the preceding paragraphs that in circumstances where an employee contribution is made, a declaration lodged in accordance with paragraph 26 would need to include details of the total kilometres travelled by the employee in the vehicle. The approved format for declarations lodged in accordance with that paragraph has been prepared on that basis. As with private kilometres, soundly based estimates of the total kilometres travelled would be accepted for this purpose (see paragraph 27).

COMMISSIONER OF TAXATION
9 October 1986

APPENDIX

ATTACHMENT

Approved Format for FBT Residual Benefit Declaration
Employer Provided Vehicles other than Cars

I .....
declare that during the period .....
.....19 ... to..... 19.....
that .....
(show details of vehicle)
was provided to me by or on behalf of my employer, the total number of private kilometres travelled was .....