



THE TAX INSTITUTE

23 October 2017

Ms Anna Longley
Assistant Commissioner
Private Groups and High Wealth Individuals
Australian Taxation Office
PO Box 9977
BOX HILL VIC 3128

By email: anna.longley@ato.gov.au

Dear Ms Longley,

Fringe Benefits Tax – Definition of Taxi

The Tax Institute welcomes the opportunity to make a submission to the Australian Taxation Office (**ATO**) in relation to the *Fringe Benefits Tax – Definition of Taxi* Discussion Paper (**Discussion Paper**).

The Tax Institute acknowledges the approach the ATO has taken to reviewing its interpretation of 'taxi' in light of the *Uber B.V. v Commissioner of Taxation* [2017] FCA 110 (**Uber**) case which discussed the term 'taxi' against the background of the Goods and Services Tax (**GST**) law.

While The Tax Institute agrees with the ATO's outcome in the Discussion Paper, we suggest that there may be a better approach that the ATO should consider taking.

Defining the phrase 'taxi travel'

The Tax Institute recommends that the ATO should define the phrase 'taxi travel' (and the associated phrase 'taxi trip') for the purpose of the section 58Z 'Exempt benefits – taxi travel' of the *Fringe Benefits Tax Assessment Act 1986* (Cth) (**FBTAA**) rather than reinterpret the term 'taxi' in light of the *Uber* case.

The definition of 'taxi' was part of the original FBTAA and is relevant to a number of provisions throughout the FBTAA. The phrase 'taxi travel' was inserted later into the FBTAA and operates in the specific circumstance of the section 58Z exemption. Given the confined application of the phrase 'taxi travel', the impact of the ATO defining this phrase in light of the *Uber* case will therefore be limited, unlike the impact of reinterpreting the term 'taxi' which will be much broader and may lead to unforeseen complications, for example in relation to the operation of sections 7, 8 and 47 of the FBTAA.

There is no definition of 'taxi travel' or 'taxi trip' in the FBTA. The ATO provides, at Part 20.2 *Transport Exemptions*¹ in the ATO *Fringe Benefits Tax – a guide for employers*, an interpretation that the section 58Z exemption "is limited to travel in a vehicle licensed by the relevant State or Territory to operate as a taxi. It does not extend to ride-sourcing services provided in a vehicle that is not licensed to operate as a taxi."

If the Commissioner does not consider that he has the power to define the meaning of 'taxi travel' to include travel provided by ride-sourcing services in light of the *Uber* case under general powers of administration, we raise for consideration by the Commissioner whether he could exercise the statutory remedial power contained in Schedule 1, Part 5-10 Division 370 of the *Taxation Administration Act 1953* (Cth) for this purpose to empower him to define this phrase.

What should be included in 'taxi travel'

In The Tax Institute's view, all travel whether by a traditional taxi, hire car² or ride-sourcing service like the Uber ride-sourcing service should be regarded as 'taxi travel' for the purpose of section 58Z. This should be whether the vehicle itself otherwise meets the definition of 'taxi' for the purpose of the FBTA and whether the hire car or ride-sourcing service is statutorily permitted or not in a particular State or Territory.

We note that the comments about 'taxi travel' in Part 20.2 *Transport Exemptions* in the ATO *Fringe Benefits Tax – a guide for employers* will need to be updated if our view is adopted by the ATO.

Anti-avoidance

We note that the ATO may also need to be ready to apply section 67 of the FBTA regarding arrangements to avoid or reduce fringe benefits tax in circumstances where a taxpayer may attempt to take advantage of this definition of 'taxi travel' if it is to be adopted by the ATO as we suggest. That is, in order for the 'taxi travel' to be exempt from FBT, the ATO should interpret the law to permit the 'taxi travel' to be provided by a taxi, hire car or a ride-sourcing service where that service is part of an enterprise the provider is carrying on. Where the provision of the travel occurs outside of these arrangements, (for example where an employer pays for the spouse of an employee to drive them to work and that spouse is not carrying on an enterprise), the ATO may have reason to apply section 67.

Requirement for legislative change

Our preference would be to see a definition of 'taxi travel' inserted into section 58Z of the FBTA and that the definition should include travel provided by ride-sourcing services as well as taxis and hire cars. However, we understand this change is unlikely to be

¹ <https://www.ato.gov.au/law/view/document?DocID=SAV%2FFBTGEMP%2F00021>

² Eg limousines, rather than self-drive hire cars.

considered a high priority by Treasury and therefore anticipate that the administrative approach discussed above could be more easily adopted.

If you would like to discuss any of the above, please contact either myself or Tax Counsel, Stephanie Caredes, on 02 8223 0059.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Matthew Pawson', with a stylized, flowing script.

Matthew Pawson
President