

Fringe Benefits Tax

Does a Fringe Benefits Tax liability arise with respect to a Motor Vehicle?

Facts

We attach a schedule of vehicles provided by the group. Only one vehicle is subject to the Fringe Benefits rules being MV1. All remaining vehicles are designed to carry more than 1 tonne and accordingly where a declaration of private use is signed there is no FBT in relation to these vehicles.

In regard to the MV1 we concluded that FBT was applicable for two reasons

- there is an arrangement between the entities to provide the vehicles to Employee1
- the vehicles are provided in respect of their employment due to the nature of the vehicles being a common employment benefit

The first point is still applicable in relation to MV1 as is the second point regarding the provision of vehicles being a common employment benefit. We noted in our previous advice it may be possible to argue that the vehicle is provided via the trust for private purposes and not in respect of employment. For example was the vehicle provided because of the employment relationship? If it can be proved the vehicles were provided solely for an independent relationship such as a family relationship then there is no fringe benefit. This may be arguable particularly where no hire fee is paid. A family trust holds the vehicles for asset protection which indicates that they are not held personally by the directors due to potential director's liability. Accordingly it is arguable that the vehicle is provided to Employee1 privately rather than in respect of employment.

Reference was made to rulings issued by the ATO and in summary it seems that claiming tax deductions for vehicle expenses is fatal to the argument the vehicle is not provided in respect of employment. This is because the argument that the vehicle is provided for asset protection would indicate that the expenses of maintaining the vehicle are not deductible. In addition the provision of a vehicle as compared to other possible fringe benefits is regarded as a normal incident of an employment relationship and it is very difficult to argue that a vehicle is provided for private purpose. Where no deduction has been claimed the argument that the vehicle is held for asset protection and not due to the employment relationship has some merit.

Conclusion

Accordingly it is my opinion that it is arguable that the provision of the MV1 by the Company is a not fringe benefit.

It is arguable that Client does not have an FBT liability in relation to the Motor Vehicle owned by Client because:

- the Motor Vehicle is provided for private purposes and not in respect of employment although the vehicles are a common employment benefit and the hire fee for the vehicles is not being deducted for tax purposes by BW

Yours sincerely

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