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***Practice Group:***

***Tax***

# Travel Costs of Fly-In-Fly-Out Workers

***Australia Tax Alert***

***By Betsy-Ann Howe***

The recent Full Federal Court of Australia decision in *John Holland Group Pty Ltd v Commissioner of Taxation* [2015] FCAFC 82 concerned whether the 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 subject to Fringe Benefits Tax (FBT). This decision will have a significant impact on companies who engage FIFO workers.

## Relevant Facts

The John Holland Group conducted a rail construction and maintenance business. To carry out its projects, the business needed to deploy people in locations as various projects arose. It employed, trained and maintained its own skilled labour force available for deployment on a project by project basis.

Most of John Holland Group's labour force in Western Australia lived in Perth, and most projects were located in remote and regional areas. Most areas did not have sufficient accommodation available to function as permanent accommodation for employees and their families.

The employees who lived in Perth and worked on a rail upgrade construction project on a railway line east of Geraldton were FIFO employees. They worked for two weeks onsite and then had a week of rest in Perth. The John Holland Group arranged and paid for apartment style group accommodation for employees, suitable for the employees but not for partners and families who were generally not permitted to stay.

The John Holland Group also organised charter flights (or less frequently, commercial flights) to fly employees from Perth to Geraldton and back. Under FBT legislation, these flights constitute 'residual fringe benefits'.

Employees were required to report at Perth Airport and were paid for the time they spent in transit. They were required to act in accordance with directions from the John Holland Group and comply with codes of conduct during travel. Employees had no control over their FIFO travel arrangements.

## Decision

The main issue in the case was whether, if the employees had themselves incurred and paid the expenditure for the provision of the fringe benefits, the general deduction rules in section 8-1 of the *Income Tax Assessment Act 1997 (Cth)* (Tax Act) would have permitted the employees to deduct this expenditure. If this was the case, the 'otherwise deductible rule' in section 52 of the *Fringe Benefits Tax Act 1986 (Cth)* (FBT Act) would reduce the taxable value of the residual benefits to nil. That is, John Holland would not be liable to FBT in respect of the flights provided to its FIFO workers.

In summary, the Court held that in situations where FIFO workers were required to report for work at an airport or other travel base and were paid for the time spent in transit, the

cost of the travel to get to the worksite should be considered a part of the employees' employment. As such, that cost would be considered deductible under the Tax Act and therefore the 'otherwise deductible rule' in section 52 of the FBT Act would operate to reduce the taxable value of the residual benefits to nil.

## Reasoning of the Full Federal Court of Australia

The key judgment of the case was delivered by Edmonds J. His Honour considered that the test of deductibility under section 8-1 of the Tax Act is based on the relevance of the expenditure to income derivation, in terms of whether the expenditure is incurred in, or in the course of, gaining or producing income.

His Honour considered that Perth Airport was the point at which the employees' duties, and remuneration for their performance of their duties, began and ended. The relevant employment contract confirmed this and Edmonds J considered it irrelevant that Perth Airport is not owned or leased by the employer.

Edmonds J concluded that from the time the John Holland Group employees checked in at Perth Airport they were travelling in the course of their employment, were subject to the directions of John Holland and were being paid for undertaking those duties. That relationship continued until the employees disembarked at Perth Airport at the conclusion of their rostered-on work time. Importantly it was held that there was no time during that period when the employees were travelling to work; rather they were travelling on work related matters and the cost of doing so would have been deductible under section 8-1 of the Tax Act. As a result the 'otherwise deductible rule' in section 52 of the FBT Act reduced the taxable value of the residual benefits provided by John Holland to nil.

## Next Steps

The Commissioner of Taxation has not made an application for special leave to appeal this decision to the High Court of Australia and is therefore bound by the decision.

If you would like further information on the implications of this decision and how it could apply to arrangements you may have with FIFO workers, please contact Betsy-Ann Howe or any member of the Tax team.

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