

AUSTRALIAN TAX ADVISER

2404 : OCTOBER 2023

The IFX Legal Tax Team

IN THIS ISSUE

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SECTION 1 – PROFESSIONAL DEVELOPMENTS	1
FIFO WORKERS' TRAVEL COSTS	1
¶4.1 The John Holland Case.....	1
¶4.2 The Bechtel Australia Case	1
¶4.3 The Rule.....	1
¶4.4 The Decisions.....	2
SECTION 2 – PROFESSIONAL CURRENCY	3
BILLS AND LEGISLATION.....	3
¶4.5 Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023.....	3
¶4.6 Other legislation.....	10
¶4.7 Other financial sector reforms	10
¶4.8 Shipping reform	11
¶4.9 Bills yet to be finalised	12
CASES AND DECISIONS	12
¶4.10 Kitchen designer was an employee for super guarantee purposes	12
¶4.11 Deduction disallowed for personal super contributions	13
¶4.12 Disputed payments not found to be gifts or loans	15
RULINGS AND GUIDELINES	15
¶4.13 Rental property owners	15
¶4.14 Valuations for tax purposes	16
¶4.15 Two significant frauds involving GST	17
¶4.16 ATO warns against fraudulent GST activities	18
¶4.17 Aggregated turnover of connected entities	18
¶4.18 Rulings on s 23AG of the ITAA36	20
¶4.19 Class and product rulings	20

Continued

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IN THIS ISSUE

STATE TAXES.....	22
New South Wales	22
¶4.20 Zhang v Chief Commissioner of State Revenue	22
Victoria	23
¶4.21 Woodsman Properties Pty Ltd v Commissioner of State Revenue	23
¶4.22 Lui v Commissioner of State Revenue.....	23
¶4.23 Healey Management Pty Ltd v Commissioner of State Revenue.....	23
¶4.24 Primary production exemption not available to vendor	24
South Australia	25
¶4.25 Stamp duty: transaction increasing interests in land holding entity dutiable	25
ACT	26
¶4.26 Landholder duty: transactions varying interests in a landholding unit trust not dutiable.....	26
SECTION 3 – QUESTIONS AND ANSWERS	28
¶4.27 Amendments to tax return.....	28
¶4.28 Company tax return completion: foreign capital gain.....	28
¶4.29 Commencing TRIS.....	29
¶4.30 Hire purchase asset.....	30
¶4.31 Non-concessional contributions.....	31
¶4.32 Transfer balance cap	32
¶4.33 Earn out payments received from UK	33
¶4.34 Taxation of US issued annuities	34
¶4.35 Foreign pension.....	35
¶4.36 Deductibility of holding costs during rental vacancy.....	36

SECTION 1 – PROFESSIONAL DEVELOPMENTS

FIFO WORKERS' TRAVEL COSTS

After the Full Federal Court decision in the [John Holland Group](#) case, we assumed that the issue of employee travel arrangements was all but settled. Readers may recall that in that case, the payment of employees' travel expenses were found not to be taxable fringe benefits where those employees travelled between an airport in their hometown or city to an airport in a place that was a 'Fly in-fly out' work site.

¶4.1 The John Holland Case

The Full Court drew a distinction between employees travelling 'on work' and employees travelling 'for work'. In this regard, the Full Court (at para 45) said:

*'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 s 52(1) FBTA would be an allowable deduction to them under [s 81](#) [sic] of the ITAA 1997.'* (Our emphasis and with respect, I assume that his Honour meant s 8-1 of the ITAA1997 rather than s 81).

Later, in the recent case of [Bechtel Australia Pty Ltd v FCT](#), the Federal Court reached the opposite conclusion on broadly similar facts. In particular, the decision addressed the issue of whether employers can utilise the 'otherwise deductible rule' so that no FBT would apply to the cost of the travel. The 'otherwise deductible rule' says that where, had the worker incurred the relevant expenditure themselves, it would have been deductible to that worker, the employer is not liable to FBT on the value of that benefit.

¶4.2 The Bechtel Australia Case

In the Bechtel case, employees worked under a FIFO roster, with transport to the worksite from a major airport being provided (booked and paid) by the employer. In both the Bechtel and the John Holland cases, the work sites were not 'remote area worksites' for FBT purposes, so the FBT exemption that would otherwise have applied was not available.

¶4.3 The Rule

To recap the rule, the general position for travel costs is that:

- when an employee is travelling between work locations, the transport expenses incurred by the employee are usually deductible and the employee is seen to be 'travelling while performing their duties'; and
- travel costs between an employee's home and regular place of work are non-deductible.