FIFO workers: travel costs considered otherwise deductible

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In brief

In what is expected to become a landmark decision in relation to travel costs, the Full Federal Court of Australia has held that costs incurred by an employer to transport fly-in-fly-out (FIFO) employees from their point of hire to their project location and back were "otherwise deductible" and therefore not subject to Fringe Benefits Tax (FBT).

In a unanimous decision handed down this morning, the three Justices in *John Holland Group Pty Ltd v Commissioner of Taxation* [2015] FCAFC 82 (John Holland Decision) determined that the flights provided were not subject to FBT on the basis that the employees were on paid duty under the control and direction of their employer from their arrival at Perth Airport and during their flights to and from Geraldton. As such, the travel costs were considered to be incurred in the course of their employment rather than being private and domestic in nature.

This decision will have a significant impact on companies who engage FIFO workers. As an advocate for John Holland in this case, we share our insights on the judgement and outline below how this decision may be relevant for your organisation.

In detail

Background

It has long been established in case law, that home to work travel is generally considered a private non-deductible expense. However, where it can be determined that the travel benefit provided to an employee is in connection to their employment (commonly seen in a business travel scenario as an example) then these transport benefits can often be provided to the employee free from FBT. This is due to the operation of the "otherwise deductible" rule. This rule operates to reduce the value of the benefit by the amount the employee would have been entitled to deduct in their personal tax return had they funded the expense themselves.

In industries which engage FIFO employees, it is common for the employer to provide transport benefits between an employee's point of hire and the project site typically to recognise the difficulties in travelling between both locations.

The question for consideration in these arrangements is whether the provision of these transport benefits gives rise to a taxable fringe benefit in respect of the employee or whether the costs could be considered incurred in travel "on work" due to the particular nature of the employment arrangement.

Facts of the John Holland case

John Holland's FIFO employment arrangements were typical of many FIFO arrangements. Essentially, John Holland provided either commercial or charter flights to their employees between a designated point of hire (Perth Airport) and a distant project location in Geraldton, Western Australia. Employees were required to report to the designated point of hire to take the flight to the project work location and were returned to this location at the completion of their rostered on period. During the flight to and from Geraldton, FIFO employees were bound to comply with the company policies and directives throughout the travel period.

John Holland originally submitted to the Federal Court of Australia that if the employees had themselves incurred and paid the expenditure in respect of the flights, a deduction would have been allowed to the employees so that the "otherwise deductible" rule would operate to reduce the taxable value of the fringe benefits to nil. Following an adverse decision in the first instance, an appeal was lodged to the Full Federal Court of Australia.

Reasoning of the Full Federal Court of Australia

In his reasons for judgment, Edmonds J. stated:

> *"From the time the John Holland employees, both Workforce and Staff, checked in at Perth Airport they were travelling in the course of their employment, subject to the directions of John Holland and being paid for it. That situation subsisted until they disembarked the plane at Perth Airport at the end of their rostered-on work time. At no time during that period were they travelling to work; they were travelling on work and the cost of doing so under the statutory hypothesis in s52(1) FBTAA would be an allowable deduction to them under s8-1 of the ITAA 1997".*

Pagone J. in his decision stated that the deductibility criteria that should be considered in FIFO work arrangements are as follows:

> *"The criteria for deductibility is thus not that there is a great distance to travel from home to work but that the travel is a part of the employment. A distant or remote location for the performance of employment duties may, however, be a relevant factor in determining whether travel is part of the employment. The location of the place at which work needs to be performed may occasion a need for travel to be part of the employment. The remoteness of the project location in this case provides the explanation for the travel being part of the employment in contrast to the need to incur the "living expense" of the kind considered in Newsom".*

Can the Commissioner appeal the decision?

The Commissioner has the ability to submit a special leave application to the High Court within 28 days (ie. by Thursday, 9 July). If the special leave application is successful, the matter will be determined by the High Court of Australia.

If the Commissioner does not lodge an appeal by 9 July, the Commissioner is bound by the decision.

The takeaway

While the Commissioner considers whether to proceed with an appeal, taxpayers should consider whether the John Holland Decision may be applicable to their FIFO arrangements. This includes an examination of such things as:

- contractual arrangements for FIFO employees;
- existing mobilisation strategy from project location to project location; and
- current company policies and procedures as applicable to FIFO employees.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

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